

EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT WORK) (ELECTROMAGNETIC FIELDS) REGULATIONS 2016

2016 No. 1026

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument implements for the maritime sector Directive 2013/35/EC¹, which sets out the minimum health and safety requirements for the exposure of workers to electromagnetic fields. It places the duty on employers to reduce the risk to their employees' health resulting from exposure to electromagnetic fields ("EMF") at work.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is drafted to be consistent with the Control of Electromagnetic Fields at Work Regulations 2016 (S.I. 2016/588), which the Committee reported for defective drafting in the fifth report of the 2016-17 session. The Department has carefully considered the Committee's report and added an express provision to regulations 6 (exposure assessment) and 9 (risk assessment) to the effect that a person is treated as having complied with regulations 6 or 9, as the case may be, if he or she has made an assessment which complies with either of those regulations before the Regulations come into force.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and is not expected to be prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Council Directive 89/391/EEC (the "Framework Directive") introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962) ("General Duties Regulations").
- 4.2 A Directive covering worker exposure to electromagnetic fields (EMF) was first adopted by the European Parliament and the Council of Ministers in 2004. However,

¹ Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC (OJ L179, 29.6.2013, p.1).

following adoption, the manufacturing sector and the medical Magnetic Resonance Imaging (MRI) community (MRI is widely used in medical diagnostics) raised concerns that it contained disproportionate requirements and was overly burdensome. An extension to the transposition deadline to address these concerns was agreed and the 2004 Directive was not transposed into UK law.

- 4.3 After further negotiation, Directive 2013/35/EC introduced minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (electromagnetic fields).
- 4.4 The requirements of Directive 2013/35/EC build on the general safety and health provisions contained in the Framework Directive, and are implemented for seafarers in the maritime sector by means of this instrument.

5. Extent and Territorial Application

- 5.1 This instrument extends to the United Kingdom.
- 5.2 The territorial application of this instrument is all United Kingdom ships whether in the United Kingdom or anywhere else in the world, and all seafarers on such vessels irrespective of nationality, ethnic origin, religion, gender etc. It also applies to non-UK ships when in UK waters.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 This instrument implements Directive 2013/35/EC for workers in the UK maritime sector. Directive 2013/35/EC is implemented for land-based workers in Great Britain by regulations made by the Health and Safety Executive, and in Northern Ireland by the regulations made by the Health and Safety Executive (Northern Ireland). It is necessary to make this instrument to ensure application of the Directive to workers in the merchant shipping and fishing sectors to avoid disparity of regulatory coverage between land-based workers and those working on ships. This is especially important for those working in, for example, dock and port areas, where land-based workers (e.g. stevedores and other dock workers) could be working on board a ship alongside members of the crew.
- 7.2 Directive 2013/35/EC aims to ensure that:
 - minimum standards for EMF safety are introduced across all Member States;
 - dutyholders minimise the risks from EMF to which workers may be exposed; and
 - risks from EMF are controlled so all workers remain protected.
- 7.3 An EMF is a type of non-ionising radiation that occurs naturally in the environment and is created whenever electrical energy is used. EMF, in this context, means static electric, static magnetic and time-varying electric, magnetic and electromagnetic fields with frequencies up to 300 GHz. Long-term effects are not considered because

there is limited scientific evidence that they are harmful. There are two general types of EMF effects that may create a safety or health hazard:

- direct effects on the body, and
- indirect effects caused by the EMF affecting other things in the environment.

Consolidation

- 7.4 No specific legislation has previously existed to protect workers in the maritime sector from the risks to their health and safety arising from exposure to electro-magnetic fields. There is therefore no scope for consolidation of existing legislation. However, the requirement to safeguard health and safety contained in the General Duties Regulations is relevant, and the MCA has transposed into these Regulations only the requirements of the Directive which go beyond or are more specific than those covered by existing UK legislation.

8. Consultation

- 8.1 Discussions were held with the UK's National Maritime Occupational Health and Safety Committee, which represents both shipowners and seafarer unions, prior to public consultation to establish likely sources of EMF on ships and the protection measures already in place. An informal stakeholder consultation was also undertaken to ascertain the costs/benefits and other effects of the proposals. The response rate was however very low and provided no significant information.
- 8.2 Formal public consultation on the draft instrument and guidance was held between 14th March and 6th May 2016. Forty-two organisations, including a number of maritime trade associations with large memberships, were notified of the consultation exercise, and documents were posted on the MCA pages of the www.gov.uk website to which interested organisations and individuals subscribe. The consultation page was viewed 836 times during the consultation period, and the documents were downloaded 59 times. Only five responses were received, all indicating general support for the instrument. Few specific comments were received and these have been taken into account in finalising the guidance.

9. Guidance

- 9.1 In line with usual practice, a Marine Guidance Note has been produced by the Maritime and Coastguard Agency to provide guidance on the requirements of this instrument. Further guidance will be included in a future update to the "Code of Safe Working Practices for Merchant Seafarers" published by The Stationery Office. The European Commission have produced a "Non-binding guide to good practice for implementing Directive 2013/35/EU Electromagnetic Fields" which contains detailed guidance on the requirements of the Directive and how to meet them.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is considered to be low. Whilst virtually all seafarers are likely to be exposed to electromagnetic fields in some form or other, they are not expected to be subject to exposure at harmful levels. The level of exposure is likely to vary according to the equipment in place on each vessel. Small vessels are less likely to have equipment, other than radar, which produce harmful levels of EMF. However, the EMF levels reduce very quickly with distance so the risk of exposure from radar, which is mounted at a height, is very limited. On larger ships,

where power generation and distribution may create high levels of EMF in a limited number of specific areas, adequate controls are expected to be in place already as a result of the General Duties Regulations, which require risk assessments to be undertaken and appropriate measures to be taken to alleviate risks identified.

- 10.2 In addition, in order to minimise the impact on businesses, this instrument does not go beyond the minimum requirements of the Directive. The UK's approach to transposition aligns with current domestic regulation and health and safety policy, avoiding any overlap or contradiction. It also implements the Directive in a way that is proportionate to the risks and takes into account existing controls.
- 10.3 The impact on the public sector is considered to be minimal as reviewing the application of the provisions of this instrument on ships will be carried out as part of MCA's normal survey regime.
- 10.4 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is designed to minimise the impacts on any business where there is a low risk of exposure to harmful levels of electromagnetic fields. There is little scope for specific measures to reduce the impact of the requirements on firms employing up to 50 people because EU Health and Safety Directives are required to be applied to all workers irrespective of the size of the company employing them. However, it is not envisaged that these Regulations will have significant effects on small businesses as they are considered unlikely to operate the types of vessel where there is risk of exposure to harmful levels of electromagnetic fields.

12. Monitoring & review

- 12.1 In consultation with HSE, the Maritime and Coastguard Agency will evaluate how the Regulations change working practices. Consideration will also be given to statistics for injuries and accidents reported to the Marine Accident Investigation Branch.
- 12.2 All health and safety directives are also subject to a regular review by the European Commission, to which MCA will contribute as appropriate. In addition, it is proposed to monitor compliance to see if any problems arise which need to be resolved by amending the Regulations, or associated guidance, to make matters clearer to those organisations/ persons covered by the Directive's provisions.
- 12.3 In line with other new legislation the instrument contains a statutory review clause requiring the Secretary of State to review the operation of the Regulations 5 years after they come into force and at five yearly intervals.

13. Contact

- 13.1 Julie Carlton at the Maritime and Coastguard Agency, Telephone: 023 8032 9216 or email: Julie.Carlton@mcga.gov.uk can answer any queries regarding the instrument.