

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE)
REGULATIONS 2014

2014 No.1512

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

The purpose of these Regulations is to supplement and provide for the enforcement of the rights and entitlements set out in Regulation (EC) No. 336/2006 (“Regulation (EC) 336/2006”) of the European Parliament and of the Council of 15th February 2006 on the implementation of the International Safety Management Code (“the ISM Code”) within the Community and repealing Council Regulation (EC) No. 3051/95. They also restate and consolidate within a single instrument United Kingdom Regulations which require additional ships not within Regulation (EC) 336/2006 to comply with the ISM Code.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 These Regulations supplement and provide for the enforcement of the rights and entitlements set out in Regulation (EC) 336/2006 which revoked the earlier, narrower Council Regulation (EC) 3051/95 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) (“Regulation (EC) 3051/95”).

4.2 The proposal that resulted in Regulation (EC) 336/2006 was the subject of Explanatory Memorandum (EM) 16218/03 submitted by the Department for Transport on 22 January 2004 to the House of Commons European Scrutiny Committee. The Committee considered the EM on 4 February 2004. The Committee recommended that the document was politically important and did not clear it from scrutiny pending further information (Report 9, Session 2003/04, reference 25187). The House of Lords Select Committee on the European Union referred the EM to its Sub-Committee B at the 1167th sif of 27 January 2004. The Lords Committee Chair wrote to the Minister on 3 February 2004 clearing the document from scrutiny.

4.3 Ministerial letters were sent to the Chairs of both Committees on 5 October 2004 to provide an update on negotiations. The House of Commons European Scrutiny Committee considered the letter on 13 October 2004. The Committee maintained its recommendation that the document was politically important, but cleared it from scrutiny (Report 32, Session 2003/04). The Lords Committee Chair replied to the Minister’s letter on 20 October 2004 acknowledging the further information provided.

4.4 These Regulations also restate and consolidate the provisions relating to additional ships not covered by Regulation (EC) 336/2006 which are currently found in the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997 (SI 1997/3022) and the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998 (SI 1998/1561). .

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The ISM Code, to provide an international standard for the safe management and operation of ships and for pollution prevention, was adopted by the International Maritime Organization (IMO) in 1993 and through its incorporation into the International Convention on the Safety of Life at Sea 1974 was applied to passenger vessels on international voyages from 1 July 1998. This international standard was further extended to other types of ships in 2002.

7.2 Regulation (EC) 3051/95 imposed a duty on roll-on, roll-off passenger ferries operating to or from European ports, to comply with the ISM Code. Regulation (EC) 336/2006 revokes that Regulation and imposes the duty to comply with the ISM Code on a wider variety of ships including passenger vessels engaged exclusively on domestic voyages (i.e. voyages by sea from a port of a Member State to the same or another port within that Member state), other than in waters of EU Class C or D (as defined by Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships), and cargo ships and mobile offshore drilling units over 500 gross tonnage in domestic waters.

7.3 While Regulation (EC) 336/2006 took effect without the need for transposition into UK law, it is necessary to (a) make appropriate supplementary provision to support the Regulation, including an enforcement regime with proportionate, effective and dissuasive sanctions; and (b) remove domestic regulation which overlaps with and has been superseded by that Regulation. The Regulations do this.

7.4 The Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998 contain a duty applicable to ships specified in those regulations (including passenger ships of Classes I, II and II(A), and tankers and cargo ships which engage in international voyages) to comply with the ISM Code as a matter of domestic law, reflecting the IMO's Safety of Life at Sea (SOLAS) Convention, Chapter IX. As mentioned above, where such duties are now provided for by Regulation (EC) 336/2006, it is necessary to remove the domestic provision which overlaps. Where such duties are not provided for by Regulation (EC) 336/2006, the policy intention is to retain those duties (with the scope neither expanded nor reduced). The new Regulations achieve this by revoking the 1998 Regulations and restating the non-overlapping duties alongside the provisions which supplement Regulation (EC) 336/2006 mentioned above.

Consolidation

7.5 The Department has decided to revoke the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997 and the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998 in their entirety and to restate the surviving domestic law provisions alongside the provisions supplementing Regulation (EC) 336/2006. It considers that this approach, which reduces domestic legislation on the ISM Code to a single instrument, is appropriate having regard to the general desirability of consolidation.

8. Consultation outcome

8.1 A consultation was conducted between 16 October and 26 November 2012. The consultation made clear that compliance with Regulation (EC) 336/2006 was not optional and

therefore not the focus of this particular consultation. Instead the focus for comment was the approach of the Maritime and Coastguard Agency (MCA) in relation to the enforcement regime for vessels covered by the draft Regulations (including those covered by Regulation (EC) 336/2006) and the proposed penalties for non-compliance. The consultation targeted all the main industry representative bodies, for example the Chamber of Shipping, the Passenger Boat Association, the Port of London Authority and the main seafarers unions. No comments were received to the consultation.

8.2 The MCA have now conducted surveys on all of the ships newly covered by Regulation (EC) 336/2006 and have found them all to have the correct ISM systems in place.

9. Guidance

Since these Regulations do not introduce any new requirements as regards the ISM Code itself, the existing guidance in Merchant Shipping Notice MSN 1826 “International Safety Management (ISM) Code Amendments” will remain applicable. As there is no change to the ships to which the ISM Code applies, no new guidance is being published to accompany these Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating Small Business

The legislation applies to small business.

As regards those ships covered by Regulation (EC) 336/2006, given that the Regulation is law in all Member States as soon as it is in force, there are no additional compliance costs arising from these Regulations as the ship operators will have already incurred the costs of compliance under Regulation (EC) 336/2006. As mentioned above, the MCA has conducted surveys which indicate that all affected UK ships have complied with Regulation (EC) 336/2006.

12. Monitoring & review

12.1 Compliance with the Regulations will be continuously monitored through MCA inspections of ships. The Regulations would be reviewed when there are changes to the ISM Code or Regulation (EC) 336/2006.

12.2 The Regulations contain a review clause which requires the Secretary of State to review their operation and effect, and publish a report, on a five yearly basis.

13. Contact

Prasad Panicker of the Maritime and Coastguard Agency (Telephone 02380 839628 or e-mail: prasad.panicker@mca.gov.uk) can answer any queries regarding the instrument.