

**EXPLANATORY MEMORANDUM TO**  
**THE MERCHANT SHIPPING (SMALL WORKBOATS AND PILOT BOATS)**  
**REGULATIONS 2023**

**2023 No. 1216**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Department for Transport and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

- 2.1 These Regulations revoke and remake with amendments and modifications the Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998 (S.I. 1998/1609) (“the 1998 Regulations”). In particular, they set out in greater detail the survey and certification requirements that apply to such vessels and now make specific provisions in relation to remotely operated unmanned vessels.
- 2.2 The Instrument is made under the enabling provisions in sections 47, 48, 77, 85(1)(a) and (b), (3)(a) to (c), (e), (k), (l), (n) to (q), (5) to (7), 86(1)(a) to (d) and 302(1) of the Merchant Shipping Act 1995.

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

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

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all United Kingdom ships, wherever they may be in the world and, non-United Kingdom ships while in United Kingdom waters and operating from a United Kingdom port.

**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 Part IV of the Merchant Shipping Act 1995 (“the Act”) makes provision for safety and health on ships. In particular, section 85 of the Act enables the Secretary of State to make regulations for securing the safety of United Kingdom ships and persons on them for protecting the health of persons on them. Section 85 also makes similar provision with regards to other ships or persons on them while such vessels are within United Kingdom waters. The 1998 Regulations are one of a number of instruments made under Part IV of the Act.

- 6.2 The 1998 Regulations set out the requirements for workboats and pilot boats to comply with the technical requirements set out in the Code of Practice for such vessels as issued by the Maritime and Coastguard Agency of the Department for Transport. The Regulations also provide that the Secretary of State may permit exemptions or equivalent standards to apply in relation to requirements for certain vessels and for penalties for breaches of the Regulations and for the detention of vessels in appropriate cases.
- 6.3 The 1998 Regulations are being revoked and remade by these Regulations in order to provide greater detail about the regulatory framework, the responsibilities of the Secretary of State and other Certifying Authorities and other compliance matters.

## 7. Policy background

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

- 7.1 This instrument revokes and remakes with modification and amendments the 1998 Regulations.

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.2 Paragraph 6.2 outlines the provisions in the 1998 Regulations.

#### Why is it being changed?

- 7.3 The 1998 Regulations are being revoked and remade as they do not provide a coherent legal framework setting out the certification process for the vessels they are intended to cover and how such vessels may continue to comply, or fail to comply, following certification. This instrument provides those details and also introduces new provisions for workboats that are remotely operated unmanned vessels which now operate in this sector.

#### What will it now do?

- 7.4 This instrument updates the provisions of the 1998 Regulations so that they set out in greater detail the responsibilities of the Secretary of State and other Certifying Authorities, the application and certification process for vessels, the requirements on owners and masters to report incidents, the processes to be followed where a vessel is deficient or detained and the penalties that can arise if the Regulations are breached. The instrument also sets out the process that applies if a surveyor determines that a vessel is deficient to the extent that it does not correspond with the particulars under which it was certificated or if it poses a danger to the vessels or a person on board. In addition, the instrument provides for disputes in relation to survey outcomes to be settled by review or arbitration. It also provides for amendments to other instruments that are needed to complement requirements for remotely operated unmanned vessels.
- 7.5 The provisions in this instrument are underpinned by detailed technical requirements set out in the Workboat Code Edition 3 which replaces and updates the earlier Codes of Practice in order to reflect current international standards and the equipment or practices that are now used in such vessels.

## **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 instrument consolidates the provisions of the 1998 Regulations which apply to small workboats and pilot boats. Further consolidation will be considered as the Department develops and updates the compliance requirements for other small vessels.

## **10. Consultation outcome**

- 10.1 A targeted public consultation took place over a period of 12-weeks from 6 October 2022 to 29 December 2022. A hard copy of the consultation and relevant documentation can be obtained from, Ship Standards, Maritime and Coastguard Agency, Bay 2/23, Spring Place, 105 Commercial Road, Southampton, SO15 1EG or, from the website:

<https://www.gov.uk/government/consultations/the-merchant-shipping-small-workboats-and-pilot-boats-regulations-2023>.

