

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (PREVENTION OF POLLUTION BY SEWAGE
FROM SHIPS) REGULATIONS 2020

2020 No. 620

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 Secondary Legislation Scrutiny Committee.

2. Purpose of the instrument

- 2.1 These Regulations implement Annex IV (Regulations for the Prevention of Pollution by Sewage from Ships) to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (“MARPOL”), an international convention agreed in the International Maritime Organization, (“IMO”) for the prevention of pollution from ships (and offshore installations). The Regulations cover the treatment of sewage on board and the discharge of sewage from ships. Such measures are designed to combat damage to the marine environment, including oxygen depletion and nutrient enrichment, and to protect human health.

3. Matters of special interest to Parliament

Matters of special interest to the Secondary Legislation Scrutiny Committee

- 3.1 The Secondary Legislation Scrutiny Committee, in its 21st Report of Session 2017-19, included an exchange of correspondence between the Committee and the Department in relation to the implementation backlog of international maritime conventions. The Committee, in its 17th Report of Session 2019-21, included further correspondence from the Department which described steps it was taking to address the backlog. These Regulations are one of the statutory instruments, identified in that correspondence, which implement outstanding international obligations to which the Department referred in that correspondence.

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 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 all United Kingdom ships, whether within United Kingdom waters, controlled waters or anywhere else in the world. It

also applies to non-United Kingdom ships in United Kingdom waters 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 These Regulations implement the international regime contained in Annex IV to MARPOL. Annex IV has been amended by subsequent resolutions of the IMO and these Regulations incorporate all amendments which are currently in force. Annex IV applies to all ships engaged in international voyages, subject to limited exceptions, provided that they are either 400 gross tonnage or more or less than 400 gross tonnage but certified to carry more than 15 persons.
- 6.2 Annex IV was previously implemented by the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Regulations 2008 (S.I. 2008/3257) (the “2008 Regulations”) The 2008 Regulations (and an amending instrument) are revoked by these Regulations. The 2008 Regulations also implemented Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) to MARPOL. Due to differences in both the technical requirements and in the application of these two Annexes, the opportunity has been taken to simplify domestic law and deal with the two subjects separately. The Regulations to which this memorandum relates deal only with sewage. The provisions in relation to the prevention of pollution by garbage from ships can now be found in the Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020 (S.I. 2020/621), which come into force simultaneously with these Regulations.
- 6.3 This instrument contains an ambulatory reference provision in regulation 4. The effect is that references in the instrument to MARPOL, an Annex to MARPOL and to the Polar Code, will be construed as a reference to those instruments as amended from time to time. This means that the Regulations will continue to refer to updated international requirements without the need for further amendment. The use of ambulatory referencing offers greater legal certainty for industry by ensuring that United Kingdom law remains consistent with the international requirements which must be satisfied by ships globally.
- 6.4 Proposed changes to Annex IV and the other instruments to which ambulatory reference is made will continue to be scrutinised (and, if necessary, objected to) by the United Kingdom in the IMO, and the impact of these changes will continue to be assessed well before any amendment is due to come into force. If an amendment is objected, to the Secretary of State retains the power to prepare additional secondary legislation in order to prevent an amendment becoming part of United Kingdom law by way of ambulatory reference. An amendment that is accepted will be publicised in advance of the date that it comes into force by means of a Parliamentary Statement to both Houses of Parliament and by way of a Marine Guidance Note, which will be available from the Maritime and Coastguard Agency (“MCA”), Spring Place, 105 Commercial Road, Southampton SO15 1EG and on www.gov.uk.
- 6.5 Implementing the amendments to Annex IV requires United Kingdom ships to comply with the latest requirements laid down by the international community, thus enabling them to operate freely throughout the world. As all international ships coming into

United Kingdom waters and controlled waters are also bound by the relevant amendments to Annex IV, the United Kingdom coastline and marine environment is further protected from risk of pollution by sewage from ships

7. Policy background

What is being done and why?

