

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARINE EQUIPMENT) (AMENDMENT) REGULATIONS 2009**

2009 No. 2021

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

2. Purpose of the instrument

2.1. These Regulations amend the Merchant Shipping (Marine Equipment) Regulations 1999 (S.I. 1999/1957). The 1999 Regulations implemented Council Directive 96/98/EC (which has been variously amended) which established a European regime for the application of common standards and type-approvals to equipment placed or installed on a ship. These Regulations give effect to the amendments to Directive 96/98/EC made by Commission Directive 2008/67/EC.

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

3.1. None

4. Legislative Context

4.1. These regulations implement EC legislation and a transposition note is attached

4.2. The principal provisions of the 1999 Regulations which are relevant for the purposes of understanding these Regulations are as follows:

(i) equipment which is to be placed on board UK ships and other ships of specified classes must comply with the applicable international standards of relevant international conventions (regulation 6(1) of the 1999 Regulations);

(ii) compliance with the applicable international standards shall be assessed solely by reference to the testing standards specified in Merchant Shipping Notice MSN 1734 and to the EC conformity-assessment procedures specified in the 1999 Regulations (regulation 6(2) of the 1999 Regulations).

4.3. These new Regulations provide for the Maritime and Coastguard Agency's Merchant Shipping Notice, which lists equipment approved for use on ships, to specify transitional conditions in line with the provisions of EC Directive 96/98 as amended. These transitional conditions will assist the shipping industry and the marine equipment industry to adjust when requirements in relation to marine equipment on ships are amended or updated.

4.4 The Regulations also amend the application of the Marine Equipment Regulations to make clear that they cover hovercraft and to apply them to Government ships (other than ships of the Royal Navy) as required by the 1996 Directive. Special provision is made for the ships of the Royal Fleet Auxiliary which need not use type-approved equipment where this is permitted by the relevant international conventions.

4.5. These Regulations are made under powers contained in the Merchant Shipping Act 1995, except in so far as they cause the 1999 Regulations to apply to Government ships (which does not include ships forming part of Her Majesty's Navy). The power to apply the 1999 Regulations to Government ships is provided by section 2(2) of the European Communities Act 1972 and is reflected in the insertion of a definition of "United Kingdom ship" in the 1999 Regulations.

5. Territorial Extent and Application

5.1. This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

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

7. **Policy background**

- *What is being done and why*

7.1. The policy objectives of these regulations are to ensure safety on UK ships and to reduce the burden on the shipping and marine equipment industries of complying with the requirements of the Marine Equipment Regulations. The regulations, in conjunction with a co-ordinated amendment to MSN 1734, will ensure that the UK complies with Directive 2008/67 in updating the lists of equipment for which EC type approval safety certificates are required.

7.2. There is little public interest in these regulations but the change to update the lists is legally important to ensure the latest uniform international standards for marine equipment are complied with.

- *Consolidation*

7.3. In drafting these regulations we have enabled MSN 1734 in future to specify such transitional provisions as are anticipated to be relevant when the lists of equipment requiring type-approval are further updated. The fifth amendment to these lists is expected to come into effect from 6 April 2010.

8. **Consultation outcome**

8.1. The industry sector is involved in working groups and meetings about the MED amendments and is therefore aware of the agreed changes well in advance of amending Directives being published. For this amendment, the EC Directive was published on 30 June 2008. The consultation therefore focused on our proposals and handling of the transposition of the Directive into UK law.

8.2. These Regulations, with the associated Impact Assessment and draft amendments to Marine Shipping Notices 1734 and 1735, were consulted on over a period of 2 months between 31 March and 25 May 2009. This reduced period was agreed as appropriate in view of the content not being controversial for the shipping industry as this just updates and expands the list of equipment for which EC type approval safety certificates are required and because there was a 2 year transitional period for the industry for four new items and 12 transferred items that now had an international standard.

8.3. Consultees included central Government (including the Ministry of Defence), UK authorised Classification Societies, Notified Bodies (as specified in MSN 1734) and Nominated Bodies (as specified in MSN 1735), the devolved administrations, the Red Ensign Group, non-governmental organisations, industry groupings representing those affected by this legislation (such as Radiocommunications, fishing industry and hovercraft association groups and the British Chamber of Shipping) and the Nautilus Union.

