

EXPLANATORY MEMORANDUM TO
THE SHIP RECYCLING (REQUIREMENTS IN RELATION TO HAZARDOUS
MATERIALS ON SHIPS) REGULATIONS 2018

2018 No. 1122

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.

2. Purpose of the instrument

- 2.1 These Regulations implement the requirements placed on ships by Regulation (EU) No. 1257/2013 on ship recycling¹. The Regulations will allow for the inspection and, in cases of non-compliance, detention of UK flagged ships and non-UK flagged ships in UK ports. Fines and/or imprisonment for failure to comply could be applied, depending on the decision of the courts.

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 This instrument implements, so far as is necessary, the requirements placed on ships by Regulation (EU) No. 1257/2013 of the European Parliament and of the Council of 20th November 2013 on ship recycling and amending Regulation (EC) No. 1013/2006 and Directive 2009/16/EC (“the EU Regulation”). In addition to requirements placed on ships, the EU Regulation also sets out standards for ship recycling facilities. These have been implemented by the Department for Environment, Food and Rural Affairs in the Ship Recycling Facilities Regulations 2015².
- 4.2 These Regulations put in place measures intended to ensure the enforcement of the directly effective EU Regulation. In particular they set out who, in the United Kingdom, is assigned certain roles under the EU Regulation and support enforcement of its requirements, by providing for criminal offences for breaching the EU Regulation. They ensure that the survey regime provided for in the EU Regulation works as intended in respect of the United Kingdom and ships in United Kingdom waters. They apply the Port State Control inspection regime to ship recycling

¹ Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20th November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.13, p. 1 - 20).

² S.I. 2015/430.

requirements, with the effect that port state control inspectors will be able to verify whether ships comply with the requirements set down by the EU Regulation.

- 4.3 On 23rd June 2016, a referendum on the United Kingdom's membership of the EU took place which concluded in a vote to leave the EU. The Government's intention is that the UK will cease to be a Member State of the EU on 29th March 2019. A further instrument will be necessary to make the relevant changes to this instrument so that it can continue to operate properly after that date.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom and United Kingdom ships wherever they may be.

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 The EU Regulation was published in the Official Journal on 10th December 2013. It is based on the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships ("the Hong Kong Convention"). The purpose of the Hong Kong Convention is to address concerns about safety, health, environmental damage and welfare matters in the ship recycling industry, by regulating the whole lifecycle of the vessel. Although the Convention was adopted in May 2009 it is unlikely to come into force before 2020. The EU Regulation is intended to put Member States in a position to comply with the Hong Kong Convention before this date. Consideration was given to ratifying the Hong Kong Convention at the same time as implementing these UK Regulations, however due to the primary legislation required for this to happen it was deemed unrealistic.
- 7.2 Ships have a normal life span of between 25 and 40 years before they are sent for recycling. In 2009, some 200 ships flagged to EU Member States, with a total volume of about two million gross tonnes, were dismantled to recycle the steel, equipment and other materials. However, most ships (especially older vessels) contain hazardous materials including asbestos, polychlorinated biphenyls (PCBs), and tributyltin – which need to be properly managed, stored and disposed of during the recycling process. Vessels in European waters going for dismantling and recycling are currently classified as 'hazardous waste' under the Waste Shipment Regulation 1013/2006/EC³ ("the WSR"). This bans the export of hazardous waste (including ships) to any country which is not a member of the Organization for Economic Co-operation and Development ("OECD").
- 7.3 The requirements in the WSR have proved to be ill-suited to addressing the issues raised by ship recycling, are difficult for Member States to enforce and have failed - with the exception of a handful of yards - to improve the safety and environmental

³ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14th June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1 - 98).

standards of ship recycling facilities in Asia. Moreover, as 95 per cent of ship recycling takes place in Asia, there is insufficient capacity within the OECD to recycle all ships flagged to EU Member States. As a consequence, many vessels circumvent the current legislation and are dismantled in conditions which offer little protection to human health or to the environment.

- 7.4 Once in place, the EU Regulation will remove ships over 500 gross tonnes flagged in EU Member States from the scope of the WSR, providing a legitimate method to recycle a European flagged vessel at an ‘approved’ ship recycling yard, either inside or outside the OECD. Non-EU flagged vessels will be subject to certain requirements under the EU Regulation when calling at a port or anchorage of an EU Member State, but will remain subject to the WSR once a decision is made to recycle the vessel. All vessels will be required to carry documentation listing hazardous materials on board, and EU-flagged vessels will undergo regular surveys and their owners will be required to inform the administration if they intend to recycle a ship and provide details of where and how recycling will be carried out.
- 7.5 The EU Regulation will apply to shipowners and ship recycling facilities when it comes into effect on 31st December 2018. These Regulations will come into force on the same day.

Consolidation

- 7.6 Ship recycling is a new policy area and therefore this consideration does not arise.

8. Consultation outcome

- 8.1 A public consultation on the Regulations and Regulatory Triage Assessment (“RTA”) took place over an eight week period with it closing on 15th September 2017. Nine comments were received which were generally supportive of the draft Regulations and RTA. None of the comments have warranted a significant change to the Regulations or RTA. The outcome of the consultation can be found at: <https://www.gov.uk/government/consultations/consultation-on-the-draft-ship-recycling-regulations-2017>.

9. Guidance

- 9.1 A Marine Guidance Note will be prepared in order to provide guidance on both this instrument and the application of the EU Regulation generally. 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.

10. Impact

- 10.1 There is minimal impact on business and no impact on charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument. As the net financial impact on business is estimated to be less than £1 million per annum, this implementation was deemed as Fast Track and a RTA (which is published alongside the instrument and this Memorandum) was completed in July 2016.
- 10.4 The total impact of the Regulations is expected to be approximately £4,800 per annum, arising from the cost of additional inspections carried out and certificates issued. Even in an extreme scenario where all ships are inspected over a single year,

the gross annual cost for that year will be approximately £23,500. The MCA aims to operate on a full cost recovery basis for inspections of UK ships, so these costs will be recovered from industry.

11. Regulating small business

- 11.1 The legislation is unlikely to apply to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The EU Regulation only applies to medium to large merchant ships of 500 gross tonnes or more. The MCA considers that the high value and operating costs of those vessels suggest that firms owning and operating such vessels are unlikely to be classified as small.

12. Monitoring & review

- 12.1 In accordance with statutory requirements, the proposed Regulations contain a statutory review clause requiring the Secretary of State to review the operation of the Regulations five years after they come into force and at five yearly intervals after that.

13. Contact

- 13.1 Ian Timpson at the Department for Transport, Telephone: 0207 944 4446 or email: ian.timpson@dft.gov.uk who can answer any queries regarding the instrument.