

**EXPLANATORY MEMORANDUM TO**  
**THE MERCHANT SHIPPING**  
**(SHIP-TO-SHIP TRANSFERS)(AMENDMENT) REGULATIONS 2012**

**2012 No. 742**

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

**2. Description**

2.1 There is a practice known as “ship-to-ship transfer”. The term is generally used to describe the transfer of oil, carried as cargo, from one tanker to another tanker at sea. It can also be used to describe transfers of substances other than oil, but oil transfers are the most common by far. Additionally, some vessel refuelling operations (known as ‘bunkering’) are carried out at sea in a manner similar to ship-to-ship transfers.

2.2. The Government adopted a policy of seeking to ensure that ship-to-ship transfers and bunkering only took place where there was a fully worked up oil spill contingency plan, with trained personnel, and the necessary equipment for responding to a spill, close at hand such as within a harbour authority. This meant regulating and managing the practice of ship-to-ship transfers so that they took place only in the areas of harbour authorities which had suitable oil spill contingency plans.

2.3 *The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 S.I. No 1228* were designed to give effect to the position outlined above by restricting ship-to-ship transfers to harbour authority areas within the seaward limits of the territorial sea of the United Kingdom - 12 nautical miles off the United Kingdom coast.

2.4 A public review of the 2010 Regulations took place before they came into force which identified that the risks could be managed less restrictively without putting an undue burden on industry.

2.5 Regulations delaying the entry into force of the 2010 Regulations were therefore laid while the policy alternatives stemming from the review were considered.

2.6 The policy intentions arising from the review are to be achieved through the 2012 Regulations – the subject of this Explanatory Memorandum. These are designed to ensure that operators had a wider choice of locations for operations and that small scale bunkering and lightering operations (the process of transferring cargo or fuel from a vessel to reduce its draft to allow it to enter ports or harbours with depth restrictions) unintentionally caught by the 2010 Regulations would be unaffected.

2.7 In addition, the 2012 Regulations would allow the UK to meet a small number of international obligations relating to ship transfers laid down by the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978 relating to that Convention which came into force on 1<sup>st</sup> January 2011.

2.8 *Regulation 3(5)* of the draft 2012 regulations implements the new Chapter 8 of Annex I to the Convention by inserting a new regulation 5A into the 2010 Regulations. This provides that ships of 150 gross tons or more must not carry out ship-to-ship cargo transfers of oil in a designated Pollution Control Zone after 1st April 2012 (*regulation 3(2)*) unless prior notice has been given to the Secretary of State. It also requires every such ship to carry and comply with a ship-to-ship transfer operations plan approved by its flag State, if it is to participate in a ship-to-ship cargo transfer of oil within United Kingdom waters or the Pollution Control Zone.

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

3.1 None

### **4. Legislative Context**

4.1 One of the recommendations in the report “Safer Ships Cleaner Seas” overseen by Lord Donaldson of Lymington following the Braer incident<sup>1</sup>, was that the Government should bring new Regulations into force as soon as practicable to control transshipments, such as cargo transfer and bunkering transfer operations.

4.2 This instrument is made under section 130 of the Merchant Shipping Act 1995.

### **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**

7.1 The problem under consideration is how to prevent pollution from ships engaged in ship-to-ship oil transfers.

7.2 The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 S.I. No 1228 introduced in April 2010 but not yet in force were intended to reduce

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<sup>1</sup> Safer Ships, Cleaner Seas – Report of Lord Donaldson’s Inquiry into the prevention of pollution from merchant shipping HMSO 1994 ISBN 0-10-125602-7

these risks by restricting ship-to-ship transfers to harbour authority areas within the seaward limits of the territorial sea of the United Kingdom - 12 nautical miles off the United Kingdom coast.

7.3 A review of the 2010 Regulations identified that the risk could be managed less restrictively by allowing transfers outside the waters of harbour authorities but within a limited geographical area of the territorial sea. The review also identified that doing so would reduce the risk of ship-to-ship transfers being displaced to areas outside the UK territorial sea where conditions would be less safe. New legislation is needed to implement this less restrictive regime. New legislation is also needed to implement minimal new ship-to-ship transfer provisions for transfers in international waters agreed under the International Convention of the Pollution of Prevention from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. The new legislation referred to in this paragraph is the 2012 amending Regulations.

## **8. Consultation outcome**

8.1 On 8 July 2010 a review of the *Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010* commenced. During the period of the review, from 8 July to 30 September inclusive, written representations from 32 persons or bodies were received and three meetings held with interested parties at their request.

