

## EXPLANATORY MEMORANDUM TO

### THE MERCHANT SHIPPING (SHIP-TO-SHIP TRANSFERS) REGULATIONS 2020

2020 No. 94

#### 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.

#### 2. Purpose of the instrument

- 2.1 The purpose of this instrument is to regulate transfers consisting wholly or mainly of oil between ships at sea, known as ship-to-ship transfers, and to maintain the good safety record for this type of activity. The transfer between ships of oil-based cargo and the transfer of fuel oil in ship bunkers (which are used for propulsion and onboard power) is potentially hazardous, and could lead to localised oil pollution from spillages. Therefore, the Regulations prohibit cargo transfers and bunkering operations in United Kingdom waters, unless they are carried out in certain specified circumstances.

#### 3. Matters of special interest to Parliament

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

- 3.1 None.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom and controlled waters.

#### 5. European Convention on Human Rights

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

#### 6. Legislative Context

- 6.1 These Regulations reinstate, update and streamline the former ship-to-ship transfer regime, which was disappplied by a sunset clause on 1st April 2019. They incorporate the requirements of the former Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 (S.I. 2010/1228) as amended (“the 2010 Regulations”), but also make minor modifications to clarify ambiguities.

- 6.2 The 2010 Regulations were originally enacted as a result of the report “Safer Ships Cleaner Seas” overseen by Lord Donaldson of Lymington, following the incident where the oil tanker, MV Braer, ran aground during a storm off Shetland. The report recommended that the Government should bring new regulations into force as soon as practicable to control cargo transfers and bunkering operations.
- 6.3 The Regulations implement Chapter 8 of Annex I to the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 (“MARPOL”), by providing that ship-to-ship cargo transfers of oil to or from a ship of 150 gross tonnes must not be carried out in controlled waters, unless prior notice has been given to the Secretary of State.
- 6.4 Before obtaining an oil transfer licence (required in order to authorise ship-to-ship cargo transfers in harbour authority waters), a harbour authority is required to assess whether the anticipated cargo transfers are likely to have a significant effect on areas of key environmental significance in the United Kingdom, known as European sites. The procedure is a component of the implementation of Article 6 of Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora (O.J. No. L 206, 22.7.91), which will continue to apply to the United Kingdom during the implementation period. The procedure for assessing the environmental impact on these sites is the same as the one that was used under the 2010 Regulations.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The practice known as “ship-to-ship transfers” involves the transfer of oil, either carried as cargo or as fuel oil in a ship’s bunkers, from one oil tanker to another. Transfers are carried out in response to oil market conditions. In particular, this process is used to transfer oil from larger tankers to smaller vessels for delivery to smaller ports, or from smaller tankers bringing oil from producers within relatively confined waters, such as the Baltic, to larger vessels for onward shipment, a practice known as reverse lightering. It is an internationally recognised practice, which takes place worldwide.
- 7.2 Although spillage incidents resulting from ship-to-ship transfer operations are rare, there are environmental concerns with this type of operation. The Regulations ensure that ship-to-ship transfers only occur in areas with appropriate equipment and plans in place. This prevents ships from conducting ship-to-ship transfers in sensitive marine areas – such as off the coast near Lyme Bay – without permission from United Kingdom authorities and without adequate pollution response equipment on site.
- 7.3 The transfer of oil and oil based cargos between ships (known as “cargo transfers”) is prohibited, unless the transfer is carried out in harbour authority waters and is authorised by the harbour authority in question, or the transfer is carried out in the permit area.
- 7.4 A harbour authority may only authorise cargo transfers if it has been issued an ‘oil transfer’ licence by the Maritime and Coastguard Agency (the “MCA”), the competent authority acting on behalf of the Secretary of State. There are five harbour authorities which had an oil transfer licence under the 2010 Regulations, all of them located in Scotland. Licensed harbour authorities get revenue from this activity, and the Regulations help to control and manage the operations by reducing the risk of oil

spills from ships and reducing the harm caused if an incident occurs. The Regulations provide that harbour authorities that were granted a licence under the 2010 Regulations will be treated as though that licence was granted under the Regulations. The MCA did not issue any oil transfer licences after the sunset clause in the 2010 Regulations activated and will not issue any further oil transfer licences until the Regulations are in force.

