

## EXPLANATORY MEMORANDUM TO

### THE MERCHANT SHIPPING (PORT STATE CONTROL AND PREVENTION OF POLLUTION FROM NOXIOUS LIQUID SUBSTANCES IN BULK) (AMENDMENT) REGULATIONS 2020

2020 No. 496

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) 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 This instrument amends the Merchant Shipping (Port State Control) Regulations 2011 (S.I. 2011/2601) (“the 2011 Regulations”) to the effect that the powers in the 2011 Regulations may be exercised in relation to ships to which the International Convention for the Safety of Life at Sea, 1974 (“SOLAS”) applies. In doing so, this instrument corrects an amendment made to the 2011 Regulations by the Merchant Shipping (Prevention of Air Pollution from Ships) (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/940) (“the 2019 Regulations”) which inadvertently had the effect of preventing those powers from being exercised in relation to SOLAS ships.
- 2.2 This instrument also amends the Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018 (S.I. 2018/68) (“the 2018 Regulations”) to the effect that the prohibitions on the discharge of noxious liquid substances, and carriage and discharge of unassessed liquid substances, apply in relation to controlled waters as well as United Kingdom waters. In doing so, this instrument corrects an error in the 2018 Regulations which inadvertently limited the application of those prohibitions to ships in relation to United Kingdom waters only.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument corrects a defect in the 2011 Regulations. Regulation 2(1) of those Regulations includes in the definition of “Conventions” the international instruments in respect of which the 2011 Regulations apply. The 2019 Regulations 2019 amended the 2011 Regulations but this amendment was defective because it had the effect of removing SOLAS from the scope of the 2011 Regulations. This instrument therefore amends the 2011 Regulations to bring SOLAS back within their scope.
- 3.2 This instrument also corrects a defect in the 2018 Regulations. Regulation 5(3) and (4) of those Regulations provided that regulations 24 and 26 apply to prohibitions in relation to the discharge of substances into the sea which cause pollution in United Kingdom waters. The 2018 Regulations are, therefore, amended to the effect that those prohibitions apply in relation to discharges which cause pollution in controlled waters as well as United Kingdom waters.

- 3.3 As this instrument makes provision to correct a defect in the 2018 Regulations and a defect in the 2011 Regulations made by the 2019 Regulations, this instrument is being issued free of charge to all known recipients of the 2018 Regulations and 2019 Regulations.

*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)*

- 3.4 As the instrument is subject to negative resolution 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 England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland, Northern Ireland and controlled waters.

#### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Legislative Context**

- 6.1 The 2011 Regulations prescribe a framework for the enforcement of international standards of ship safety, pollution prevention and shipboard living and working conditions. Part 1 of the 2011 Regulations, which applies to ships that are not British ships calling at a UK port or anchorage, contains powers to (amongst other things) inspect, detain and refuse access to ships. These powers are available to inspect etc. a ship's compliance with a number of Conventions which are listed in regulation 2(1) of those Regulations.
- 6.2 The 2011 Regulations were amended by the 2019 Regulations to update the reference to another of the listed Conventions (the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL)). As a result of defective drafting, this amendment not only updated that reference but inadvertently omitted SOLAS from the listed Conventions. Consequently, the powers in the 2011 Regulations ceased to be available to determine and enforce compliance with SOLAS.
- 6.3 This instrument corrects this defect by inserting SOLAS into the listed Conventions, and in turn restores the powers in the 2011 Regulations in relation to non-British ships to which SOLAS applies.
- 6.4 The 2018 Regulations implement the revised version of Annex II of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 ("MARPOL") and prescribe a framework for the control of pollution by noxious liquid substances which are carried in bulk. This includes provision governing, amongst other things, the survey and certification of ships intended for the carriage of noxious liquid substances in bulk and requirements on such ships operating in polar waters.
- 6.5 Part 2 of the 2018 Regulations contains operational requirements regarding the survey and certification of ships carrying noxious liquid substances in bulk. These include a

prohibition on the discharge into the sea from ships of noxious liquid substances or any ballast water, tank washings or other mixture containing a noxious liquid substance, and a prohibition on the carriage at sea of unassessed liquid substances in bulk and the discharge into the sea of such substances.

- 6.6 As a result of defective drafting, the 2018 Regulations provided that these prohibitions apply to ships which cause, or are likely to cause, pollution within United Kingdom waters. The provision should have applied these prohibitions in relation to controlled waters as well as United Kingdom waters (controlled waters are defined in regulation 3(1) of the 2018 Regulations as areas of sea specified as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea). This instrument corrects this defect by amending the relevant application provision (regulation 5(3) and (4)) to the effect that the prohibitions apply in relation to United Kingdom waters or controlled waters.

