

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (POLAR CODE) (SAFETY) REGULATIONS 2021
2021 No. 1401

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 These Regulations implement the requirements of Chapter XIV of the Convention for the Safety of Life at Sea, 1974 (“the Convention”), which incorporates the safety related requirements for ships set out in the International Code for Ships Operating in Polar Waters (“the Polar Code”). All the safety-related provisions of the Polar Code are implemented by these Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 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 and in its 11th Report of Session 2021-22, included further correspondence from the Department which described the 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. On 19th October 2021, Robert Courts MP appeared before the Committee to provide a further update on the backlog and to explain how it will be discharged by the Department, and the Committee reported on the outcome in its 17th Report of Session 2021-22.

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 United Kingdom ships which are operating, or which intend to operate, in polar waters, and non-United Kingdom ships which commence a voyage from, or end a voyage in, a port in the United Kingdom, and as part of that voyage operate, or intend to operate, in polar 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 requirements of Chapter XIV of the Convention and the safety related provisions of the Polar Code, which are contained in part I-A of the Code. They apply, with certain limited exceptions, to United Kingdom ships certified in accordance with the Merchant Shipping (Survey and Certification) Regulations 2015 (S.I. 2015/508) operating in, or intending to operate in, polar waters (regulation 3). They also apply to non-United Kingdom ships with appropriate certification which commence a voyage from, or end a voyage in, a port in the United Kingdom, and as part of that voyage operate in, or intend to operate in, polar waters. Appropriate certification means the ship has been certified in accordance with Chapter I of the Convention or, in the case of non-Convention ships, in accordance with the requirements of that non-Convention country which demonstrate compliance with the requirements of Chapter I.
- 6.2 All ships operating, or intending to operate, in polar waters must hold on board a Polar Ship Certificate in accordance with regulation 11 (Polar Ship Certificate).
- 6.3 Chapter XIV and the Polar Code entered into force internationally on 1st January 2017, with compliance required with the safety-related provisions of the Polar Code by 1st January 2018. The United Kingdom is obliged to implement the obligations they create into domestic law. The safety-related provisions of the Polar Code contain requirements relating to all aspects of a ship's safety when operating in polar waters.
- 6.4 The majority of these requirements are incorporated into the Regulations by direct reference to the requirements in the Polar Code, which are additional to the requirements in the rest of the Convention. Regulation 4 operates to make the application of these requirements to ships ambulatory so that all future amendments are automatically given direct effect in the United Kingdom by these Regulations. The same applies to any references in the Regulations to provisions of Chapter I and Chapter XIV of the Convention, the International Convention on Standards of Training, Certification and Watchkeeping 1978 ("the STCW Convention") and the Seafarers' Training, Certification and Watchkeeping Code ("the STCW Code").
- 6.5 Although the ambulatory reference provision in regulation 4 will allow future amendments to the requirements in the Polar Code, Chapter I, Chapter XIV, the STCW Convention and the STCW Code referenced in the Regulations to be incorporated automatically into domestic law, the United Kingdom will, nevertheless, be able to continue to scrutinise (and, if necessary, object to) proposed changes in the International Maritime Organization ("IMO"); that is, in an international arena. This will allow their impact to be assessed well before any amendment is due to come into force, which will inform decision making. United Kingdom industry and workers' representatives will also be involved at the stage that the United Kingdom negotiating strategy is being formulated and will be able to influence it. If an amendment is objected to by the United Kingdom but will come into force internationally, the Secretary of State will make amending secondary legislation to prevent that amendment coming into force domestically. An amendment that is accepted will be publicised in advance of its in-force date 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) of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk>.

- 6.6 The Regulations also provide for offences and penalties in the event of a contravention of the requirements of the Regulations (regulation 26). In cases of non-compliance with the Regulations, a ship may also be detained (regulation 28). These sanctions are applicable in respect of both United Kingdom ships and non-United Kingdom ships visiting United Kingdom ports.

7. Policy background

What is being done and why?

- 7.1 This legislation is being made in order that the United Kingdom can meet its international obligations in respect of Chapter XIV of the Convention, ensuring that United Kingdom ships are constructed and equipped in accordance with the safety related provisions contained in part I-A of the Polar Code and that seafarers on ships operating in polar waters are appropriately trained. The legislation also means that non-United Kingdom ships sailing from United Kingdom ports to polar waters, and vice-versa, must meet these requirements. The second part of the Code contains requirements relating to environmental protection (part II-A) and is made mandatory by way of amendments to Annexes I, II, IV and V of the International Convention for the Prevention of Pollution from Ships, 1973 (known as MARPOL), and is implemented in UK law by way of regulations implementing Annexes I, II, IV and V¹.
- 7.2 The safety of ships operating in the harsh, remote and vulnerable polar areas, and the protection of the pristine environments around the two poles, have always been matters of concern for the IMO, and many relevant requirements, provisions and recommendations have been developed over the years.
- 7.3 Trends and forecasts indicate that polar shipping will grow in volume and diversify in nature over the coming years and these challenges need to be met without compromising either safety of life at sea, or the sustainability of the polar environments.
- 7.4 The Polar Code is intended to cover the full range of shipping-related matters relevant to navigation in waters surrounding the two poles. In terms of safety, this includes ship design, construction and equipment, operational concerns, search and rescue and manning and training. As well as mandatory measures covering safety, the Code includes guidance.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This is legislation implementing obligations in a new area of maritime safety and there is no need for consolidation.

