

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (PREVENTION OF POLLUTION BY GARBAGE
FROM SHIPS) (AMENDMENT) REGULATIONS 2024

2024 No. 570

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 His Majesty.

2. Declaration

2.1 Lord Davies of Gower, Parliamentary under Secretary of State at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Katy Ware, Director for United Kingdom Maritime Services at the Maritime and Coastguard Agency, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lorraine Weller at the Maritime and Coastguard Agency, Telephone: 020 38172448 or email: lorraine.weller@mcga.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations amend the Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020 (S.I. 2020/621) (“the Garbage Regulations”) to implement an amendment to Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) of the International Convention for the Prevention of Pollution from Ships, 1973 (“MARPOL”) which comes into force on 1st May 2024.

4.2 These Regulations also make a consequential amendment to the Merchant Shipping (Fees) Regulations 2018 (S.I. 2018/1104).

Where does the legislation extend to, and apply?

4.3 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.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all United Kingdom ships, whether within United Kingdom waters or anywhere else in the world. It also applies to non-United Kingdom ships while in United Kingdom waters or controlled waters.

5. Policy Context

What is being done and why?

- 5.1 These Regulations implement an international amendment to MARPOL Annex V by amending the Garbage Regulations and the background, purpose and means of making this change are described in detail in paragraphs 5.2 to 5.8.
- 5.2 In the United Kingdom, MARPOL Annex V is implemented by the Garbage Regulations. Annex V generally prohibits the discharge of garbage into the sea, except as provided otherwise in specific circumstances relating to food waste, cargo residues, cleaning agents and additives which are not classified as harmful to the marine environment, and animal carcasses. In Annex V, garbage is defined in Regulation 1.9 and includes a range of wastes and other items which are generated during the normal operation of a ship and are likely to be disposed of continuously or periodically.
- 5.3 Regulation 10.3 of Annex V previously required all ships of 400 gross tonnage and above, every ship which is certified to carry 15 persons or more engaged in international travel, and every fixed or floating platform to be provided with a Garbage Record Book and to record all specified discharges and incineration operations. This made it easier to check that there is compliance with the requirements governing the discharge and handling of garbage because ship personnel must keep track of the garbage and what happens to it.
- 5.4 The International Maritime Organization (“the IMO”), through its Marine Environmental Protection Committee (“the MEPC”), carried out an investigation to assess whether Annex V required further development as part of a global solution within the framework of ocean governance, in pursuance of the target of the United Nations’ Sustainable Development Goal 14, to prevent and significantly reduce marine pollution of all kinds by 2025. In undertaking this instruction, the MEPC adopted Resolution MEPC.310(73) on 26 October 2018 which provides an action plan to address marine plastic litter from ships (“the Action Plan”).
- 5.5 The Action Plan comprised measures including a review of the application of placards, garbage management plans and garbage record keeping. Subsequently, the IMO adopted Resolution MEPC.360(79) in order to amend Regulation 10 of Annex V relating to the Garbage Record Book, extending the scope of affected ships from those of 400 gross tonnage and above to those of 100 gross tonnage and above. These Regulations amend the Garbage Regulations to bring this into effect in the United Kingdom. Resolution MEPC.360(79) also contained amendments relating to regional reception facilities in Arctic waters, which the United Kingdom is not required to implement.
- 5.6 IMO Resolution MEPC.360(79) comes into force on 1 May 2024 and is available from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR and at [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MEPCDocuments/MEPC.360\(79\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MEPCDocuments/MEPC.360(79).pdf). It will also be made available on the Foreign, Commonwealth and Development Office treaties database (<https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/>). IMO Resolution MEPC.310(73) is also available from the IMO and at [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MEPCDocuments/MEPC.310\(73\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MEPCDocuments/MEPC.310(73).pdf).
- 5.7 Legislation has been identified as the most effective method to achieve the intended outcomes of reducing marine debris and therefore protecting the marine environment.

It also fulfils the United Kingdom's international obligations, maintains the United Kingdom's reputation as a responsible flag state and party to MARPOL, and ensures a level playing field for United Kingdom flagged ships.

- 5.8 The Department also considered a non-regulatory approach based on advice to industry. Whilst this would achieve a level of awareness of the new requirements within the industry, it would not achieve compliance by the UK with its international obligations and securing compliance by industry through the availability of effective enforcement mechanisms, protecting the marine environment and setting a level playing field for United Kingdom flagged ships. This would risk reputational damage and the potential for United Kingdom flagged ships of between 100 gross tonnage and 399 gross tonnage being subject to sanctions in foreign ports such as findings of lack of compliance during port state control inspections or ship detentions, causing unnecessary delays and costs to industry. It would also leave United Kingdom waters unprotected, as there would be no way to enforce the international requirements within the United Kingdom.

What was the previous policy, how is this different?

- 5.9 The preceding position and requirements are described in paragraph 5.3 and the basis for the new approach is described in paragraphs 5.4 and 5.5. The basis for the need to legislate is set out in paragraph 5.7.

6. Legislative and Legal Context

How has the law changed?