8.4. The consultation package was placed on the MCA's website and a press notice was released by the MCA to inform the general public and industry of this consultation. Ten consultee comments were received.

8.5. The main responses from the consultation may be summarised as follows:

No	Comment	Response
1	Welcome effort to clarify the regulations (Marine Commissioners Irish Lights)	Noted
2	Two items have not been included in the French transposition. Testing standard IMO MSC Circ 1006 does not apply (Bureau Veritas)	Noted Agreed and removed
3	Testing standard IMO MSC Circ 1006 does not apply (ISSETA)	As above
4	Documents clear and to the point and *Trans footnote welcomed of ease of identification of inclusion of new items Concern about “offered for supply in UK” wording as ABS certifies equipment in other member States	Noted See 8.6
5	No comments (Class NK)	Noted
6	Actively involved in MarED meetings where standards are agreed so minor changes suggested (Lloyd’s Register)	Noted and minor changes agreed or noted
7	No comments but commitment to keep their members informed of changes (Scottish Fishermen’s Federation)	Noted
8	Broadly content. Request to consider them as UK designated EU Notified Body (RYA)	Noted and request is being considered outside the consultation
9	Consider scope of these MSN’s extending to 5 th and 6 th amendments Germanischer Lloyd	Noted. Advised the future amendments will be incorporated in future MSN’s when these are transposed into UK legislation
10	Raised the issue of the application of the partial application of these regulations to the Royal Fleet Auxiliary MOD	Noted. Discussed and agreed with the MOD See 8.7

8.6. The Department has taken account of these responses in finalising the Regulations. As a consequence of the concern expressed (comment 4) regarding the need for member States to ensure that their laws allow the selling of pre 2009 stock into their countries during the transitional period the Department considered there was a need to clarify the footnote for the transitional arrangements. This now includes reference to equipment placed on or before 21 July 2011 on board a ship the relevant safety certificate of which was issued by or on behalf of a member State in accordance with the relevant international convention.

8.7. The Department has informed the hovercraft associations of the inclusion of an explicit reference to hovercraft in the safety regulations for clarity and to ensure that our European obligations are seen to be met. The Department has also been in discussion with the Ministry of Defence as regards the broader definition of UK ships (encompassing Government ships, as defined) and in particular the application of the partial application of these Regulations to the Royal Fleet Auxiliary.

9. Guidance

9.1. The MCA has drafted an amended version of MSN 1734 which specifies UK designated EC Notified Bodies (responsible for undertaking type approval of the product or production range of equipment listed in Annex A1) and MSN 1735 specifying UK Nominated Bodies (responsible for undertaking type approval of the product or production range of equipment listed in Annex A2) to accompany the Regulations. These include the appropriate lists of equipment requiring type-approval, or pending the adoption of type-approval standards, split by category.

9.2. In relation to the 16 items that now have a uniform international standard the transitional period of 2 years allows the industry time to accommodate the changes for these items.

10. Impact

10.1. The impact on business, charities or voluntary bodies is nil

10.2. The impact on the public sector is minimal as these regulations update existing regulations and a transitional period of 2 years is provided.

10.3. A final Impact Assessment is attached to this memorandum. The saving provision included in Article 2 of Directive 2008/67/EC is intended to ensure equitable transition into new standards, allowing retailers and distributors a two-year period to continue to market marine equipment otherwise rendered obsolete by full implementation of the Directive. No costs to the Exchequer have been identified in the final stage impact assessment. Additionally, no risk of higher costs to the private sector parties has been identified. There is no evidence available to allow the costs and benefits associated with the provision to be quantified. However, as the Directive is intended to reduce inventory obsolescence costs to the marine equipment supply chain, with potential non-monetised costs limited to a partial and temporary delay to the benefits expected from the Directive, it is reasonable to assume that the saving provision would present a net benefit to society.

11. Regulating small business

11.1. The legislation applies to all businesses.

11.2. To minimise the impact of the requirements on firms employing up to 20 people, Directive 2008/67 and the UK's transposition provides for a transitional period of 2 years to 21 July 2011.

11.3. The basis for the final decision on what action to take to assist small business is that the transitional arrangements will fully meet the needs of any changes that are required to be made for the 16 items that now have a uniform international standard. These 16 items only represent 7% of the 170 items of equipment with international standards indicating the small scale of the changes which have been known about since the publication of the EC Directive on 30 June 2008.

