

EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (SAFETY RULES AND STANDARDS FOR PASSENGER SHIPS) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2018

2018 No. 53

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to transpose Directive 2016/844. This will ensure a continued high standard of safety is maintained on UK seagoing domestic passenger ships, and that the UK meets its legal obligations to implement EU Directives. This instrument also takes the opportunity to update definitions of 'EEA State' and corrects issues identified by the JCSI in relation to the instruments this instrument amends.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Regulation 2 of this instrument amends the Merchant Shipping (Survey and Certification) Regulations 2015 (S.I. 2015/508), which were reported by the Committee in the fourth report of the 2015-16 session for defective drafting. The Department has carefully considered the Committee's report and has substituted a revised definition of 'pleasure vessel'.
- 3.2 Regulation 4 of this instrument amends the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000 (S.I. 2000/2687), which were themselves subject to an amendment by regulation 3(2)(b) of the Merchant Shipping (Passenger Ships on Domestic Voyages) (Amendment) Regulations 2012 (S.I. 2012/2636). Those amending regulations were reported by the Committee in the thirteenth report of the 2012-13 session for doubt that they were *intra vires*. The Department has carefully considered the Committee's report and has addressed the issue by again amending the 2000 Regulations, this time employing the correct power. There has been no use of the provision now replaced between 2012 and now, and so no further provision is required to safeguard such use.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Directive 1998/18/EC applied safety standards developed at the International Maritime Organization (IMO) for passenger ships engaged on international voyages,

adopted under the auspices of the International Convention for the Safety Of Life At Sea (SOLAS), appropriately scaled to make them proportionate for ships operating in domestic waters. This Directive was amended three times by way of amending directives, to update the standards such that they were in line with changes made to SOLAS.

- 4.2 Directive 1998/18/EC was replaced by Directive 2009/45/EC ('the 2009 Directive'), which consolidated and superseded the requirements of Directive 1998/18/EC in a recast form. 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 Article 10 of the 2009 Directive allows parts of the 2009 Directive to be updated by Commission Directives when amendments are made to SOLAS or other international conventions. This happened in 2010 by Commission Directive 2010/36/EU.
- 4.4 As the 2010 Directive was legislation made by the Commission under delegated powers from another Directive, it was not subject to Parliamentary scrutiny.
- 4.5 Commission Directive 2016/844 is the latest amendment, and reflects more recent amendments to SOLAS. It came into force on 1st July 2017, at which point it changed the requirements of the 2009 Directive.
- 4.6 The 2009 Directive is implemented in UK law through the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000 (SI 2000/2687) (via amendments made by the Merchant Shipping (Passenger Ships on Domestic Voyages) (Amendment) Regulations 2012 (SI 2012/2636)) and the Merchant Shipping (Survey and Certification) Regulations 2015 (SI 2015/508). The 2009 Directive is also mentioned in the Merchant Shipping (Technical Requirements for Inland Waterway Vessels) Regulations 2010 (SI 2010/1075) so that certain vessels which comply with the 2009 Directive do not have to comply with those Regulations. In each case, reference is made simply to the 2009 Directive as a whole.
- 4.7 Section 20A of the Interpretation Act 1974 provides that a reference to an EU instrument is a reference to that EU instrument as it has been amended, extended or applied at the date that the statutory instrument is made. Therefore, when an EU instrument is further amended, the reference to the EU instrument must be removed and replaced so that the reference covers the new amendments.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is to 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 intended effect of the Directive is to maintain a robust, up to date and appropriate safety regime for seagoing domestic passenger ships across the EU.
- 7.2 The changes within Commission Directive 2016/844 are mostly of a technical nature, and concern requirements for construction and carriage of safety equipment. They do however include some limited operational requirements, such as safety drills.
- 7.3 In order to achieve proportionality in the application of the safety requirements the original 1998 Directive defined four sea areas of operation for domestic passenger ships: A, B, C and D. Each of these areas present a varying level of risk and require a corresponding level of safety standards. Sea area A is the sea area which is furthest from land, thus presenting the greatest safety risks, and so attracts the application of the full international standards. Sea area D is the closest to land and generally presents the lowest level of risks, and therefore attracts less onerous adaptations of international standards. In between areas A and D, areas B and C represent intermediate levels of risk, and correspondingly attract intermediate adaptations.
- 7.4 A transposition note has not been prepared for the transposition of Commission Directive 2016/844 because, as explained in paragraph 4.7 above, each provision of these Regulations replacing a reference to the 2009 Directive has the effect of transposing the whole of the Commission Directive into that reference (in that the reference becomes a reference to the 2009 Directive as amended by Commission Directive 2016/844). Further details about the transposition of the 2009 Directive can be found in the Explanatory Memorandum to the Merchant Shipping (Passenger Ships on Domestic Voyages) (Amendment) Regulations 2012 (SI 2012/2636).
- 7.5 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

Consolidation

- 7.6 A further amending directive, (EU) 2017/2108 was adopted on 15 November 2017, and published on 30 November. This amendment was developed as a result of the European Commission's Regulatory Fitness and Performance ("REFIT") Programme, which aims to make EU legislation clearer, more streamlined and better targeted. The Directive enters into force on 20 December 2018, and involves amendments to both Articles and Annexes of the 2009 Directive. As those amendments are awaited, it is not considered appropriate to consolidate the Regulations at this stage.
- 7.7 A new directive, which is expected to repeal and replace 2009/45/EC, is in the early stages of development, which will resume in early 2018. Depending on when the eventual transposition date for this directive falls, it may be appropriate to consider if this may be the most appropriate point at which to consolidate the associated UK legislation.

