

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (SPECIAL MEASURES TO ENHANCE MARITIME
SAFETY) REGULATIONS 2024

2024 No. 280

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument implements the requirements in Chapter XI-1 in the Annex to the International Convention for the Safety of Life at Sea, 1974 (“SOLAS”) for a ship identification number, an identification number for owners and operators of ships and an ongoing record of the ship’s operations and extends these requirements to certain United Kingdom non-Convention ships. The instrument also implements the requirement for oil tankers to be surveyed in accordance with the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (“the ESP Code”). Implementation of the requirements brings UK law up to date with these internationally agreed safety measures.

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 which implement outstanding international obligations and 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. Further correspondence from Robert Courts MP and Trudy Harrison MP, providing detail on the progress made to clear the backlog, was included in the Committee’s 37th Report of Session 2021-22. On 5th December 2022, Baroness Vere wrote to the Committee providing an update on progress to clear the backlog. The letter was included in the Committee’s 22nd Report of Session 2022-23. On 18th September 2023, Baroness Vere wrote again to the Committee providing a further update on progress to clear the backlog and the letter was included in the Committee’s 53rd Report of Session 2022-23.

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 United Kingdom ships on international voyages, certain United Kingdom passenger ships on non-international voyages, United Kingdom tankers on non-international voyages which, as part of such voyages, operate at sea, and to non-United Kingdom ships while in United Kingdom 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 SOLAS Chapter XI-1 contains special measures to enhance maritime safety. The requirements for a ship identification number, an owner and operator identification number, a ship record (which is termed a “continuous synopsis record”) and the requirement for oil tankers to be surveyed in accordance with the ESP Code have not previously been implemented in United Kingdom law. As a result of this implementation, UK law is up to date with all the requirements of SOLAS Chapter XI-1.
- 6.2 SOLAS Chapter XI-1 applies to ships engaged on international voyages, but the Regulations also apply to UK registered passenger ships of Class A, which are the largest passenger ships operating domestic voyages in the United Kingdom, as well as passenger ships of Class B, which operate no more than 20 miles from the coast, and which are certified to carry more than 250 passengers. Both Class A and Class B passenger ships are regulated by the Merchant Shipping (Ships on Domestic Voyages) Regulations 2000 (S.I. 2000/2687). The Regulations also apply to UK registered tankers on non-international voyages, but which, as part of such voyages, operate at sea.
- 6.3 The remaining provisions of SOLAS Chapter XI-1 are implemented in other legislation as follows:
- The requirements for recognised organisations (surveyors appointed by the State for the purpose of undertaking statutory surveys) in regulation 1 in Chapter XI-1 are implemented primarily by way of Assimilated Regulation (EC) 391/2009.
 - The requirement in regulation 2 for bulk carriers to be surveyed in accordance with the ESP Code is contained in the Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 2021 (S.I. 2021/1218) and the harmonised system of surveys for cargo ships not subject to the ESP Code is given effect by the Merchant Shipping (Survey and Certification) Regulations 2015 (S.I. 2015/508) (“the Survey and Certification Regulations”) and Merchant Shipping Notice 1571 (M+F) Amendment 1.
 - Regulation 4 in Chapter XI-1 provides that a ship is subject to inspection by port State control officers where there are clear grounds to believe that the master or crew are not familiar with essential shipboard procedures, and is

implemented in the Merchant Shipping (Port State Control) Regulations 2011 (S.I. 2011/ 2601).

- The requirement in regulation 6 for States to follow the international Code relating to casualty investigation is implemented in Part XI of the Merchant Shipping Act 1995 (c. 21) and in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (S.I. 2012/1743).
- The requirements in regulation 7 relating to atmosphere testing instruments for enclosed spaces are implemented in the Merchant Shipping and Fishing Vessels (Entry into Enclosed Spaces) Regulations 2022 (S.I. 2022/96).