- 6.1 These Regulations amend the Garbage Regulations to implement the amendment made by IMO Resolution MEPC.360(79) to Annex V of MARPOL. For the purposes of these Regulations, the relevant amendment is contained in paragraph 3 of the Annex to MEPC.360(79) and extends the requirement that ships of 400 gross tonnage or more carry a Garbage Record Book to ships of 100 gross tonnage or more. Annex V applies (subject to limited exceptions) to all ships.
- 6.2 The requirements in Annex V were implemented by the Garbage Regulations and many of those requirements are incorporated by direct reference in those Regulations to provisions in Annex V. The Garbage Regulations make provision for references to requirements in MARPOL Annex V and the Polar Code to be ambulatory so that all future amendments to those requirements are automatically given direct effect in the United Kingdom by the Garbage Regulations. However, the provision in Regulation 10.3 of Annex V (setting the threshold for ships required to carry a Garbage Record Book at 400 gross tonnage or more) is not incorporated by direct reference but is instead specifically set out in regulation 12(1)(a) of the Garbage Regulations. Therefore, to implement this amendment in MEPC.360(79), regulation 12(1)(a) must be amended directly.
- 6.3 Guidance in respect of the operation of MARPOL Annex V and the Garbage Regulations, which does not require implementation in domestic law, is set out in Marine Guidance Note 632 (M+F) Amendment 2 (which replaces MGN 632 (M+F) Amendment 1). This is available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk/government/collections/marine-guidance-notice-mgns>.
- 6.4 The Garbage Regulations contain detailed provision in regulation 21 for offences. A ship may also be detained under regulations 17 or 18 where it does not comply with those Regulations. These sanctions are applicable in respect of both United Kingdom

ships and non-United Kingdom ships visiting United Kingdom ports, and these Regulations will extend the availability of those sanctions to ships of between 100 and 399 gross tonnage.

Why was this approach taken to change the law?

- 6.5 The Department considers that this is the most appropriate means of legislating to make the necessary changes. Annex V was comprehensively implemented by the Garbage Regulations in 2020. The amendments made by this instrument are minor and therefore it would not be an effective use of legislative and other resource to consolidate these amendments by remaking the Garbage Regulations in full.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The Maritime and Coastguard Agency engaged with stakeholders through a consultation on the draft of these Regulations. This took place between 16th October and 13th November 2023.
- 7.2 Fifteen responses were received to the consultation. The responses were from Environmanagement, the Ballastwater Equipment Manufacturer's Association (BEMA), the Scottish Environment Protection Agency (SEPA), Blue Funnel, the Workboat Association, the Chamber of Shipping, the National Federation of Fishermen's Organisations (NFFO), the Port of London, Kommunernes International Miljøorganisation (KIMO), the Northern Ireland Fish Producers' Organisation (NIFPO), the Scottish Islands Federation Marine Litter Working Group, the Law Society of Scotland, Natural England, the Scottish Fishermen's Federation (SFF) and the Royal Yachting Association (RYA). Not all of the respondents answered all of the consultation questions and some additional comments were received. These have been fully considered and did not necessitate making any changes to the policy proposal and corresponding draft of these Regulations which formed the basis of the consultation.
- 7.3 The consultation and subsequent post consultation report can be found at: <https://www.gov.uk/government/consultations/consultation-on-amendments-to-the-merchant-shipping-prevention-of-pollution-by-garbage-from-ships-regulations-2020-and-the-merchant-shipping-preven>

8. Applicable Guidance

- 8.1 Further guidance on the implementation of Annex V to MARPOL to supplement these Regulations is contained in Marine Guidance Note 632 (M+F) Amendment 2 which is available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk/government/collections/marine-guidance-notices-mgns>.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because the Department's de minimis assessment concluded that the costs and benefits to business are expected to fall below the +/- £5 million net threshold in any one year.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument represents a minor change to the existing Garbage Regulations. This instrument will have an impact on owners of ships with a gross tonnage of between 100 and 399, but based on the costs outlined in the de minimis assessment, the impact is unlikely to be disproportionate. Ship owners impacted by the change will need to carry and complete a Garbage Record Book, but it is likely that many will only need to replace it every few years, although this will depend on the number of voyages those ships take. The master and owner of the ship will also need time to familiarise themselves with the Garbage Record Book and complete it as necessary, which can be considered to have a financial and time impact. However, the new Garbage Record Book requirements complement existing requirements for ships of 100 gross tonnage and above to carry a Garbage Management Plan, so ship owners and masters will already be familiar with garbage management principles. Ships within the 100 to 399 gross tonnage range are unlikely to carry many persons on board, and so are unlikely to generate large amounts of garbage to be recorded in the Garbage Record Book. In addition, ships engaged on voyages of one hour or less that are certified to carry 15 or more persons, or fixed or floating platforms may apply for an exemption from the Garbage Record Book requirements. There are currently 1,137 ships on the UK Ship Register with a gross tonnage of between 100 and 399. A number of these will be certified to carry 15 or more persons on board, and so will already be required to maintain a Garbage Record Book. The net annual costs to businesses are well below the £5 million threshold for full impact assessments.
- 9.3 The legislation does impact small or micro businesses.
- 9.4 No specific action is proposed to minimise regulatory burdens on small businesses or micro businesses because the United Kingdom is committed to fully implementing Annex V even where this applies to ships owned by such businesses. Annex V has balanced regulation for reducing pollution by garbage from shipping whilst limiting the impact on small businesses.
- 9.5 There is no, or no significant, impact on the public sector because this instrument represents a minor change to the existing Garbage Regulations. Consequently, MCA personnel engaged in ship inspections will need little time to familiarise themselves with the changes and will need little extra time to check the Garbage Record Book during inspections of ships. There are no specific survey and certification requirements under MARPOL Annex V. When MCA personnel board a ship for a general inspection, they will check for the provision of the Garbage Record Book and compliance under Annex V.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is to include it within the scope of the post implementation review which will be conducted in respect of the Garbage Regulations. Those Regulations include statutory review provision comprising a commitment to conduct a post implementation review by 22 July 2025 and every five years thereafter. This review will be published.
- 10.2 The instrument does not include a statutory review clause because it will fall within the scope of the existing statutory review provision in the Garbage Regulations.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).