- 7.1 MARPOL Annex IV entered into force on 27th September 2003. Historically it was considered that the seas and oceans could assimilate pollution from ships. However, with advancing scientific research and evidence it was proven that the seas and oceans, especially more coastal seas, are unable to assimilate such pollution. Research has shown that the discharge of raw sewage into the sea can cause environmental issues such as oxygen depletion, nutrient enrichment, and more importantly a negative impact on human health. Sewage contains pathogens such as bacteria and viruses that cause disease and which therefore pose a risk to public health for swimmers and those eating contaminated shellfish. Annex IV was created to combat these negative effects on human health and the environment.
- 7.2 The amendments to Annex IV, some of which date back to 2013, are being implemented in United Kingdom law by these Regulations and aim to reduce the impact of sewage pollution from ships. These include additional sewage discharge requirements for passenger ships in special areas (such as the Baltic Sea) and a requirement for ships operating in polar waters to comply with the Polar Code.

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 / trigger the statement requirements under the European Union (Withdrawal) Act 2018 (c. 16).

9. Consolidation

- 9.1 The 2008 Regulations implemented Annex IV and Annex V to MARPOL in United Kingdom law. This instrument revokes the 2008 Regulations and an amending instrument. The provisions in relation to sewage are included in these Regulations. The provisions in relation to garbage can now be found in the Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020 (S.I. 2020/621), which come into force simultaneously with these Regulations.

10. Consultation outcome

- 10.1 The MCA informally engaged with key stakeholders throughout the process of amending Annex IV. A consultation on the draft Regulations took place between 3rd February and 30th March 2020.
- 10.2 Notifications of the consultation were sent to more than 100 shipping and marine industry companies, plus in excess of 30 Government Departments and maritime bodies with professional and specialist functions.
- 10.3 A total of six responses were received; one from the Law Society of Scotland, one from Oil and Gas UK Association, plus one from Class NK, one from the Torbay Harbour Authority, one from Endo Enterprises and one from the Department of Agriculture Environment and Rural Affairs (DAERA) Northern Ireland. Not all of the

respondents answered all of the questions posed. Some additional comments have been received. These have been fully considered.

- 10.4 The consultation and post consultation report can be found at:
<https://www.gov.uk/government/consultations/consultation-on-the-draft-merchant-shipping-prevention-of-pollution-by-sewage-from-ships-regulations-2020>

11. Guidance

- 11.1 Guidance regarding the operation of the Regulations has been published by the MCA in Marine Guidance Note MGN 631 (M+F). Copies of this MGN may be obtained free of charge at www.gov.uk or in hard copy from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

12. Impact

- 12.1 There is no, or no significant, impact on business, 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 the Department's de-minimis assessment concluded that the costs and benefits to business would fall below the +/- £5 million net threshold in any one year.
- 12.4 The majority of the revisions have no economic impact on United Kingdom businesses and those that do have an impact relate to new standards for sewage discharge in the Baltic Sea Special Area. These changes are expected to affect a very limited number of ships (approximately 2) and the costs associated with compliance are not significant.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people). It is estimated that around 3% of ships (approximately 25 ships) on the UK Shipping Register are owned by small businesses. The vast majority of companies owning UK registered ships are large multinational, or subsidiaries of multinational, companies.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the MCA has analysed the ships that will be affected by the changes made in the Regulations and concluded that none of these are small businesses. In order to determine this, the MCA analysed the companies owning United Kingdom registered ships in order best to determine any impact. The changes being introduced through these Regulations apply only to internationally trading passenger ships of which there are only two ships affected, which are owned by large multinational companies.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to review the Regulations and a report of that review will be published no later than five years from the coming into force of the Regulations, and every five years thereafter.
- 14.2 A statutory review clause is included in these Regulations.

15. Contact

- 15.1 Lorraine Weller at the Maritime and Coastguard Agency Telephone: 0203 8172448 or email: lorraine.weller@mcga.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Katy Ware, Director of Maritime Safety and Standards and UK Shipping Register can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State at the Department for Transport, Kelly Tolhurst MP, can confirm that this Explanatory Memorandum meets the required standard.