8. Consultation outcome

- 8.1 A six-week targeted consultation took place from 11 May to 22 June 2017. Notification of the consultation was sent to some 50 named stakeholders, covering ships owners and operators; industry representative bodies; ship builders; equipment manufacturers; port authorities; and, relevant Government bodies.
- 8.2 There were three responses to the consultation, all of which indicated broad contentment with the amended requirements, and the proposed Marine Guidance Note ('MGN') that formed part of the consultation package. A summary of responses can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/632251/Consultation_Responses_Table_for_posting.pdf, and can be accessed in hard copy at the Maritime and Coastguard Agency, 105 Commercial Rd, Southampton SO15 1EG.
- 8.3 This low level of responses reflected the level of impact, and associated concern within the industry. Furthermore, prior to the consultation, industry representatives were kept apprised about the Directive during the course of the Department's regular meetings with them through the Maritime and Coastguard Agency (the MCA); notably via the MCA's Domestic Passenger Ships Steering Group (DPSSG).

9. Guidance

- 9.1 Guidance is provided in MGN 572, "Safety Rules and Standards for Seagoing Domestic Passenger Ships: Directive (EU) 2016/844 Amendments". This MGN summarises the background and principles of the Directive, and provides a link to the published text. It also includes an annexed list of the changes introduced. The guidance will be available on laying at <https://www.gov.uk/government/publications/mgn-572-m-safety-rules-and-standards-for-seagoing-domestic-passenger-ships>, and can be accessed in hard copy at the Maritime and Coastguard Agency, at the address above.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is the same as the Directive concerns safety standards. It is anticipated that the great majority of compliance cost impacts will not be significant. A number of the changes apply only to ships constructed on or after 1 July 2018, and their impacts will arise at the design and construction stages. Most other changes will either affect only larger ships.
- 10.2 The impact on the public sector is minimal. MCA ship surveyors will need to be aware, and have access to, the amended requirements introduced by Directive 2016/844, to enable them to survey and certificate applicable ships effectively.
- 10.3 An Impact Assessment has not been prepared for this instrument. As the amended requirements are limited in impact, with estimated annual costs of less than £1m, this transposition was deemed as Fast Track, and a Regulatory Triage Assessment (RTA) was completed in December 2016. The RTA estimated an expected cost of £234,491 in its most expensive year from the quantifiable costs imposed by the directive as a worst case scenario. The cost over a 10 year period is not expected to be greater than £450,000. The non-monetised costs are not expected to be larger than £500,000, because many of these are either negligible or only applicable to ships constructed on or after 1 January 2018. Furthermore they will be incorporated in the design and

construction processes so isolating and identifying such costs separate to the cost of the whole ship would not be feasible.

- 10.4 The net financial impact to business, of the changes introduced by Directive 2016/844, is therefore estimated to be less than £1 million per annum.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 As this legislation transposes an EU directive that concerns public safety, its requirements apply equally to businesses of any size.

12. Monitoring & review

- 12.1 As mentioned in paragraph 4.6 above, the 2009 Directive, including as now amended, is implemented through the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000 (SI 2000/2687) and the Merchant Shipping (Survey and Certification) Regulations 2015 (SI 2015/508), both of which contain regulations requiring the Secretary of State to carry out a review of the regulatory provision made in those regulations. Those reviews will include an assessment of the effect of the amendments made in regulations 2 and 4 of this instrument.

- 12.2 The amendment made by regulation 3 is to a reference to the 2009 Directive in the Merchant Shipping (Technical Requirements for Inland Waterway Vessels) Regulations 2010 ('the 2010 Regulations'). In respect of that amendment, the Secretary of State for Transport, Chris Grayling MP, has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument because it would be disproportionate taking into account the economic impact of the amendment made by these Regulations. This is because of the limited size of the economic impact, and because the reference amended by these Regulations is an incidental reference, which exempts the application of the 2010 Regulations from certain vessels carrying a certificate issued in conformity with the 2009 Directive, and therefore makes no substantial amendment to the regulatory provision contained within the 2010 Regulations”.

13. Contact

- 13.1 Stuart Hannam at the Maritime and Coastguard Agency.
Telephone: 020 381 72437 or email: stuart.hannam@mcga.gov.uk can answer any queries regarding the instrument.