- 6.4 The Regulations include an ambulatory reference provision in regulation 5 to ensure that future amendments to SOLAS Chapter XI-1 referenced in the Regulations are automatically incorporated into United Kingdom law. This ensures that United Kingdom domestic law remains in line with the requirements of the Convention. The United Kingdom will continue to be able to scrutinise and, if necessary, object to, any proposed changes in an international arena, that is, in the International Maritime Organization (IMO), and to assess the impact of the changes well before any amendment is due to come into force. This will inform decision making. United Kingdom industry and workers' representatives will also be involved at the stage at which the United Kingdom negotiating strategy is being formulated and will be able to influence it. If the United Kingdom objects to an amendment that is due to come into force internationally, and which is referenced in the Regulations, then the Secretary of State will make amending secondary legislation to prevent that amendment from becoming incorporated into domestic law by way of ambulatory reference.
- 6.5 An amendment that is accepted by the United Kingdom will be publicised in advance of its in force date by a Parliamentary Statement to both Houses of Parliament, and by a Marine Guidance Note, which will be available from the Maritime & Coastguard Agency (MCA) from Spring Place, 105 Commercial Road, Southampton, SO15 1EG, and on <https://www.gov.uk>.
- 6.6 Once a future amendment to Chapter XI-1 comes into force it can be obtained in hard copy from the IMO of 4 Albert Embankment, London SE1 7SR, or found on the Foreign, Commonwealth and Development Office online treaties database: <https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/>. Until such publication is made on the treaties database an amendment will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk>. The IMO generally adopts and gives effect to amendments to the Annexes to SOLAS on a quadrennial cycle and the most recent amendments came into force on 1st January 2024.
- 6.7 As United Kingdom merchant ships are subject to a survey and certification regime under the Survey and Certification Regulations, compliance with the Regulations is checked at the time of survey. A ship must comply with all the requirements of Chapter XI-1 applicable to it and failure to do so is an offence under the Regulations. Provision for offences and penalties under the Regulations is contained in regulation 10. A ship may also be detained under regulation 11 where it does not comply with the Regulations.
- 6.8 These sanctions are applicable in respect of both United Kingdom ships and non-United Kingdom ships visiting United Kingdom ports. The Maritime & Coastguard

Agency is a prosecuting authority, acting on behalf of the Secretary of State; it has the power to investigate potential offences and, where necessary, bring prosecutions.

7. Policy background

What is being done and why?

- 7.1 SOLAS contains the minimum safety standards for the construction, equipment and operation of merchant ships to ensure safety of lives at sea. The UK, as a party to SOLAS, has an obligation in international law to give effect in the UK to the Convention.
- 7.2 This legislation completes the implementation of SOLAS Chapter XI-1 into United Kingdom domestic law and discharges the international obligations in that Chapter for the enhanced safety of ships, which is the main objective of the legislation. The Regulations will enhance the safety standards for the operation of United Kingdom ships and ships that visit United Kingdom waters and ensure enforcement action can be taken against non-compliant ship operators. This ensures that all ships are maintained to a unified standard and will improve the safety, security and pollution prevention capabilities of ships.
- 7.3 The provisions in Chapter XI-1 that are being implemented in these Regulations are set out below.
- 7.4 *Requirement for oil tankers to be surveyed in accordance with the ESP Code (regulation 2 in Chapter XI-1).* The Regulations contain improved standards for oil tankers by requiring that these ships be surveyed in accordance with the ESP Code (which contains requirements for oil tankers which are additional to the standard survey requirements for other cargo ships). This enhanced inspection is undertaken in parallel to the ship's standard survey with the objective of enhancing maritime safety and preventing pollution. This new requirement is implemented by way of amendments to regulation 9 of the Survey and Certification Regulations (surveys of cargo ship structure, machinery and equipment).
- 7.5 *Requirement for a ship identification number (regulation 3 in Chapter XI-1).* The unique ship identification number (generally referred to as "the IMO number") enhances maritime safety and pollution prevention by ensuring the ship is fully identifiable wherever it goes. The number is permanently marked on the ship. The Regulations make it a requirement on the owner and operator of a ship, as well as on the master, to ensure that a ship is not operated without an IMO number, as well as to ensure that the number is inserted in the ship's certificates. Maintaining and exchanging information between stakeholders through multilateral mechanisms is very important for ship safety, security, pollution prevention and crew welfare. A unique number for each ship provides a superior framework and capacity to obtain and use ship data, i.e., port State control (PSC) officers can readily identify a ship and company/owner regardless of name, operator, flag, and so on. As the IMO encourages Administrations to extend the requirement to domestic shipping, the requirement is extended to certain domestic passenger ships and tankers; it is considered appropriate to apply the requirements to these ships as they are either ships with a significant domestic operating area or are carrying a large number of passengers.
- 7.6 *Requirement for a company and registered owner number (regulation 3-1 in Chapter XI-1).* A ship operator (which is referred to in SOLAS as the "Company" and is the entity with operational responsibility for the ship) and owner (if different) of a ship

which is registered, must not operate a ship unless it has a unique number. The objective of this requirement is primarily to facilitate the prevention of maritime fraud. A permanent number is assigned for identification purposes to each Company and/or registered owner managing ships engaged on international voyages (except for cargo ships under 500 gross tons). Again, as Administrations are encouraged to extend the requirement to domestic shipping, provision has been made in the Regulations for owners and operators of certain domestic passenger ships and tankers.

- 7.7 *Continuous Synopsis Record (regulation 5 in Chapter XI-1)*. The Continuous Synopsis Record (“CSR”) provides an onboard record of the history of the ship. It is a form of log book that stays with the ship for its whole life and contains key information about the ship, such as the flag State, port of registry and registered owner identification number. It must be kept on board the ship at all times and the ship must not be operated without it. As such, the CSR helps to prevent fraud and enhances safety by way of a complete ship record. This provision is also extended to the owners and operators of certain domestic passenger ships and tankers.