## **7. Policy background**

### *What is being done and why?*

- 7.1 When the 2011 Regulations were amended by the 2019 Regulations so as to update the reference to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), this amendment inadvertently omitted SOLAS from the listed Conventions. Consequently, the powers in the 2011 Regulations ceased to be available to determine and enforce compliance with SOLAS. This instrument rectifies this anomaly by reinstating SOLAS in the listed Conventions, and in turn restores the powers in the 2011 Regulations in relation to non-British ships to which SOLAS applies.
- 7.2 No ships have been detained under the 2011 Regulations since 30th June 2019. Powers available in other merchant shipping legislation have been used to detain ships, for example in the Merchant Shipping (Fire Protection) Regulations 2003 (S.I. 2003/2950).
- 7.3 This instrument is also correcting an omission in the 2018 Regulations. The omission had the effect of inadvertently reducing the United Kingdom's powers to prevent or enforce requirements or prohibitions in respect of the illegal discharge of noxious liquid substances from ships operating in and around the United Kingdom. These powers had previously included United Kingdom territorial and controlled waters and the 2018 Regulations should have replicated this position. However, a drafting error removed the reference to 'controlled waters' thereby limiting the powers of United Kingdom authorities to manage the discharge of noxious liquid substances in relation to territorial waters only and removed the ability to prosecute a vessel making a discharge in the United Kingdom's controlled waters.
- 7.4 The 2018 Regulations replaced the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996 (S.I. 1996/3010) ("the 1996 Regulations"). The 1996 Regulations (in regulation 3(b)(ii)) applied those regulations to United Kingdom waters, controlled waters, or any other waters which are sea, thus providing powers to manage discharges and prosecute illegal discharges within United Kingdom controlled waters. This correction will restore the previous jurisdictional reach with regard to the discharge of noxious liquid substances in bulk from ships.

- 7.5 Since the coming into force of the 2018 Regulations, there has not yet been a requirement to prosecute a vessel for making an illegal discharge. However, approximately 20 vessels have been identified as discharging tank washings in accordance with the discharge requirements of the 2018 Regulations. These vessels have been identified on the basis of reports received from the European Maritime Safety Agency's (EMSA) CleanSeaNet service, a pollution monitoring satellite system, and each has been investigated to determine whether the discharge was illegal.
- 7.6 From 1st January 2021, new discharge requirements will enter into force and these will reduce the quantity of noxious liquid substances that can be legally discharged in accordance with the 2018 Regulations. It is therefore timely that this error has been identified and a correction applied.
- 7.7 This instrument does not amend or impose requirements, restrictions or conditions in relation to business activity, or secure the compliance with and enforcement of requirements etc. which relate to that activity. This instrument corrects errors in existing legislation and the impacts were assessed at the time of the implementation of that legislation.

## **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 or trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 The Department currently has no plans to consolidate this legislation.

## **10. Consultation outcome**

- 10.1 The Department considers that a consultation is not necessary. In relation to the inspection powers under the 2011 Regulations, this instrument makes corrections which simply reinstate the position as it existed before the inadvertent removal of those powers by virtue of the 2019 Regulations (which came into force on 30 June 2019). In relation to the 2018 Regulations, this instrument is not introducing new measures but making corrections which have the effect of restoring the status quo. They do not change or extend previous provisions and they reflect the United Kingdom's agreed international position.
- 10.2 The 2011 and 2018 Regulations were the subject of consultations before they were made. In relation to the 2018 Regulations, no concerns were raised. The original explanatory memorandum and consultation document referred to the regulations as applying to 'all waters over which the UK has jurisdiction' and the correction made by these Regulations is consistent with that position.

## **11. Guidance**

- 11.1 None.

## **12. Impact**

- 12.1 There is no, or no significant, impact on charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because these Regulations relate to the maintenance of existing regulatory standards.

**13. Regulating small business**

13.1 These Regulations do not apply to activities that are undertaken by small businesses.

**14. Monitoring & review**

14.1 The approach to monitoring of this legislation will give effect to the obligation in section 28 of the Small Business, Enterprise and Employment Act 2015 in that both the 2011 and 2018 Regulations contain a statutory review provision requiring the Secretary of State to review the operation of these Regulations and publish a report five years after they come into force, and at least every five years thereafter.

**15. Contact**

15.1 Prasad Panicker, Maritime and Coastguard Agency Telephone: 020 38172543 or email: [prasad.panicker@mcga.gov.uk](mailto:prasad.panicker@mcga.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Katy Ware, Director for Maritime Safety and Standards, at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kelly Tolhurst, MP Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.