

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (CODE OF SAFE WORKING PRACTICES)
(AMENDMENTS AND REVOCATION) REGULATIONS 2015

2015 No. 1692

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

These Regulations introduce a revised duty on the ship-owner (or person with responsibility for operation of a ship) to ensure that the Code of Safe Working Practices for Merchant Seafarers (“the 2015 Code”), and any edition which supersedes it, is available for all workers and seafarers working on board their ships. As a consequence one set of Regulations is revoked.

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

None.

4. Legislative Context

These Regulations amend the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962) (“the Health and Safety Regulations”) to require ship-owners to ensure sufficient copies of the 2015 Code (which supersedes the Code of Safe Working Practices for Merchant Seamen (“the Code”)) are available on a ship so that all workers and seafarers have access to it. As a consequence the Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998 (S.I. 1998/1838) (“the Code Regulations”), which made specific requirements about the availability of hard copies of the Code, are revoked. This reflects the greater availability of the 2015 Code in electronic or other alternative formats.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

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

- *What is being done and why*

7.1 *The Health and Safety Regulations* require ship-owners and employers to ensure, so far as is reasonably practicable, the health and safety of seafarers, workers and others, by application of general principles. In particular ship-owners are required, in performing that duty, to provide—

- “such information, instruction, training and supervision as is necessary to ensure the health and safety of workers and that of other persons aboard ship who may be affected by their acts and omissions” (see regulation 5(2)(d)).

7.2 *The Code Regulations* were made under section 85 of the Merchant Shipping Act 1995, and replaced and re-enacted earlier regulations about carriage of copies of the Code (as amended from time to time). They apply to UK ships and place a duty on the Company (defined as the owner of the ship or any other organisation or person who has assumed responsibility for the operation of the ship from the owner) to provide a copy of the Code to specified officers on board. In addition, an adequate number of copies of the Code must be available sufficient to provide access to other workers on board. Failure to comply with the requirements is a criminal offence. It is also a criminal offence to remove a copy of the Code from the ship without the consent of the Company or the master. The regulations do not apply to fishing vessels, pleasure craft or other vessels where alternative arrangements apply.

7.3 The Government is committed to cutting red tape and reducing administrative burdens. This instrument replaces the requirements in the Code Regulations with a less prescriptive provision in the Health and Safety Regulations. Promulgation of national guidelines on the management of safety and health on board ships is a requirement of the Maritime Labour Convention, 2006 (Regulation 4.3 and Guideline B4.3.1).

7.4 This provision will ensure that the 2015 Code, which is endorsed by the National Maritime Occupational Health and Safety Committee (membership drawn from the UK Chamber of Shipping and the maritime Unions), continues to be readily available to all seafarers on UK ships, but with greater flexibility as to how that may be achieved. These changes have been introduced so as to coincide with the launch of the 2015 Code, published by the Maritime and Coastguard Agency in September 2015. The 2015 Code supersedes the most recent edition of the Code, which was last updated in 2011.

7.5 The Maritime and Coastguard Agency originally proposed revocation of the Code Regulations, relying entirely on the principle quoted in paragraph 7.1 above to enforce carriage of the 2015 Code. This was not expected to trigger significant changes in the number of hard copies carried, but was intended to allow more flexibility as regards the number of such copies generally available, allowing for web, or network based e-copies, as these become available. However, following consultation with the affected parties, a

more specific duty is being included in the Health and Safety Regulations. This will have the same benefits as regards flexibility but removes any doubt as to the continuing statutory requirement to carry the 2015 Code and ensure it is easily accessible and generally available to all workers and seafarers. As a consequence of the amendment, the Code Regulations are revoked.

- Consolidation

7.6 This instrument is the fourth amendment to the Health and Safety Regulations. Further amendments are expected in the next 12 to 24 months when the United Kingdom implements the health and safety provisions of the International Labour Organization Convention on Work in Fishing (No. 188). Consideration will be given to producing consolidating Regulations at that time.

8. Consultation outcome

8.1 A targeted eight week consultation was held on the original proposal to revoke the Code regulations. Twenty-five trade organisations, unions and companies were directly notified of the consultation exercise, including the UK Chamber of Shipping which represents a broad cross section of UK shipping companies in all sectors, the British Marine Federation and International Marine Contractors Association. Ten responses were received, mostly from significant representative organisations in the industry.

8.2 The majority opposed outright revocation of the Code Regulations. There was concern that this would undermine the status of the 2015 Code, reduce the number of copies carried on ships and so reduce the availability of information on health and safety best practice to workers and seafarers, with a detrimental effect on safety.

8.3 Taking these concerns into account, this instrument inserts an explicit duty on the Company to ensure that the 2015 Code is readily available to all seafarers. Those who commented on the initial consultation have been further consulted on this proposal and are content.

9. Guidance

Marine Information Notice 512(M) was published on 4 September 2015 and notified shipowners of the intended changes to the carriage requirements and the publication of the 2015 Code. Marine Guidance Note MGN 539(M) published with the Regulations ensures industry is aware of the change in the requirements, and that UK ships are still expected to have copies of the Code readily available for all those working on board.

10. Impact

An Impact Assessment is attached to this memorandum and is published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

The legislation will have no significant adverse impact on small business.

12. Monitoring & review

12.1 The impact of revoking the Code Regulations will be reviewed through the Maritime and Coastguard Agency's stakeholder fora, the Domestic Passenger Ship Steering Group and the National Maritime Occupational Health and Safety Committee (a bilateral industry stakeholder group, which the Maritime and Coastguard Agency is regularly invited to attend as an observer).

12.2 The Health and Safety Regulations contain a review clause under which a report must be published no later than 12th October 2019 and, thereafter, every five years. A review of the amendments made by this instrument will form part of that exercise.

13. Contact

Julie Carlton at the Maritime and Coastguard Agency Tel: 02380 329216 or email: Julie.Carlton@mca.gov.uk can answer any queries regarding the instrument.