

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING AND FISHING VESSELS (PORT WASTE
RECEPTION FACILITIES) (AMENDMENT) REGULATIONS 2016

2016 No. 1211

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.

2. Purpose of the instrument

- 2.1 In the context of marine pollution, EU law requires ships' masters to notify ports in advance of the waste that they wish to discharge on arrival.
- 2.2 This instrument implements for the maritime sector Directive 2015/2087¹, which amends the existing regime so as to re-align the content of the prescribed advanced notification form with the waste categories listed in MARPOL Annex V – Garbage, and to provide an additional column on the form to record waste delivered at the previous port of call.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 The International Convention for the Prevention of Pollution from Ships (MARPOL) requires Contracting States to ensure the provision of adequate facilities at ports and terminals for the reception of ship-generated waste and cargo residue. The international requirements are not detailed, and as such have been implemented differently across the world. Therefore the European Union decided that by producing more prescriptive European legislation, it would be able to further reduce illegal marine discharge resulting from shipping.
- 4.2 In 2000 the Commission published its initial Directive 2000/59/EC (the 2000 Directive) on port reception facilities (PRFs) for ship-generated waste and cargo residues. It required all EU ports to have adequate facilities to allow all visiting ships to deliver their waste ashore thereby reducing the risk of ships illegally discharging ship-generated waste and cargo into the sea. It provides for the harmonisation of PRFs and a structured enforcement regime. Amending Directives were published in 2002,

¹ Commission Directive (EU) 2015/2087 of 18 November 2015 amending Annex II to Directive 2000/59/EC of the European Parliament and the Council on port reception facilities for ship-generated waste and cargo residues (OJ L 302, 19.11.2015, p. 99–102).

2007 and 2008. The 2002 amendment introduced provisions for updating the 2000 Directive through comitology, with the involvement of the Committee on Safe Seas (COSS). The 2007 amendment introduced the provision for delivery of sewage to reception facilities and the 2008 amendments simplified procedures for changes to the Directive providing those changes did not broaden the scope of the 2000 Directive.

- 4.3 Therefore, Directive 2015/2087 was adopted through the comitology process laid out in Article 15 of the 2000 Directive and 2008 amendments. That Article allows the Annexes to be adapted in order to bring them into line with EU or International Maritime Organisation (IMO) measures which have entered into force, and in order to improve the regime established by the Directive.

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 2015/2087 within the UK maritime sector. This Directive amends the PRF regime so as to re-align the content of the prescribed advanced notification form with the waste categories listed in MARPOL Annex V – Garbage, and to provide an additional column on the advanced notification form to record waste delivered at the previous port of call.
- 7.2 The amending Directive replaces Annex II of Directive 2000/59/EC, as amended. The amendments require:
- An amendment to the advanced notification form to use the waste categories in line with MARPOL, in particular, MARPOL Annex V – Garbage.
 - An additional column to record waste that has been delivered to the previous port of call.

Consolidation

- 7.3 Existing requirements are already set out in UK regulation, the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 (SI 2003/1809), as amended. It is proposed that due to the minimal change required by this amending Directive, a simple amending SI will implement these amendments.

8. Consultation

- 8.1 The Maritime and Coastguard Agency (MCA) has informally engaged key players throughout the negotiation process of this amending Directive and subsequently following its publication with regards to the impacts that the minor changes will have

on their industry. Throughout, industry representatives have supported the UK approach and responses indicated the impact would be negligible. The draft amending regulations were issued as an official consultation package on 20th October 2016, providing a 6 week formal consultation period.

- 8.2 As the industry affected has been fully expecting these changes, there was little response to the formal consultation process, those received fully supported the proposed changes.

9. Guidance

- 9.1 In line with usual practice the existing Marine Guidance Notes 253, 259, 326 and 387, produced by the Maritime and Coastguard Agency, will be consolidated into one updated Note issued to industry and will provide guidance on the requirements of this instrument. This will be available on the Maritime and Coastguard Agency's website when this instrument comes into force. Hard copies can also be obtained from the Maritime and Coastguard Agency.
- 9.2 In 2012 the IMO published Guidelines for the Implementation of MARPOL Annex V². These Guidelines provide assistance for all parties developing and enacting domestic laws and having to comply with MARPOL Annex V- Garbage, together with the interrelation port reception facilities.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is considered minimal. When negotiating the amending Directive, the majority of industry indicated that they had already modified their advanced notification forms to take into consideration the additional waste categories in line with MARPOL. The MCA has worked with the ports industry to produce a revised standardised advanced notification form in line with that of the amending Directive together with voluntary additional information that would assist the process on request from the UK ports. Therefore the impact is considered to be minimal.
- 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 International 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 the Regulations on ships will be carried out as part of MCA's normal survey regime.
- 10.4 No Impact Assessment has been produced as the impact is considered to be minimal.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

² Guidelines for the Implementation of MARPOL Annex V ISBN 978 – 92 -801-1564-2;
[http://www.imo.org/en/OurWork/Environment/PollutionPrevention/Garbage/Documents/2014%20revision/RESOLUTION%20MEPC.219\(63\)%20Guidelines%20for%20the%20Implementation%20of%20MARPOL%20Annex%20V.pdf](http://www.imo.org/en/OurWork/Environment/PollutionPrevention/Garbage/Documents/2014%20revision/RESOLUTION%20MEPC.219(63)%20Guidelines%20for%20the%20Implementation%20of%20MARPOL%20Annex%20V.pdf)

- 11.2 To minimise the impact of the requirements including those on small businesses (employing up to 50 people), the UK successfully negotiated a compromise to the original proposal made by the Commission. This resulted in only an additional column to be added to the advanced notification form to gather further data on the last port of call, rather than the full introduction of mandatory waste delivery receipts which would have had a significant impact on businesses.

12. Monitoring & review

- 12.1 The Commission are currently undertaking work to review Directive 2000/59/EC, for a full recast, which is expected to be at the end of 2016 / early 2017. The UK is monitoring progress and providing input by attendance of the European Sustainable Shipping Forum (ESSF), in particular at working level with the specifically established sub-group on port reception facilities.
- 12.2 In line with statutory requirements, the proposed regulation contains a statutory review clause requiring the Secretary of State to review the operation of this instrument 5 years after it comes into force.

13. Contact

- 13.1 Lorraine Weller at the Maritime and Coastguard Agency, Telephone: 023 8032 9503 or email: lorraine.weller@mcga.gov.uk can answer any queries regarding the instrument.