Explanations

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

- 7.8 The requirements in the instrument are a first implementation of the corresponding requirements in SOLAS Chapter XI-1. However, all United Kingdom registered ships are already compliant with the four specific measures in Chapter XI-1 that these Regulations implement. This is because the two types of identification numbers and the CSR are required as part of the registration process in the United Kingdom. Additionally, surveys of oil tankers to which the ESP Code applies are already surveyed in accordance with the ESP Code.

Why is it being changed?

- 7.9 As a party to SOLAS, the UK must ensure that Chapter XI-1 is fully implemented into domestic law. Full implementation means that the requirements, which all United Kingdom ships already comply with, can be enforced against non-United Kingdom ships. The fraudulent registration of ships, proliferation of fraudulent registries and related deceptive shipping practices pose a serious threat to the safety and security of international shipping, including the safety and well-being of the crew, and to the protection of the environment, and can facilitate illicit maritime trafficking and the evasion of sanctions. The possibility of identifying fraud and enhancing the safety of the maritime industry is significantly improved as a result of the requirements for unique identifiers and onboard ship information.

What will it now do?

- 7.10 These Regulations ensure that all the enhanced safety measures in SOLAS Chapter XI-1 are fully implemented into United Kingdom domestic law and can be enforced by way of criminal sanctions. As a key objective of the SOLAS obligations was to combat international fraud, the liabilities attributed to the operator (that is, the “Company”), owner and master in the Regulations reflect the need for each to be involved in the prevention of such fraud. The role of the “Company” was established as a concept in international law for the purposes of the International Safety Management (ISM) Code in Chapter IX in the Annex to SOLAS so the entity responsible for the operation of a ship would always be liable for its safe management. The role of the Company is therefore essentially a managerial and operational one and

usually comprises an entity separate to the owner of the ship, although occasionally the Company may also be the owner. As such, while in most cases it is appropriate that both the Company and owner are liable in relation to the fraud prevention measures in the Regulations, in some cases it is appropriate that only the entity with direct responsibility for the operation of the ship (i.e. the Company) should be liable. The Regulations reflect these distinctions.

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 The instrument contains previously unimplemented requirements so consolidation is not needed.

10. Consultation outcome

- 10.1 The Department conducted an eight-week public consultation that ran from 15th September to 10th November 2023. Industry stakeholders, including the Devolved Administrations of Scotland, Wales and Northern Ireland, Red Ensign Group Registries, Trade Unions, operators of passenger ships and operators of cargo ships of 300 gross tons and over, Class Associations and others were notified of the consultation and invited to respond by a letter sent by email. The consultation was also publicised on the Maritime and Coastguard Agency's social media channels, and a press release was issued.
- 10.2 A total of two responses were received. Both respondents noted that operators currently comply with the measures, although one was of the view that they disproportionately affect smaller businesses; the response explained the safety case for not differentiating between smaller and larger businesses, which is also explained in paragraph 13.3 of this Explanatory Memorandum. One respondent noted that the penalties were quite severe; in response, it was explained that the penalties are in line with other merchant shipping legislation, that they are aimed primarily at ships operating under a false flag, including fleets concealing identification numbers in order to break sanctions, and that the penalties therefore provide robust deterrents to such operations. Not all questions posed in the Consultation Document were answered. The answers given have been fully and carefully considered with no resulting alterations made to the Regulations or associated documentation.
- 10.3 The consultation and the consultation report can be found at <https://www.gov.uk/government/consultations/implementation-of-requirements-of-solas-chapter-xi-1-the-merchant-shipping-special-measures-to-enhance-maritime-safety-regulations-2024#:~:text=Summary,enhance%20the%20safety%20of%20ships>. A hard copy version can be obtained from the Maritime & Coastguard Agency of Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone 020 3817 2000 and email infoline@mcga.gov.uk).

11. Guidance

- 11.1 Marine Guidance Note 660 (M) provides further information on the instrument and MSF 5623A provides guidance on the specific requirement for a continuous synopsis record. These guidance documents are available on

www.gov.uk/government/collections/ships-and-cargoes-guidance-and-bulletins and in hard copy from the Maritime & Coastguard Agency.

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 instrument falls below the threshold for an impact assessment. Industry bodies were consulted and supported the implementation of the outstanding requirements in Chapter XI-1.

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 to determine any impact. It is estimated that around 3% of ships (approximately 32 ships) on the United Kingdom 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 Chapter XI-1 requirements are concerned with safety measures for ships. In the interests of safety, it is not possible to justify different requirements just because a company has fewer employees. The benefits of lives potentially saved, even amongst smaller operators, greatly outweigh the impact. All operators are expected to comply with the same standards and, therefore, there will be no disproportionate impact upon one smaller business relative to another.

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 Masud Karim at the Maritime & Coastguard Agency Telephone: 020 3908 5178 or email: masud.karim@mcga.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gwilym Stone, Deputy Director for Regulations and Standards, at the Maritime & 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.