12. Monitoring & review

12.1. The effect of these regulations will be reviewed one year after their introduction on 21 July 2009. Note that amendment 5 comes into effect from 6 April 2010.

13. Contact

Susan Rooke, Internal Consultant of the Maritime and Coastguard Agency: Telephone 023 8032 9149 or e-mail: susan.rooke@mcga.gov.uk can answer any queries regarding the instrument.

**ASSOCIATED IMPACT ASSESSMENT
IN CONNECTION WITH THE MERCHANT SHIPPING (MARINE EQUIPMENT)
(AMENDMENT) REGULATIONS 2009**

Department /Agency: Maritime & Coastguard Agency	Title: Impact Assessment of IMPLEMENTATION OF DIRECTIVE 2008/67/EC AMENDING DIRECTIVE 96/98/EC ON MARINE EQUIPMENT (transitional arrangements ~ Article 2 of Directive)	
Stage: Final	Version: 6	Date: 22 May 2009
Related Publications: Council Directive 96/98/EC of 20 December 1996 on marine equipment Statutory Instrument 1999 No 1957 The Merchant Shipping (Marine Equipment) Regulations 1999		

Available to view or download at:

<http://www.mcga.gov.uk/shipsandcargoes/consultations/mcga-currentconsultations>

Contact for enquiries: Susan Rooke

Telephone: 023 80 329 149

What is the problem under consideration? Why is government intervention necessary?

The purpose of the Marine Equipment Directive is to enhance safety at sea and the prevention of marine pollution through the uniform application of the relevant international instruments relating to marine equipment for which EC type approval safety certificates are issued. The new EC Directive 2008/67/EC amends Directive 96/98/EC and enters into force on 21 July 2009. It includes a new Annex A1 that updates the list of appropriate international standards to be used as a basis for type approval. Article 2 of the Directive includes details of transitional arrangements for equipment for which standards are newly listed or which formerly appeared in Annex A2. Transitional arrangements will be in force until 21 July 2011 for equipment manufactured before 21 July 2009 provided certain conditions are met as stated in MSN 1734 and 1735. This reduces the risk to manufacturers, distributors and retailers who might otherwise be left holding stocks of maritime equipment which they could not sell in EU countries.

What are the policy objectives and the intended effects?

The policy objective is the full implementation of Directive 2008/67/EC in order to enhance safety at sea and the prevention of marine pollution through the uniform application of standards to marine equipment for which EC type approval safety certificates are issued. The intended effect of the transitional arrangements are a smooth and equitable transition into the new standards which will ensure that for a two year period manufacturers, distributors and retailers may market their stock of maritime equipment that would otherwise be made obsolete by implementation of the Directive.

What policy options have been considered? Please justify any preferred option.

No alternative options are appropriate for consideration because the UK as a Member of the European Community is required to implement this Directive by 21st July 2009.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed one year after its introduction on 21 July 2009.
(Note that amendment 5 comes into effect from 6 April 2010)

Ministerial Sign-off For final proposal/implementation stage ~ Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Paul Clark

Date:20th July 2009

Summary: Analysis & Evidence

Policy Option: 1

Description: IMPLEMENTATION OF DIRECTIVE 2008/67/EC of 30 June 2008 AMENDING DIRECTIVE 96/98/EC ON MARINE EQUIPMENT

COST	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off	Yrs	
	£ 0	2	
	Average Annual Cost (excluding one-off)		
	£ 0		
Total Cost (PV)			£ 0
Other key non-monetised costs by 'main affected groups' Delay to the benefits calculated for Directive 2008/67/EC.			

BEN- EFIT	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ 0	2	
	Average Annual Benefit		
	£ 0		
Total Benefit (PV)			£ 0
Other key non-monetised benefits by 'main affected groups' Avoidance of costs to the marine equipment supply chain of the holding of stock otherwise rendered obsolete by implementation of the Directive.			

Key Assumptions/Sensitivities/Risks Full benefits envisaged for the Directive would be delayed. Obsolescence costs to the marine equipment supply chain are reduced.

