

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (PASSENGER SHIPS ON DOMESTIC VOYAGES)
(AMENDMENT) REGULATIONS 2012

2012 No. 2636

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

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

2. **Purpose of the instrument**

To transpose into UK law Commission Directive 2010/36/EU of 1 June 2010, amending Directive 2009/45/EC of the European Parliament and of the Council, of 6 May 2009, on safety rules and standards for passenger ships.

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

None.

4. **Legislative Context**

4.1 These regulations transpose Directive 2010/36/EU (“the 2010 Directive”) , amending Directive 2009/45/EC on safety rules and standards for passenger ships (“the 2009 Directive”). They do so by amending the following SIs.

4.1.1 SI 2000/2687, The Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, as previously amended by:-

- SI 2003/771 The Merchant Shipping (Passenger Ships on Domestic Voyages) (Amendment) Regulations 2003;
- SI 2004/1107 The Merchant Shipping (Passenger Ships on Domestic Voyages) (Amendment) Regulations 2003; and,
- SI 2004/2883 The Merchant Shipping (Passenger Ships on Domestic Voyages) (Amendment) (No.2) Regulations 2004.

4.1.2 SI 1995/1210, The Merchant Shipping (Survey and Certification) Regulations 1995. The definition of “the Directive” at Regulation 1(2) previously referred to Directive 1998/18/EC plus three amendments. Regulation 1(2) is now amended to refer to the 2009 Directive.

4.1.3 SI 2004/302, The Merchant Shipping (High Speed Craft) Regulations 2004. The definitions of High Speed Craft Code at Regulation 2 are updated. Regulation 3(2) is amended, and Regulation 3(3) deleted, in order to disapply this SI from certain (smaller, slower) high speed craft, as specified in Article 2(g) of the Directive 2009/45/EC, as amended by 2010/36/EU.

4.2 The proposal that resulted in the 2009 Directive was the subject of Explanatory Memorandum (“EM”) 16170/07, submitted to Parliament by the Department for Transport on 17 December 2007. The House of Commons European Scrutiny Committee considered the EM on 9 January 2008. The Committee recommended that the document was not legally or politically important, and cleared it (Report no 7 session 2007-2008). The House of Lords Select Committee on the European Union cleared the EM at the 1307th sif on 18 December 2007.

4.3 As the 2010 Directive is comitology legislation, it was not subject to Parliamentary scrutiny.

4.4 The Department utilised a provision in Council Directive 98/18/EC, the original directive on safety rules and standards for domestic passenger ships¹, for equivalent safety rules and standards to be applied by member States. This provision is at Article 9(2) of the 2009 Directive. Under this arrangement, which was agreed with the European Commission, eligible UK ships may operate in accordance with certain UK national safety requirements and restrictions, rather than complying with corresponding requirements laid down in the 2009 Directive. In this way, eligible ships can operate in UK waters without having to meet the full costs of complying with the 2009 Directive. As they do not comply fully with the 2009 Directive however, such ships may not be able to operate from the ports of other EU member States.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. It covers passenger ships and passenger High Speed Craft operating at sea on non-international voyages.

5.2 Gibraltar has transposed the above Directive under its own legislation.

6. European Convention on Human Rights

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

7. Policy background

7.1 The aim of 2009 Directive, as amended by the 2010 Directive, is to:

¹ Directive 1998/18/EC, together with three subsequent amendments, was replaced and repealed by Directive 2009/45/EC.

- provide improved and updated minimum safety rules and standards for UK seagoing domestic passenger ships on domestic (non-international) voyages,
- ensure, through statutory survey, certification and inspection that those standards are underpinned and maintained on such ships operating in the domestic waters of EU Member States, and
- ensure single Market principles of the EU are complied with, and freedom of trade and movement thereby facilitated.

7.2 The purpose of the transposing regulations is to enshrine the safety rules and standards in UK law, so that the UK:

- fulfils its obligations as an EU Member State;
- domestic passenger ships complying with the Directive can operate with scope and flexibility in domestic trades from the ports, and in the waters, of other EU Member States, if they so wish; and
- operators are not commercially disadvantaged against their counterparts from mainland Europe.

7.3 The EU first introduced standards for passenger ships through Council Directive 1998/18/EC on safety rules and standards for passenger ships (the 1998 Directive). The 1998 Directive, and its subsequent amendments², first introduced new EU categories of passenger ship classes A, B, C or D, based upon the corresponding sea areas where they operate. (See table 1 below for the definitions.) These sea areas are designated on the basis of “significant wave heights” and distance from the coast, and the consequent risks to safety.

Class A	means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D
Class B	means a passenger ship engaged on domestic voyages in the course of which it is at no time more than 20 miles from the line of the coast, where shipwrecked persons can land, corresponding to the medium tide height.
Class C	means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 2.5m significant wave height is smaller than 10% over a one-year period for all-year round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 15 miles from a place of refuge, nor more than 5 miles from the line of the coast, where shipwrecked persons can land, corresponding to the medium tide height.
Class D	means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 1.5m significant wave height is smaller than 10% over a one-year period for all-year round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer

² Commission Directive 2002/25/EC of 5 March 2002 amending Council Directive 98/18/EC on safety rules and standards for passenger ships;

Directive 2003/24/EC of the European Parliament and of the Council of 14 April 2003 amending Council Directive 98/18/EC on safety rules and standards for passenger ships

Commission Directive 2003/75/EC of 29 July 2003 amending Annex I to Council Directive 98/18/EC on safety rules and standards for passenger ships

	period operation), in the course of which it is at no time more than 6 miles from a place of refuge, nor more than 3 miles from the line of the coast, where shipwrecked persons can land.
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7.4 The safety standards applied by the 1998 Directive are based on those developed for passenger ships on international voyages, by the International Maritime Organization (IMO), and adopted through several international Conventions and Codes. Those standards were applied by the 1998 Directive, to varying degrees depending on the level of risk presented by the sea area in which a given passenger ship operates, its age and other factors. As will be seen from table 1, sea area “A” is farthest from land. It consequently carries the highest safety risks and normally attracts the full international safety standards. Area D is nearest to land, has the lowest risks and consequently attracts less onerous adaptations of the international standards. The standards for areas B and C are at intermediate levels.

