

**EXPLANATORY MEMORANDUM TO THE  
MERCHANT SHIPPING (FEES) (AMENDMENT) REGULATIONS 2005**

**2005 No. 580**

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instrument.

2. **Description**

- 2.1 The Regulations make changes to certain of the fees charged under the Merchant Shipping (Fees) Regulations 1996 (S.I. 1996/3243) (“the principal Regulations”) and increase some existing fees following the re-letting of the UK radio Survey & Inspection Contracts.

- 2.2 The amending Regulations will provide the following fees increases:

- 2.2.1 the hourly survey rate from £32.00 per hour to £36.00 per hour; and

- 2.2.2 the fixed fee for administration of £50.00 increased to £75.00.

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

- 3.1 The amendments made in regulation 2(2) and (3)(a) to regulation 5(2) and paragraph 2(2)(a) of Part I of the Schedule to the principal Regulations have been drafted to deal with an ambiguity in the drafting of the previous amendments made by the Merchant Shipping (Fees) (Amendment) Regulations 2001 (SI 2001/3340).

- 3.2 The fees provided for in the new contract for radio marine surveys increase the hourly survey rate from £32.00 per hour to £36.00 per hour. The agreed rates were slightly above the rate of inflation. However, the contractor did not increase its radio survey rates throughout the three year period of the last contract. Over the same period, rates of inflation would have increased the fee to £35.00. Thus this new contractual rate represents a slight increase (£1) above inflation at the start of the new contract term. The contract does not permit a further increase in the survey fees during the new contract period.

- 3.3 The Department recognises that the principal Regulations have now been amended a number of times. This amendment to the principal Regulations is required at this time due to the commencement of the UK Radio Survey and Inspection Contract from 1 April 2005. It is intended that the principal Regulations will be revoked and replaced towards the end of 2005.

#### **4. Legislative Background**

- 4.1 The Regulations are made to increase the fees chargeable for radio surveys following the re-letting of the UK radio Survey & Inspection Contracts. They amend the principle Regulations.
- 4.2 The Regulations are made following a full tendering process to re-let the current Radio Survey & Inspection Contract through EU Journal. Fees are set on a full costs recovery basis to cover the hourly and other rates paid to the contractor. The contract is let by competitive tender. The current contract expires on 31 March 2005 and the new fees reflect the outcome of the competitive re-tendering.
- 4.3 The Regulations are made with the consent of the Treasury.

#### **5. Extent**

This instrument applies to all of the United Kingdom.

#### **6. European Convention on Human Rights**

Not applicable

#### **7. Policy background**

- 7.1 These Regulations amend fees relating to radio marine surveys following the re-letting of the UK Radio Survey & Inspection Service for a three year period from 1 April 2005 to 31 March 2008. This service is undertaken by a third party under contract to Maritime and Coastguard Agency (“MCA”).
- 7.2 The fees provided for in the new contract for radio marine surveys increase the hourly survey rate from £32.00 per hour to £36.00 per hour.
- 7.3 The additional fees which may be charged for waiting time and for working outside of normal working hours have also been increased. No fee is chargeable for waiting time of less than one hour. For waiting time in excess of one hour the contractor may charge the normal hourly rate of £36 per hour in the United Kingdom or £72 (twice the hourly rate) abroad. The fees for waiting time are charged to encourage service users to minimise the time spent waiting by surveyors and recognise that the surveyors could be undertaking other work instead of waiting. An additional hourly fee of £18 per hour (half the hourly rate) may be charged for surveys and travelling outside of normal working hours to recognise the anti-social aspect of the hours.
- 7.4 A full industry consultation was undertaken prior to the tendering process to identify how those who are required to have radio survey wished the service to be conducted after 1 April 2005. The responses to the consultation were taken into account and incorporated into the new contract. The consultation showed that the majority of the industry was

content with the performance of the contractor from 2001 to the date of the consultation. Further consultation on the fees is not appropriate since the fees have to be increased as a result of the competitive tendering exercise.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 No impact on the public sector is foreseen.

## **9. Contact**

The official within the MCA who can be contacted with any queries in relation to these Regulations is Richard Ward, Finance and Contracts Directorate, Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG; telephone 02380 329472; email: richard.ward@mcga.gov.uk.

# **Regulatory Impact Assessment for the Merchant Shipping (Fees) (Amendment) Regulations 2005**

## **Purpose and intended effect of measure**

### **The objective**

1. The survey service will be provided through delegation via Statutory Instrument and related Deed. The contractor will be liable for all expenses in connection with the running of the service which will continually reflect international obligations.
2. All remuneration payable to the contractor will be in the form of fees chargeable to vessel owners. No remuneration will be payable to the contractor by the Maritime and Coastguard Agency ("MCA"), nor will the MCA have any liability for non - payment of fees by vessel owners.
3. The contractor will be required to take all reasonable and practical steps to ensure that the number of official visits (and therefore costs) for a survey are kept to a minimum. Such additional costs arising should be fully justifiable to the Owner.

