

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MONITORING, REPORTING AND VERIFICATION
OF CARBON DIOXIDE EMISSIONS) AND THE PORT STATE CONTROL
(AMENDMENT) REGULATIONS 2017

2017 No. 825

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport 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 The primary objective of these Regulations is to support the operation of Regulation (EU) No. 2015/757 of the European Parliament and of the Council on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport and amending Directive 2009/16/EC (O.J. L123, 19.5.2015, p. 55.) (“the EU Regulation”).
- 2.2 The Regulations amend the Merchant Shipping (Port State Control) Regulations 2011 (S.I.2011/2601) to make compliance with the EU Regulation the subject of an inspection under those regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations correct a drafting error in the Merchant Shipping (Port State Control) Regulations 2011 identified by the Joint Committee in their Thirty Seventh Report published on 18 January 2012. Copies of these Regulations are being issued free of charge to all known recipients of those regulations.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been 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 EU Regulation creates a mechanism for monitoring and reporting carbon dioxide emissions from ships and for reporting other information at national and European Union level.
- 4.2 Article 19.1 of the EU Regulation requires Member States to take all measures necessary to ensure compliance with the monitoring and reporting requirements in the EU Regulation by ships flying its flag, and article 20.1 requires Member States to set up a system of penalties for failure to comply with the monitoring and reporting obligations set out in Articles 8 to 12 of the EU Regulation. The penalties provided

for shall be effective, proportionate and dissuasive. These Regulations implement that obligation.

- 4.3 Proposals for a draft EU Regulation were laid before Parliament on 5 July 2013. In their Report of 4 September 2013, the European Scrutiny Committee noted that whilst the Government would have preferred to tackle emissions from ships through the IMO, it supported the approach proposed, subject to considering whether the draft Regulation would result in an extension of EU competence, and what the costs for UK industry might be. As a result clearance was withheld pending further information on these points.
- 4.4 In their subsequent Report of 10 December 2014, the Committee noted that the Government had subsequently provided a number of updates when it reported that the Presidency had agreed a text with the European Parliament, which was acceptable to the UK, and on which a political agreement would be sought at the Council on 17 December 2014. Although the Committee stated that they were now broadly satisfied as regards the costs of the measure, they stated that they would only be prepared to lift scrutiny if the Government could assure the Committee before the Council that its concerns over competence had been addressed satisfactorily.
- 4.5 Following confirmation by a letter to the Committee of 15 February 2015 that the Government was satisfied that draft Regulation does not represent an extension of EU competence, the Committee cleared the draft EU Regulation from scrutiny on 25 February 2015
- 4.6 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of the instrument is the United Kingdom.

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 As part of the EU Regulation, Member States are instructed to set up a penalties regime to encourage compliance.
- 7.2 The EU Regulation establishes rules for monitoring, reporting and verifying CO₂ emissions from ships above 5,000 gross tonnage which make voyages that start or finish in a port in an EEA State. The EU Regulation has been designed to be compatible with (and inform discussion on) a global data collection system developed

by the International Maritime Organization. It has also been designed to minimise the cost burden for the shipping industry and maritime administrations.

- 7.3 The EU Regulation came into force on 1 July 2015. The first reporting period begins on 1 January 2018 and ships within scope are required to carry a valid Document of Compliance (“DoC”) from 30 June 2019. The Regulation has direct effect and does not require transposition, but ‘top up’ legislation, in the form of UK regulations is needed to establish a compliance regime.
- 7.4 A ship which is required to have a DoC must not enter or leave a port in the United Kingdom unless a DoC is in force in respect of that ship. A breach of this requirement is an offence by the company. In addition, the DoC must be carried on board the ship and produced on demand by the master of the ship. A failure to produce the DoC is an offence by the master of the ship and a failure to carry the DoC on board the ship is an offence by the company.
- 7.5 The amendment being made to the Merchant Shipping (Port State Control) Regulations 2011 means that the DoC will be one of the documents that a ship which is subject to an inspection under those regulations is required to produce.

8. Consultation outcome

- 8.1 The Department for Transport launched a consultation on the draft of these regulations implementing EU Regulation on 4 January 2017 which sought the views of industry on the proposed penalties regime and to obtain information about the costs of the penalties regime.
- 8.2 The consultation closed on 15 February 2017 and three responses were received. The responses did not question the policy and consisted of purely technical comments on the draft statutory instrument.

9. Guidance

- 9.1 No guidance is being published. As a result of the publicity that preceded the adoption of the EU Regulation all affected parties are aware of their responsibilities.

10. Impact

- 10.1 The impact on charities and voluntary bodies is expected to be minimal given the fact that the EU Regulation only applies to ships of more than 5,000 gross tonnes.
- 10.2 The impact on the public sector is not expected to be a significant.
- 10.3 A Regulatory Triage 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. The impact is expected to be minimal.

12. Monitoring & review

The Secretary of State must from time to time carry out a review of regulations 3 to 10 and set out the conclusions of the review in a report and publish the report before 1 October 2022. In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the EU Regulation is implemented in other EEA

States. The report must set out the objectives intended to be achieved by the regulatory system established by the regulations. It must also assess the extent to which those objectives are achieved and whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation. The amendments to the Merchant Shipping (Port State Control) Regulations 2011 will be considered when those regulations are reviewed in accordance with regulation 26 of those regulations. The next review is scheduled to take place in 2021.

13. Contact

- 13.1 Stavroulla Economou at the Department for Transport Telephone: 07876 003074 or email: Stavroulla.economou@dft.gsi.gov.uk can answer any queries regarding the instrument.