

**EXPLANATORY MEMORANDUM TO**  
**THE MERCHANT SHIPPING (PREVENTION OF POLLUTION FROM NOXIOUS**  
**LIQUID SUBSTANCES IN BULK) REGULATIONS 2018**

**2018 No. 68**

**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 Annex II (Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk) of MARPOL 73/78 (as revised), an International Convention made by the International Maritime Organization (IMO) for the prevention of pollution from ships. Annex II was revised in the light of new scientific knowledge of the properties of the various liquid substances and their effect on the marine environment, improvements in technology and to make the regulatory regime simpler to use. The revision encompasses a new pollution categorisation system and criteria for assigning products to these new categories, and revises the stripping (i.e. emptying and cleaning) and noxious liquid substances discharge criteria.

**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 the revised international regulatory regime governing the carriage by ship of noxious liquid substances in bulk, as set out in the revised Annex II of MARPOL 73/78. It also gives effect to the associated mandatory Codes and Resolutions, including relevant provisions in the Polar Code which came into force on 1st January 2017. These Regulations ensure the UK, a party to MARPOL, fully implements Annex II as currently amended ensuring compliance with its obligations under international law. These Regulations revoke in full the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996 (S.I.1996/3010) (“the 1996 Regulations”) and two amending instruments (S.I. 1998/1153 and S.I. 2004/930). Other consequential amendments and partial revocations are also included.
- 4.2 This instrument also makes use of the power in section 306A of the Merchant Shipping Act 1995 to make ambulatory references to international instruments. The effect is that references to specific provisions in the MARPOL Convention and associated mandatory Codes will be to those instruments as amended from time to

time. This means the Regulations will refer to updated international technical requirements without the need for further amendment. Such amendments will be publicised in advance of their coming into force date by means of a Parliamentary Statement to both Houses of Parliament and a Merchant Shipping Notice.

- 4.3 Implementing the changes will result in UK flagged vessels having to comply with the requirements laid down by the international community, thus allowing them to continue to operate freely. As all vessels operating internationally coming into UK waters will also be bound by the changes to Annex II, the UK coastline and marine environment will be further protected from the risk of pollution from ships.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is to the United Kingdom.
- 5.2 The territorial application of this instrument is all United Kingdom ships, whether within United Kingdom waters 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 Annex II of MARPOL entered into force on 6th April 1987. Its purpose is to protect the marine environment by controlling operational pollution and reducing accidental pollution resulting from groundings and collisions from ships carrying Noxious Liquid Substances (“NLS”) in bulk. It was implemented in the UK by the 1996 Regulations.
- 7.2 Annex II has been amended various times and the new revised Annex II of MARPOL came into force on 1st January 2007. It applies to all ships carrying NLS in bulk – essentially chemical tankers, or oil tankers when carrying NLS – and also to gas carriers when carrying liquefied gases. It prohibits the discharge of NLS into the sea, other than in specified circumstances, and also prohibits the carriage and discharge into the sea of liquid substances which have not been assessed and categorised as required under Annex II to ascertain whether they have the potential to harm the marine environment.
- 7.3 Annex II lays down specific requirements for ships carrying NLS in bulk including requirements in relation to design and construction, ship certification, the record of cargo operations and the control of operational discharges. It also sets out inspection requirements for port states and requirements in relation to the provision of reception facilities for cargo residues from the stripping of cargo tanks. The Annex sets out guidelines for the categorisation of NLS based on the hazard profile established by the Joint Group of Experts on the Scientific Aspects of Marine Environment Protection (GESAMP). This is the United Nations body of experts which lays down the principles by which chemical products are assessed.

- 7.4 A number of Codes are referred to in Annex II which apply to specific ship types and impose associated requirements. The purpose of these Codes is to provide an international standard for the safe carriage in bulk by sea of dangerous chemicals and noxious liquid substances. They prescribe the design and construction standards of ships, regardless of tonnage, involved in such carriage and the equipment which must be carried to minimize the risk to the ship, its crew and the environment, having regard to the nature of the products involved. Annex II of MARPOL uses the Codes to identify ship types and as a method of control to ensure that such ships are regulated and certified to industry agreed standards.
- 7.5 As a member of the IMO, the UK is committed to introducing into national legislation those conventions and treaties to which it is a signatory, of which MARPOL Annex II is one. The UK therefore has a duty to amend existing legislation to reflect international changes.

### ***Consolidation***

- 7.6 These Regulations revoke the 1996 Regulations but re-enact those parts which are extant.

## **8. Consultation outcome**

- 8.1 The Maritime and Coastguard Agency has informally engaged with key players throughout the process of amending Annex II at the IMO. A public consultation on the draft Regulations took place between 15th February and 14th April 2017. Following this, but arising from the consultation, it was agreed to include measures in this instrument to implement the Polar Code as far as is relevant to Annex II. The Maritime and Coastguard Agency held a short, targeted, consultation with interested parties about this.
- 8.2 Industry has been operating to the revised Annex II international requirements since 2007 and therefore the requirements were not new to them. No comments were received on the draft Regulations (including in response to the subsequent consultation on the Polar Code) or Regulatory Triage Assessment.

## **9. Guidance**

- 9.1 Guidance is not required as the International requirements contained within the legislation came into force in 2007 so ships trading internationally have been operated in compliance since then. The industry was fully involved in the revision process ten years ago and has been operating to the requirements of the revised Annex II since then in order to comply internationally.

## **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 considered to be minimal as it will only apply to those serving on and operating ships to which the Regulations apply.
- 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 Regulatory Triage Assessment (which is published alongside the instrument and this Memorandum) was completed in July 2016.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 To flag in a vessel on the UK register, the owner/company has to demonstrate a link to the UK. The company does have to be UK registered, but in practice, this could just be a PO Box address registered at Companies House. The complicated nature of the marine industry makes it hard to establish firmly the size of the company and proportion of that company that operates within the UK.
- 11.4 However, the MCA considers that the high value of the vessels involved and the operating costs of those vessels suggest that such firms are unlikely to be classified small. In addition, any firms that have fewer than 250 employees in the UK often have much larger international parent companies backing them.
- 11.5 It is also a complicated exercise to ascertain how many people working within a UK registered company are actually employed in the UK as a large number of those employed will be on vessels crewed by people of different nationalities. In addition, the offices of these organisations are not always located in the UK.

## **12. Monitoring & review**

- 12.1 In line with policy on new legislation, the Regulations contain a statutory review provision requiring the Secretary of State to review the operation of the Regulations five years after they come into force, and every five years thereafter.

## **13. Contact**

- 13.1 David MacRae at the Maritime and Coastguard Agency, Telephone: 02038172445 or email: [david.macrae@mcga.gov.uk](mailto:david.macrae@mcga.gov.uk) who can answer any queries regarding the instrument.