¹ Annex I of MARPOL is implemented by the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 (S.I. 2019/42), Annex II of MARPOL is implemented by the Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018 (S.I. 2018/68), Annex IV is implemented by the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2020 (S.I. 2020/620) and Annex V is implemented by the Merchant Shipping (Prevention of Pollution by Garbage from Ships) 2020 (S.I. 2020/621).

10. Consultation outcome

- 10.1 The MCA, an executive Agency of the Department, carried out a public consultation from 17th March to 12th May 2021 regarding the proposed implementation of the safety-related requirements in Chapter XIV and the Polar Code by way of the Merchant Shipping (Polar Code) (Safety) Regulations 2021. At that time, it was proposed to include the manning and training requirements for seafarers on ships operating in polar waters and contained in chapter 12 of part 1-A of the Polar Code (“the manning and training requirements”) in separate regulations amending the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (S.I. 2015/782) (“the 2015 Regulations”). This was because the detail of the manning and training requirements is contained in the STCW Convention and the STCW Code, which are implemented in the 2015 Regulations. The manning and training requirements were therefore consulted on in the consultation on the proposed amendments to the 2015 Regulations (“the STCW consultation”). It was subsequently decided that the manning and training requirements could also appropriately be contained in these Regulations, which allows for the whole of the safety-related requirements in the Polar Code to be implemented in the same piece of legislation.
- 10.2 The Polar Code consultation was published on GOV.UK and is available here: <https://www.gov.uk/government/consultations/implementation-of-the-international-code-for-ships-operating-in-polar-waters-polar-code>. The STCW consultation took place between 14th June and 9th August 2021 and was also published on GOV.UK. It is available here: <https://www.gov.uk/government/consultations/proposed-amendments-to-the-merchant-shipping-stcw-regulations-2021>. The Polar Code is available on the IMO website at <https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED.pdf>.
- 10.3 The Scottish, Welsh and Northern Irish Devolved Administrations were made aware of the consultations.
- 10.4 In relation to the Polar Code consultation, a total of one response was received from the Law Society of Scotland. Not all questions posed in the Consultation Document were answered. The answers given were fully and carefully considered with no resulting alterations made to the associated Polar Code documentation. There were no comments received in the STCW consultation in relation to the specific issue of the burden of the training requirements prescribed by the Polar Code and consequently no amendments were necessary in relation to provision made for such training.

11. Guidance

- 11.1 Further guidance is provided in a Marine Guidance Note: “International Code for Ships Operating in Polar Waters (Polar Code)” (<https://www.gov.uk/government/collections/marine-guidance-notices-mgns>). This is a notice to all owners, managers, operators, ship builders, repairers, designers, masters, officers, training providers, certifying authorities and surveyors of ships operating, or intending to operate, in polar waters. It provides information on the training requirements and the Annex to the guidance contains requirements for training providers who seek, and obtain, the approval of the Secretary of State to undertake training for seafarers on ships operating in polar waters. The Annex is made mandatory by way of reference to it in regulation 9 of these Regulations.

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 it is deemed that the instrument's level of impact is minimal. Currently, the only ship on the United Kingdom register operating in polar waters is the RSS James Clark Ross, which is owned by the British Antarctic Survey and is primarily publicly funded. In addition, no other ships are currently expected to be affected by these Regulations.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to analyse the companies owning United Kingdom registered ships in order best to determine any impact. It is estimated that around 3% of ships (approximately 25 ships) on the UK Shipping Register are owned by companies which may employ fewer than 50 people. The vast majority of companies owning United Kingdom registered ships are large multinational, or subsidiaries of multinational, companies, and would therefore fall outside of the scope of the small firms' impact test.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the safety-related provisions of the Polar Code are designed to ensure that ships operating in polar waters are adequately constructed, equipped and manned. In the interests of safety, it is therefore not possible to justify different requirements in these areas just because a company has fewer employees.

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 the instrument.

15. Contact

- 15.1 Leanne Page at the Maritime & Coastguard Agency Telephone: 020 3817 2450 or email: leanne.page@mca.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gwilym Stone, Deputy Director for Ship Standards, at the Maritime and Coastguard Agency, Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.