

EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (COUNTING AND REGISTRATION OF PERSONS ON BOARD PASSENGER SHIPS) (AMENDMENT) REGULATIONS 2021

2021 No. 81

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.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to provide new requirements regarding the reporting of information collected in respect of passengers on passenger ships. This will ensure that passenger details can be made available to search and rescue authorities efficiently by modern and digital means. It transposes Directive (EU) 2017/2109 which amended Directive (EC) 98/41, pursuant to the United Kingdom’s transposition obligation under the EU Withdrawal Agreement.
- 2.2 The instrument amends the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999 (S.I. 1999/1869).

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 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 the United Kingdom.
- 4.2 The territorial application of this instrument is to any United Kingdom passenger ship wherever it may be and any other passenger ship while it is within United Kingdom waters.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Merchant Shipping (Passenger Boarding Cards) Regulations 1988 (S.I. 1988/191) established the need for owners of a passenger ship to maintain a system of individual boarding cards and required the vessel not to leave its berth until the number of passenger on board had been determined.

- 6.2 Internationally, Chapter III Regulation 27 of the International Convention on the Safety of Life at Sea (the SOLAS Convention) provides for the counting and registration of all persons on board all passenger ships sailing on international voyages, from 1 July 1997 and 1 January 1999 respectively.
- 6.3 Directive (EC) 98/41 sought to establish a minimum standard for the registration of passengers on board passenger ships throughout the EU. The purpose of Directive (EC) 98/41 was to address the safety concerns raised following shipping accidents involving passenger ships such as the ‘Herald of Free Enterprise’ and the ‘Estonia’ which resulted in significant loss of life.
- 6.4 The UK implemented Directive (EC) 98/41 through S.I. 1999/1869 which in turn revoked and replaced The Merchant Shipping (Passenger Boarding Cards) Regulations 1988 (S.I. 1988/191), The Merchant Shipping (Passenger Boarding Cards) (Application to non-UK Ships) Regulations 1988 (S.I. 1988/641), and The Merchant Shipping (Passenger Counting and Recording) Regulations 1990 (S.I. 1990/659). S.I. 1999/1869 introduced a number of new requirements to further develop the UK’s framework for passenger counting regulations, including the requirement to report additional information on passengers on board a sea-going ship on a voyage of more than 20 miles. S.I. 1999/1869 also required ship owners to appoint a passenger registrar responsible for holding and transmitting personal data to the appropriate search and rescue services in the event of an emergency.
- 6.5 The results of the European Commission’s Regulatory Fitness and Performance Programme (REFIT) fitness check and implementation of Directive (EC) 98/41 revealed that information on persons on board was not always made readily available to the competent authorities when they needed it. To address this gap, Directive (EC) 98/41 was updated requiring passenger information to be reported electronically, leading to greater efficiency. Digitalisation would also make it possible to facilitate quicker access to information concerning a significant number of passengers in the event of an emergency or in the aftermath of an accident at sea.
- 6.6 The requirement to provide information digitally throughout the EU was reinforced by Directive 2010/65/EU. Directive 2010/65/EU sought to introduce in more detail the reporting mechanisms approved by the International Maritime Organisation’s Convention on Facilitation of International Maritime Traffic, 1965, as amended (“the FAL Convention”). The FAL Convention makes it mandatory for ships and ports to exchange ‘FAL data’ electronically and encourages the use of the so named “National Single Window” (“the NSW”), in which agencies and authorities are involved in the exchange of data via a single point of contact.
- 6.7 This instrument makes a number of amendments to S.I. 1999/1869 to introduce the new passenger counting and reporting requirements applicable to United Kingdom passenger ships and passenger ships in United Kingdom waters. From 20 December 2023, passenger ship owners to which the regulations apply, shall be required to communicate passenger numbers to the master of the ship and the passenger registrar and report the same in the NSW or via the ship’s Automatic Identification System (“AIS”). Seagoing passenger ships (on voyages of more than 20 miles) must also report additional passenger details in the NSW. Information volunteered concerning special care or assistance that might be needed in an emergency regarding a passenger on board a seagoing passenger ship shall be communicated to the master of the ship and reported in the NSW.

- 6.8 This instrument also introduces two additional categories of data that will need to be collected on passengers on board a seagoing passenger ship on a voyage of more than 20 miles. In addition to a passenger's surname, forename, and gender, their nationality and date of birth will also need to be collected and reported accordingly. A transitional period will be in place regarding the method of reporting passenger numbers and passenger information. Up until 20 December 2023, the passenger numbers and additional information may continue be reported to the ship company's shore-based passenger registrar, as at present.

7. Policy background

What is being done and why?