Price Base Year N/A	Time Period Years 2	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?			United Kingdom	
On what date will the policy be implemented?			21 July 2009	
Which organisation(s) will enforce the policy?			DfT (MCA)	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase of £ 0

Decrease of £ 0

Net Impact £ 0

All figures are annual costs and benefits quoted at constant prices, except where reference is made to (net) present value, indicated by (N)PV.

Evidence Base (for summary sheets)

The purpose of the Marine Equipment Directive is to enhance safety at sea and the prevention of marine pollution through the uniform application of the relevant international instruments relating to marine equipment for which EC type approval safety certificates are issued. The new EC Directive 2008/67/EC amends Directive 96/98/EC and enters into force on 21 July 2009. It includes a new Annex A1 that updates the list of appropriate international standards to be used as a basis for type approval. Article 2 of the Directive includes details of transitional arrangements for equipment for which standards are newly listed or which formerly appeared in Annex A2. Transitional arrangements will be in place until 21 July 2011 for equipment manufactured before 21 July 2009 provided certain conditions are met. This reduces the risk to manufacturers, distributors and retailers who might otherwise be left holding stocks of maritime equipment which they could not sell in EU countries. The equipment affected by this provision is listed below with the previous reference in brackets:

1. Life Saving Appliances

A.1/1.41: Winches for survival craft and rescue boats (new item)

A.1/1.42: Pilot ladder (new item)

3. Fire Protection Equipment

A.1/3.51: Fixed fire detection and fire alarm systems components for control stations, service spaces, accommodation spaces, machinery spaces and unattended machinery spaces (transferred from Annex A.2/3.5; 2/3.6; 2/3.7; 2/3.16; and 2/3.17)

A.1/3.52: Non-portable and transportable extinguishers (transferred from Annex A.2/3.1)

A.1/3.53: Alarm devices (transferred from Annex A.2/3.18)

A.1/3.54: Fixed oxygen analysis and gas detection equipment (new item)

4. Navigation Equipment

A.1/4.40: Heading control system for high speed craft (formerly autopilot) (transferred from Annex A.2/4.2)

A.1/4.41: Transmitting heading device THD (GNSS method) (transferred from Annex A.2/4.3)

A.1/4.42: Searchlights for high speed craft (transferred from Annex A.2/4.5)

A.1/4.43: Night vision equipment for high speed craft (transferred from Annex A.2/4.6)

A.1/4.44: Differential beacon receivers: DGPS, DGLONASS Equipment (transferred from Annex A.2/4.12)

A.1/4.45: Chart facilities for shipborne radar (transferred from Annex A.2/4.21)

A.1/4.46: Transmitting heading device THD (Gyroscopic method) (transferred from Annex A.2/4.22)

A.1/4.47: Simplified voyage data recorder (S-VDR) (new item)

5. Radiocommunication equipment

A.1/5.19: Inmarsat-F SES (transferred from Annex A.2/5.3)

6. Equipment required under COLREG 72

A.1/6.1: Navigation lights (transferred from Annex A.2/6.1)

Costs

Directive 2008/67/EC will affect all sea-going ships registered in EU member states covered by international conventions and all manufacturers of the equipment specified in Annex A of the Directive.

It is unlikely that the implementation of Article 2 of the Directive will involve any additional cost to business because it allows for a two-year transitional period until 21 July 2011. During this period the equipment identified above that was manufactured before 21 July 2009 in accordance with type approval already in force in an EC member state before that date may be:

- a. Placed on the market, supplied for use or offered for supply within the UK; and
- b. Placed on board a ship, the relevant safety certificate of which was issued by or on behalf of a member state in accordance with the international conventions.

Any non-monetised costs associated with this transitional provision will therefore be generated by the partial delay to the full benefits envisaged for the Directive.

Benefits

There may be some benefit for manufacturers, ship owners and retailers as the equipment subject to these transitional arrangements may continue to be marketed until 21 July 2011.

Non-monetised benefits of this transitional provision relate to the removal of costs of disposal of equipment that would otherwise have been rendered obsolete.

Small Firms and Competition impacts

There is no restriction regarding the market price or where the product is sold providing it meets the minimum standards required. It is therefore unlikely that competition and small firms would be adversely affected.