7.5 In 2009 the EU issued the 2009 Directive on safety rules and standards for passenger ships which consolidated and replaced the 1998 Directive and all of its amendments. The 2010 Directive is the first amendment to the 2009 Directive, and further amendments are expected approximately every two years as a result of ongoing review and development.

8. Consultation outcome

8.1 The transposition deadline for the 2010 Directive was 28 June 2011. Meeting this deadline was not possible due to competing priorities, including other directives with earlier deadlines, and inadequacy or unavailability of resources. Consequently, the European Commission commenced infraction proceedings against the UK in July 2011, and issued a Reasoned Opinion in January 2012.

8.2 In view of the tight deadline imposed by the Reasoned Opinion, a shortened (6 week) consultation has been undertaken, purely on the proposed policy for transposing the Directive. Consultees included principle representative organisations for:-

- domestic passenger ship owners and operators;
- relevant trade associations;
- approved Classification Societies; and,
- the Devolved Administrations.

8.3 There were no responses to the consultation. A post-consultation liaison exercise with stakeholders elicited some limited further information on compliance costs, which allowed some refinement of the associated Impact Assessment. However, no substantive changes to the proposed UK implementation are necessitated.

9. Guidance

The Maritime and Coastguard Agency (MCA) is publishing a Marine Guidance Note (MGN) to provide guidance about how the Directive has been implemented in the UK.

10. Impact

10.1 The impact on business, charities or voluntary bodies is set out in the Impact Assessment that has been prepared for these regulations.

10.2 The impact on the public sector is not significant and is referred to in the Impact Assessment prepared for these regulations.

10.3 The Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

As it concerns public safety, the legislation applies to small business.

12. Monitoring & review

These regulations will be reviewed in the light of:

- the 5 year statutory review requirement; and,
- future amendments to the 2009 Directive.

13. Contact

Richard Bone at the Maritime and Coastguard Agency (Department for Transport) Tel: 023 80 329 209 or email: richard.bone@mcga.gov.uk can answer any queries regarding the instrument.

Transposition Note – Directive 2010/36/EU

<p>Directive 2010/36/EU amending Directive 2009/45/EC on safety rules and standards for passenger ships</p>	<p>The Merchant Shipping (Passenger Ships on Domestic Voyages) (Amendment) Regulations 2012</p>
<p>-</p>	<p>General Regulations 2(2)(a) and 3(2)(a), amending definition of Directive in SI 2000/2687, Regulation 2(1). <i>Regulation 2(2)(a) amends Regulation 1(2) of SI 1995/1210: The Merchant Shipping (Survey and Certification) Regulations 1995; Regulation 3(2)(a) amends Regulation 2(1) of SI 2000/2687: The Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000.</i></p>
<p>Article 1(1) amending Article 2(c) of Directive 2009/45/EC – definition of “High Speed Craft Code”. - reference to the 2000 High Speed Craft Code</p>	<p>Regulation 4 (1) and 4 (2), amending SI 2004/302, Regulation 2(1).</p>
<p>Article 1(2) amending Article 2(g)(ii) – criteria for disapplication of High Speed Craft Code provisions from certain smaller. slower high speed - reference to 2000 High Speed Craft Code</p>	<p>Regulation 4(3), amending SI 2004/302, Regulation 3(2) (with new sub-paragraph (h), and deletion of Regulation 3(3)).</p>
<p>Article 1(3) amending Article 3(2)(a)(iii) - reference to IMO Resolution MSC. 97 (73)</p>	<p>Article 3(2) (a)(iii) disapplies the Directive from certain types of craft. This Article is complied with by not reflecting it in the transposing regulations.</p>
<p>Article 1(4) amending Article 4(3) – high speed craft categories - reference to the 2000 High Speed Craft Code</p>	<p>Regulation 4(2)(b), amending definition of the 2000 High Speed Craft Code in SI 2004/302 Regulation 2(1).</p>
<p>Article 1(5) amending Article 6(1)(c) – shipborne navigational equipment - introduces reference to revised SOLAS Chapter V, Regulations 17, 18, 19, 20 and 21</p>	<p>Regulation 3(2)(a) and (b), amending definition of the Directive in SI 2000/2687, Regulation 2(1).</p>
<p>Article 1(6) – amending Article 6(4)(a) - reference to SOLAS X, Regulation 2</p>	<p>SI 2004/302, Regulation 3 (1)</p>
<p>Article 1(7) – amending Article 12(4) – Harmonised system of survey and certification</p>	<p>Regulation 2(2) (a) and (b), amending definition of the Directive in SI 1995/1210 The Merchant Shipping (Survey and Certification) Regulation 1995, Regulation 1 (2).</p>
<p>Article 1(8) - replacement of annexes in Directive 2009/45/EC by those in 2010/36/EU</p>	<p>Regulation 2(2), amending definition of Directive in SI 2000/2687 Regulation 2(1).</p>