8.2 As a result of the consultation, the draft amending regulations were developed which were designed to:

- (i) change the policy on ship-to-ship transfers outside harbour authority areas. Instead of a general prohibition, there would be a regime which would:
  - restrict ship-to-ship transfers outside harbour authority areas to a single designated area within the UK Territorial Sea (specifically the waters off Southwold in Suffolk where ship-to-ship transfers were already being carried out under the supervision of the Maritime and Coastguard Agency); harbour authority area transfers would still be permitted under this regime.
  - establish a system of permits issued by the MCA; and
  - give effect at the same time to the new chapter 8 of Annex I to the MARPOL Convention, the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.
- (ii) maintain, without change, the policy of requiring oil transfer licences for harbour authorities. Harbour authorities that already had a history of hosting ship-to-ship transfers would continue to benefit from transitional arrangements.

- (iii) take account of some specific instances where a type of ship or a type of activity needed to be treated in a way which departed from the general rules, or where the application of the rules needed to be adjusted to allow normal harbour activities to continue unhindered.

8.3 It became apparent that some residents of the Southwold area, who had welcomed the prohibition on ship-to-ship transfers outside harbour authority areas which the 2010 Regulations would have put in place, had not known the review was taking place and were therefore unable to submit representations as part of the review.

8.4 Accordingly, the Department for Transport wrote on 9 February 2011 to the Southwold and Reydon Society and other interested parties. On the basis that some residents had not known about the review, the Department offered them four weeks in which to register any comments, assuring them that their representations would be treated just as if they had been received during the period of the review.

8.5 Over the four week period of this local extension of the review, the Department received a total of 206 representations. In addition, the Department received two petitions. A meeting was also held as part of the process with a delegation from the Southwold and Reydon Society and the Southwold and District Chamber of Commerce accompanied by their local MP, Dr Therese Coffey.

8.6 All the representations received during this extended review period were considered as part of the wider consultation. The majority of representations were opposed to the conduct of ship-to-ship transfers in the waters off Southwold. Nevertheless, it was concluded that the designated area for ship-to-ship transfers (other than in harbour authority waters) would be the waters off the Suffolk coast where ship-to-ship transfers were already carried out.

8.7 The recognition of these waters off the Suffolk coast as a suitable area for carrying out ship-to-ship transfers was based on the Maritime and Coastguard Agency's and the industry's actual experience of the successful use of these waters for ship-to-ship transfer operations over a number of years without pollution of the seas and coasts.

8.8 An analytical table, which summarised the points of substance made in the written representations and the meetings held with interested parties in the review in July to September 2010, was placed on the Department's website and in the Libraries of the House in December 2010.

8.9 An addition to the analytical table provided in December 2010 was placed in the libraries of both Houses and on the Department's website. This summarised the points of substance made in the written representations and the meetings held with interested parties during the period of the extension of the review in February and March 2011.

8.10 The Government's external Regulatory Policy Committee was presented with an Impact Assessment for the proposed Regulations in December 2011 and in January 2012 advised that it was content that the regulations could proceed.

## **9. Guidance**

9.1 Guidance, in the form of a Marine Safety Note has been developed to support these Regulations. This notice sets out detailed requirements regarding Ship-to-Ship transfers of a cargo consisting wholly or mainly of oil. Additionally it incorporates guidance on the revised Annex I of MARPOL 73/78 which addresses ship-to-ship transfer operations.

## **10. Impact**

10.1. The impact on operators may be through additional compliance costs due to changes to the reporting requirements when undertaking ship-to-ship transfers and the need to prepare ship-to-ship operations plans. There would also be familiarisation costs to operators.

10.2 The impact on the public sector would be the need for the Maritime and Coastguard Agency to deal with applications for permits to carry out ship-to-ship transfers in the UK territorial sea.

10.3 An Impact Assessment is attached to this memorandum.

## **11 Regulating small business**

11.1 The legislation applies to small businesses.

11.2 Whilst being mindful of the need to minimise the impact of regulation on small business, inclusion of small businesses in the regulations is required to ensure that no significant STS transfers take place outside the designated areas.

11.3 A cross section of businesses of varying sizes was included in the consultation process.

## **12. Monitoring & review**

12.1. The impact of this policy will be reviewed within five years following the entry into force of these Regulations, to ensure it meets the needs of the environment and industry.

## **13. Contact**

13.1 Jim Spooner at the Department for Transport Tel: 0207 944 5417 or e-mail [jim.spooner@dft.gsi.gov.uk](mailto:jim.spooner@dft.gsi.gov.uk) can answer any queries regarding the instrument.