Enforcement

Enforcement of safety rules and compliance is carried out by MCA surveyors during vessel surveys. Vessels which are found not to have equipment on board that complies with these regulations in accordance with United Kingdom legislation may be liable to detention. Vessels which are detained are required to pay fees to the MCA. Owners who fail to comply or make false declaration may be liable to prosecution.

Consultation

These Regulations, with the associated Impact Assessment and draft Marine Shipping Notices 1734 and 1735, were consulted on over a period of 2 months between 31 March and 25 May 2009. This reduced period was agreed as appropriate in view of the content not being controversial for the maritime industry as this just updates and expands the list of equipment for which EC type approval safety certificates are required and because there was a 2 year transitional period for the industry for four new items and 12 transferred items (representing only 7% of all items of equipment) that now had an international standard.

The industry is involved in working groups and meetings about the MED amendments and is therefore aware of the agreed changes well in advance of the EC Directives being published. For this amendment the EC Directive was published on 30 June 2008. The consultation therefore focused on our proposals and handling of the transposition of the Directive into UK law.

The consultation package was placed on the MCA's website and a press notice was released by the MCA to inform the general public and industry of this consultation. Nine consultee comments were received.

The public consultation has therefore welcomed the transposition of this EC Directive and has confirmed the Impact Assessment presents a reasonable view of likely costs and benefits. There were no specific comments on the Impact Assessment.

In view of the comments received that favour the approach taken we will therefore use this as a basis for the forthcoming implementation of the 5th amendment which comes into effect on 6 April 2009.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

**Transposition Note for Commission Directive 2008/67/EC of 30 June 2008
amending Council Directive 96/98/EC on marine equipment**

These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objective	Implementation	Responsibility
1	Annex A of the Commission Directive 2008/67/EC replaces Annex A of Council Directive 96/98/EC on Marine Equipment	<p>Third amendment to Merchant Shipping Notice 1734 that replaces amendment 2: Type Approval of Marine Equipment (EC Notified Bodies) and</p> <p>Third amendment to Merchant Shipping Notice 1735 that replaces amendment 2: Type approval of marine equipment (UK Nominated Bodies)</p>	The Maritime and Coastguard Agency (MCA) as an Executive Agency of the Department for Transport.
2	To provide a "saving provision" for Article 2. Transitional arrangements for equipment listed as "new" or transferred from Annex A.2 to Annex A.1 that was manufactured before 21 July 2009 in accordance with type approval already in force before that date may be: a. Placed on the market, supplied for use or offered for supply within the UK; and b. Placed on board a ship, the relevant safety certificate of which was issued by or on behalf of a member State in accordance with the relevant international convention during the two years following 21 July 2009. That is until 21 July 2011.	<p>New Statutory Instrument "The Merchant Shipping (Marine Equipment) (Amendment) Regulations 2009.</p> <p>This amends the Merchant Shipping (Marine Equipment) Regulations 1999 (paragraphs 3, 4 and 5) and allows the transitional provisions for the two year period as identified in Merchant Shipping Notice 1734.</p>	The Secretary of State by amendment to the Merchant Shipping (Marine Equipment) Regulations 1999.

Article	Objective	Implementation	Responsibility
3.1	<p>Member States shall adopt and publish, by 21 July 2009 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.</p> <p>They shall communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive. They shall apply those provisions from 21 July 2009. When member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p>The Merchant Shipping (Marine Equipment) Regulations 1999 (S.I.1999/1957) will be amended by a new Statutory Instrument "The Merchant Shipping (Marine Equipment) (Amendment) Regulations 2009.</p> <p>Third amendment to Merchant Shipping Notice 1734 that replaces amendment 2: Type Approval of Marine Equipment (EC Notified Bodies)</p> <p>and</p> <p>Third amendment to Merchant Shipping Notice 1735 that replaces amendment 2: Type approval of marine equipment (UK Nominated Bodies)</p>	<p>The Secretary of State by amendment to the Merchant Shipping (Marine Equipment) Regulations 1999 and the Maritime and Coastguard Agency as an Executive Agency of the Department for Transport by amendment to the Merchant Shipping Notices 1734 and 1735.</p>
3.2	<p>Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive</p>		
4	<p>This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union</p>	<p>No implementing legislation required</p>	<p>n/a</p>
5	<p>This Directive is addressed to the Member States</p>	<p>No implementing legislation required</p>	<p>n/a</p>