

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (HOME OFFICE SHIPS) ORDER 2020
2020 No. 1551

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of the Merchant Shipping (Home Office Ships) Order 2020 is to enshrine in statute the power of a commander of a Border Force ship to cause any person on board that ship to be put under restraint if and for so long as it appears to them as necessary or expedient in the interest of safety or for the preservation of good order or discipline on board the ship.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to no procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

- 6.1 Part IV of the Merchant Shipping Act 1995 (“the MSA”) sets out provisions relevant to safety in merchant shipping. Section 105 of Part IV sets out the specific power of restraint available to a Master of any United Kingdom ship to maintain safety on board their vessel by putting an individual under restraint.
6.2 Subsection (2) of section 308 of Part XIII provides for the making of regulations under an Order in Council to allow government ships to be registered as British ships and therefore for the MSA (with modifications) to apply to ships so registered in accordance with the Order as if they were registered in accordance with Part II of the MSA. This Order, made pursuant to section 308, provides for Border Force vessels to be registered thus, and has the effect that only section 105 of the MSA applies.

- 6.3 Although no Orders in Council have been made previously under s.308(2) of the MSA 1995, several Orders made under earlier Merchant Shipping Acts have effect as if they had been made under s.308(2) (by virtue of s.17(2)(b) of the Interpretation Act 1978). The most recent of those are the Merchant Shipping (Ministry of Defence Ships) Order 1989, SI 1989/1991 (amended by SI 1992/1293; SI 1992/1294); the Merchant Shipping (Ministry of Defence Commercially Managed Ships) Order 1992, SI 1992/1293; and the Merchant Shipping and the Merchant Shipping (Ministry of Defence Yachts) Order 1992, SI 1992/1294.

7. Policy background

What is being done and why?

- 7.1 Border Force are currently responding in a rescue capacity to increasing numbers of migrants attempting to make dangerous crossings by sea to the United Kingdom, as well as in an enforcement capacity to increasing instances of suspected immigration offences at sea. In the nine months January to September inclusive, of this calendar year 2020, 6,901 migrants had crossed the Channel in this dangerous capacity, which is a significant increase in numbers compared to 1,844 in the calendar year 2019 and 299 in 2018.
- 7.2 Enshrining the power of restraint for Border Force commanders in the event of dangerous behaviour by individuals on board their vessels is necessary in order to ensure safety on the vessel and in the surrounding area.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 It is not intended to consolidate the various legislation to which the instrument relates.

10. Consultation Outcome

- 10.1 A public consultation has not been conducted in the preparation of the instrument, given that it will not result in any changes to current operations and those who the power of restraint may apply to.

11. Guidance

- 11.1 Operational guidance is in place for Border Force covering the use of this power.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 There is no impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because this Order will not result in any changes to current operations and thus we do not consider there will be any significant additional impact on those exercising the powers or those who the power of restraint may apply to.

- 12.4 It is anticipated that there will not be additional costs associated with the training of Border Force officers to enforce safe restraint when necessary, as this already forms a component of Border Force training.
- 12.5 In order to bring Border Force vessels within the ambit of section 105 of the MSA, this Order makes provision for those vessels to be registered with the UK Ships Register (UKSR), part of the Maritime and Coastguard Agency and placed on the UK's Central Shipping register under Part 1. This is expected to have limited impact as although provisions in the MSA do not currently apply to Border Force vessels, Border Force already and deliberately operate their vessels in close alignment with the Act's provisions.
- 12.6 There will be a need for Border Force vessels to be registered centrally in order to have paragraph 105, powers of restraint, extended but this will only need to be undertaken every 5 years and the process for doing this is limited to the essential requirements. All other requirements relating to being on the UKSR will be disapplied.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The use of these powers will be monitored.
- 14.2 The operational use of these powers is overseen by Border Force Operational Assurance Directorate who report on their use and impact.

15. Contact

- 15.1 Richard Hooton at the Border Security, Visa, Identity and Policy Unit (Home Office) Telephone: 07778 101506 or email: richard.hooton@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nigel Farminer at Border Security, Visa, Identity and Policy Unit (Home Office) can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chris Philp, Minister for Immigration Compliance and the Courts, Home Office can confirm that this Explanatory Memorandum meets the required standard.