- 7.1 The main change introduced by this instrument is the method by which passenger numbers and passenger information is required to be transmitted. From 20 December 2023, for passenger ships to which the regulations apply, passenger numbers must be reported digitally to the relevant authorities either in the NSW or via the ship's AIS.
- 7.2 Depending on the length of the voyage, different data is required to be reported. For passenger ships travelling 20 miles or fewer, only the numbers of those on board is required to be reported. For voyages of more than 20 miles, the family name, forenames, gender, nationality and date of birth is to be recorded and reported in the NSW. When volunteered by a passenger, information concerning special care or assistance that might be needed in an emergency including a contact number in case of an emergency shall be communicated to the master of the ship and reported in the NSW.
- 7.3 Currently, within the UK, the principal means for reporting passenger information digitally is through the Consolidated European Reporting System (CERS). CERS is an information management system which has been developed by the MCA to comply with the UK's reporting obligations in Directive 2002/59/EC. These obligations are based on the technical content, method and format of messages contained within the EU "SafeSeaNet" system. Regarding the practical process of transmitting data through to the NSW via CERS and passenger numbers via the AIS, this is still being developed. Updates will be made to Merchant Shipping Notice 1794 (M) Amendment 1 once the new processes are finalised.
- 7.4 The intended outcome of this instrument is that all passenger ships operating within UK waters and UK flagged passenger ships wherever they may be will be required to use a harmonised, uniform method of collecting and reporting prescribed passenger information digitally. It follows that this information will be accessible to search and rescue authorities if there is an incident on, or involving, the ship thereby reducing the risk to lives at sea.
- 7.5 Ship owners must adhere to current data protection regulations to ensure that once each voyage has concluded, any passenger information collected and reported is erased without undue delay.
- 7.6 This instrument is supplemented by Merchant Shipping Notice 1794 (M) Amendment 1 which provides the statutory guidance to the new amendments.
- 7.7 Domestic passenger shipping is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have, however, been consulted in the preparation of this EM.

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

- 8.1 This instrument does not relate to withdrawal of the United Kingdom from the European Union so does not require statements under the European Union (Withdrawal) Act 2018 (2018 c. 16).

9. Consolidation

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

10. Consultation outcome

- 10.1 A four-week targeted consultation took place from 15th October 2020 to 12th November 2020. The consultation and relevant documents can be found here: <https://www.gov.uk/government/consultations/consultation-on-merchant-shipping-counting-and-registration-of-persons-on-board-passenger-ships-amendment-regulations-2020>.
- 10.2 The devolved administrations were also notified of the public consultation. Five responses were received in total; two from industry stakeholders in the UK; one from a trade association; one from the Information Commissioners Office; and finally, one from the Law Society of Scotland. Consultees were asked about various issues ranging from costs associated to compliance with the planned amendments, to their views on the NSW as a reporting mechanism. No significant additional costs were identified and further details of the responses and review can be found in the consultation document. From the responses received, some minor changes were made to the instrument and associated documents. The full report on the review and changes from the consultation can be found in the consultation document.
- 10.3 The consultees sought clarity regarding the passenger ships to which the new requirements for reporting in the NSW or via AIS apply. In particular, there was a specific query raised as to whether ships operating exclusively on Category A, B, C or D waters (such as certain rivers, canals, lakes and estuaries) would be subject to the new reporting requirements. As a result, the instrument was changed to specify that the owner of a passenger ship operating exclusively on Category A, B, C or D waters, whilst required to continue a system for passenger counting, will not be required to report their passenger numbers in the NSW or use AIS.
- 10.4 The response from the Information Commissioners Office reinforced the need to ensure that the data collected and reported is in accordance with current data protection requirements. Their response also required that passenger ship operators make their passengers aware of the reasons why their personal data is required and how such data will be handled.
- 10.5 The response from the Law Society of Scotland emphasised the need to ensure that the recording of information in relation to gender allows passengers to freely select a suitable option including non-binary. Guidance on the approach to requesting information in relation to gender has been provided to ship owners in Merchant Shipping Notice 1794 (M) Amendment 1.
- 10.6 A few minor amendments were made to the instrument and Merchant Shipping Notice 1794 (M) Amendment 1 following the outcome of the consultation. A full summary of the MCA's consideration of the consultation responses will be made available in the form of a Consultation Outcome Report to be published on the gov.uk website.

11. Guidance

- 11.1 Guidance regarding the changes introduced by Directive (EU) 2017/2109 is provided in Merchant Shipping Notice 1794 (M) Amendment 1 and will be published before these Regulations enter into force. Copies of this Merchant Shipping Notice 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. Merchant Shipping Notice 1794 (M) Amendment 1 will replace Merchant Shipping Notice 1794 which was published in 2005.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is not deemed to be significant and further economic analysis and information can be found in the de minimis assessment provided in the public consultation. The vast majority of seagoing domestic passenger ships are operated by businesses with costs being borne by them.
- 12.2 The impact on the public sector is concerned with the set up and operation of the NSW. Only a fraction of these costs will be attributed to this instrument.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impacts and compliance costs arising from Directive (EU) 2017/2109 are minimal at most, and do not approach the £5m threshold (Equivalent Annual Net Direct Cost to Business). As such, a proportionate analysis on costs and benefits has been carried out through a de minimis assessment. The benefits resulting from reporting passenger information digitally have not been quantified due to a lack of evidence. In summary, the instrument is estimated to have a net cost to business of £0.01m over the appraisal period (10 years).

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 United Kingdom is committed to operating to the same international shipping standards on safety as other IMO Member States, even where this applies to ships owned by such businesses. The Department recognises that the costs to operators are proportionate to their size of vessel with larger operators assumed to own larger or numerous vessels. As such, no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

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

15. Contact

- 15.1 Robert Gale at the Maritime and Coastguard Agency (Telephone: 020 381 72132 or email: infoline@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 can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Katy Ware, Director of Maritime Services can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 The Parliamentary Under Secretary of State at the Department for Transport, Robert Courts can confirm that this Explanatory Memorandum meets the required standard.