- 10.2 The Devolved Administrations were notified of the public consultation; however, no responses were received from them.
- 10.3 Responses were received from: individuals, ship owners/operators, legal representatives, industry representatives, classification societies and certifying authorities.
- 10.4 A total of 94 responses were received from individuals and organisations consisting of hundreds of individual comments on the SI, Workboat Code Edition 3, and its Annexes. Responses were mostly positive and the majority of those that responded were in favour of the proposed Merchant Shipping (Small Workboats and Pilot Boats) Regulations 2023 and accompanying Workboat Code Edition 3 and welcomed these measures.
- 10.5 However, there were some concerns from the industry regarding the application of the provisions to existing vessels and how that would be managed. In particular, these relate to the proposed transitional arrangements and the associated costs involved in requiring existing vessels to meet new or updated standards. There were 62 responses to a specific question about this and of those who expressed a preference, the majority of respondents were against the proposed transitional arrangements. In recognition of these concerns the Department has amended this instrument and the related Workboat Code Edition 3 as outlined below.
- 10.6 A key aim of the draft Workboat Code Edition 3 is to provide uniformity and consistency of applicable standards and the associated safety benefits that this would bring across the whole workboat fleet. In considering the concerns raised regarding the detrimental impact the Department acknowledged that requiring all existing vessels to meet the revised standards would be impractical, prohibitively expensive and an unnecessary burden on the sector. The Department has concluded that on the balance of cost verses benefit, the transitional arrangements should be simplified, and the Code and draft Statutory Instrument have been amended to reduce the impact on existing vessels in so far as this is possible without compromising health and safety.

The details are in the Workboat Code Edition 3 which permits existing vessels to maintain certification by compliance with standards against which they were originally certificated, and which are still relevant today.

- 10.7 On the assumptions of costings, the Department carried out a thorough analysis based on the best information that was available at the time. Where more accurate information and data has subsequently been made available that challenges those earlier assumptions, a revised assessment has been made.
- 10.8 Where industry feedback did not agree with the assumptions made, this related to the costs associated with the transition of existing vessels to the new Code. In revising the transitional arrangements and making provision for existing vessels in Workboat Code Edition 3, it is believed the concerns raised over these costs will be negated.
- 10.9 A hard copy of the summary of responses with the Governments comments can be obtained from, Ship Standards, Maritime and Coastguard Agency, Bay 2/23, Spring Place, 105 Commercial Road, Southampton, SO15 1EG or, from the website:

[Consultation on the Merchant Shipping \(Small Workboats and Pilot Boats\) Regulations 2023 and accompanying Code, The Safety of Small Workboats and Pilot Boats — A Code of Practice \(“Workboat Code Edition 3”\) - GOV.UK \(www.gov.uk\).](#)

## **11. Guidance**

- 11.1 Guidance regarding the changes introduced by the SI is contained in the Workboat Code Edition 3. Copies of this Code may be obtained free of charge at [www.gov.uk](http://www.gov.uk) or in hard copy from the Maritime and Coastguard Agency (MCA), Code Vessel Team of Spring Place, 105 Commercial Road, Southampton, SO15 1EG. A hard copy can be obtained from the MCA office only if pre-arranged.

## **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 A full Impact Assessment has not been prepared for this instrument because the MCA has produced a de minimis assessment (DMA) demonstrating that the impacts are negligible (and therefore not quantified). The DMA certifies that the cost to business falls well below the Better Regulation threshold of £5m per year, hence a full Impact Assessment is not required.
- 12.4 This Statutory Instrument and Code is necessary to future proof the international competitiveness of the UK flag and safety of UK-flagged vessels. The Code is also deemed as being uncontroversial and non-contentious, as it has been welcomed by industry.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people). The measure is designed to provide more clarity to all operators and replaces the need for operators of remotely operated unmanned vessels to apply for equivalencies with a simpler regulatory environment.

#### **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is to review the Regulations. 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 Rob Taylor at the Maritime and Coastguard Agency Telephone: 020 3817 2466 or email: [rob.taylor@mca.gov.uk](mailto:rob.taylor@mca.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Gwilym Stone, Deputy Director, Regulations and Standards at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Davies of Gower, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.