### **Charging for the inspection and advice service**

4. Charges to the MCA will be based on the time spent on the service. This will be invoiced monthly in arrears.

## **The background**

### **Survey**

5. The statutory requirements for the survey of the radio installations on UK registered ships and fishing vessels are laid down in the Merchant Shipping (Survey and Certification) Regulations 1995 and Merchant Shipping (Radio) (Fishing Vessel) Regulations 1999.
6. A new Harmonised Survey Regime was implemented by The Merchant Shipping (Survey and Certification) (Amendment) Regulations 2000. This new regime standardises the period of validity and intervals between surveys for the nine main Convention certificates, including radio (except for Passenger Certificates) to five years.
7. For radio, a certificate will be issued on a five yearly basis with periodical survey conducted annually. The certificate may then be endorsed accordingly. For fishing vessels, a certificate will be issued on a four yearly basis with annual endorsements.
8. The contractor will perform the initial survey of the radio installations on UK ships or fishing vessels. If a series of identical ships require initial surveys, the contractor will perform the first survey. Initial surveys of sister ships may then be undertaken by a Classification Society at the discretion of the contractor or MCA.

9. A renewal survey is a survey other than an initial survey, carried out on a five yearly basis for the issue of a Cargo Ship Safety Radio Certificate under the Harmonised Survey Regime.

10. A periodical survey is a radio survey undertaken annually under the Harmonised Survey Regime other than a Renewal Survey.

11. In United Kingdom ports, survey of the radio installations on UK ships or fishing vessels will be performed by the contractor.

12. Marine Guidance Note 269 requires all UK registered ships to, where possible arrange, for the survey of a radio installation in a port of the United Kingdom.

13. Where it is not possible, the survey should be arranged at a suitable port overseas in accordance with the following:

when requested by owners, the contractor will be authorised to appoint Classification Society Surveyors to undertake surveys. On satisfactory completion of the survey, the Classification Society surveyor will submit required declaration and endorse the certificate on board.

Surveys not undertaken by a Classification Society surveyor may be undertaken by the contractor surveyors. However, if costs are prohibitive for the contractor's surveyor to undertake the survey; the contractor may use appointed agents. In this event, regular direct monitoring and record keeping of the appointed agent will be required and be the responsibility of the contractor. MCA will undertake periodic audits of contractors to ensure quality assurance.

However, under the Harmonised Survey Regime, the contractor will undertake at least one survey in five for cargo ships and passenger ships, regardless of location.

14. In the event that either the MCA or the contractor perform the survey, the ship owner will be responsible for meeting the cost of any additional travel and subsistence over and above incurred for surveys in the United Kingdom. United Kingdom survey rates will apply.

### **Inspection and advice**

15. The MCA requires a single provider for inspection and advisory work.

16. The selected contractor will be required to provide the services of a team of suitably qualified surveyors to carry out inspection work and advice on all types of radio equipment together with a detailed knowledge of legislation covering all radio matters.

17. The contractor will be required to perform self-monitoring of technical standards to ISO 9000 2000 or an equivalent standard, and this will include periodic monitoring of any work which is sub-contracted.

18. Regular review meetings (usually every quarter) with the MCA will be held to review progress and to agree future programmes. No payments will be made for attending these meetings.

19. The contractor will be responsible for the provision and maintenance of sufficient numbers of professional and administrative staff, to provide the service. A 24/7 survey service, covering the scope of work is required, with no exceptions on account of public or other holidays, covering all UK ports, including Northern Ireland is required. The contractor will be required to provide a central administration facility to co-ordinate inspection work and to liaise closely with MCA and Regional Marine Offices as inspections should be undertaken with MCA inspections wherever possible.

20. The contractor and his employees will be bound by an undertaking that all discussions and dealings with the MCA will remain confidential.

### **Risk assessment**

21. Under the new contract commencing April 2005 new fee rates for Survey and administrative charge have been agreed. For The contractor to be able to charge these fees from the commencement of the contract an amendment to The Merchant Shipping (Fees) Regulations 1996 needs to be made.

22. If this legislation is not amended the contractor will not be able to charge the agreed increase in fees under the new Survey and Inspection contract and will have to charge industry fees at the rate of the current contract with the MCA having to make up the difference until the new fees are implemented.

### **Options**

23. Option 1:

Amend The Merchant Shipping (Fees) Regulations to give the Contractor the authority to charge the fees agreed for the new Survey and Inspection contract which commences April 2005.

24. Option 2:

Not to amend The Merchant Shipping (Fees) Regulations. This would leave the contractor in the position of not being able to charge the fees for the new Survey and Inspection contract agreed with the MCA who would therefore have to pay the contractor the difference between the rate of fees under the current contract and the new contract commencing in April 2005.

### **Costs and benefits**

## **Benefits**

### 25. Option 1:

This is the recommended option as this will allow the contractor to charge the fees under the new Survey and Inspection contract at the agreed rates.

### 26. Option 2:

To do nothing. This is not an option as the contractor will not be able to charge the fees agreed from April 2005 under the new Survey and Inspection contract, resulting in MCA having to pay the contractor the difference between the current rate and the rate for the new contract until such a time as The Merchant Shipping (Fees) Regulations were amended.

## **Equality and Fairness**

27. The amendment to the legislation will not disadvantage any specific race, creed or ethnic minority as it applies to all vessels on the UK flag.

## **Summary and recommendation**

27. Option 1 is the option that is recommended due to the fact that this option will allow the contractor to charge fees at the agreed rate and therefore MCA will not incur the cost of having to meet the difference between the fee rate under the current contract and the fee rate agreed under the new contract to commence in April 2005.

## **Ministerial Declaration**

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the cost."

**Signed.....**

**Mr David Jamison MP**

**Parliamentary Under-Secretary of State for Transport**

**2 March 2005**

## **Contact Point**

Dave Wagstaff

Navigation Safety Branch

MCA

Tel: 02380329521

Fax: 02380329204

E-mail: [Navcomms@mcga.gov.uk](mailto:Navcomms@mcga.gov.uk)