- 7.5 Cargo transfers may be carried out in the permit area (an area of sea off Southwold in Suffolk defined by a circle of radius 1.5 nautical miles, centred on position 52° 16'N, 01° 57.3'E) provided that a permit for the procedure has been obtained from the MCA, following the procedure set out in Merchant Shipping Notice 1829. This initiative was introduced as a deregulatory measure, to allow ship operators more choice of location for this activity, and to allow them to carry out cargo transfers without incurring harbour fees. However, ship operators who carry out cargo transfers in the permit area must provide resources and have the capability to counter any potential pollution incidents which might occur. Transfers in the permit area must be formally requested (72 hours in advance) through the MCA, who will determine whether the request should be approved or denied. Transfers to or from a ship of 150 gross tonnes or more carried out outside United Kingdom territorial waters (i.e. beyond 12 nautical miles from the coast) but within controlled waters must be notified to the MCA 48 hours prior to commencement – these notifications will simply be acknowledged unless other regulatory issues impact.
- 7.6 The transfer of fuel oil from one ship's bunker tank to another ship's bunker (known as a "bunkering operation") in United Kingdom waters is prohibited, unless the transfer is carried out in harbour authority waters.
- 7.7 The United Kingdom already has powers to prosecute any oil spills under the Merchant Shipping Act 1995 (c. 21) and the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 (S.I. 2019/42). However, without this instrument, we cannot require operators to keep their operations to designated locations, nor require them to provide contingent response capability on scene, or on standby, where and when appropriate. While industry has continued to operate in line with the 2010 regime, these transfers could have been undertaken anywhere in UK territorial waters prior to the introduction of these Regulations, including in environmentally sensitive areas. The new legislation reinstates control and oversight by the MCA and further reduces the risk of a pollution incident from this activity.
- 7.8 The 2010 Regulations were amended in 2012 to insert a clause requiring a Post Implementation Review ("PIR") to be held in 2017 and to insert a sunset clause which disapplied the 2010 Regulations on 1st April 2019 by default. This was in accordance with Government policy for new regulation, which sought to minimise the regulatory burden on small and medium sized businesses. The Department published the results of the PIR in July 2017, concluding that the existing regime was meeting its objectives, was working well and that stakeholders were generally in favour of it being retained. As a consequence, the Department decided to amend the instrument in order to postpone the activation of the sunset clause for another five years.
- 7.9 In the event, the Department was unable to amend the 2010 Regulations before the sunset clause was activated. This has meant that a regulatory gap has existed since 1st April 2019. However, the gap has not had any practical impact on ships, harbour authorities or the MCA. The new Regulations reinstate the former ship-to-ship

transfer regime in its entirety and are substantively the same as the previous Regulations. The most significant changes are explained in paragraphs 7.10 to 7.12.

- 7.10 Firstly, it was an offence under the 2010 Regulations for a harbour authority to fail to take all reasonable steps to prevent a cargo transfer that has not been authorised and is not exempt. In the Regulations, the scope of this offence has been narrowed so that it only applies in the harbour authority waters of that particular harbour authority. Secondly, minor adjustments have been made to clarify ambiguities, to simplify drafting and to reflect the fact that the United Kingdom will no longer be a member of the European Union from exit day onwards. These amendments include (i) separating the prohibitions in relation to cargo transfers (regulations 4 and 5) and bunkering operations (regulation 10) into two distinct provisions to increase the clarity of the Regulations; and (ii) specifying in the procedure for dealing with applications for an oil transfer licence (Schedule 1) that the Secretary of State may only seek the opinion of the European Commission until the end of the implementation period.
- 7.11 Thirdly, transitional provisions (regulation 9) have been added to manage the transition to the new regime.
- 7.12 Fourthly, the existing exemption provision which allows the Secretary of State to approve oil transfers in UK territorial waters has been extended to allow the Secretary of State to exempt transfers in harbour waters which are not covered by an oil transfer licence (“OTL”). Fifthly, the Secretary of State has the option of suspending an OTL if a harbour authority does not apply for an amended OTL within the specified time period. Finally, to align UK legislation with Annex I of MARPOL, a requirement has been added for all ships involved in cargo transfers to or from a ship of 150 gross tonnes or more, to have a copy of the ship-to-ship transfer operations plan on board.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018 (c. 16).

## **9. Consolidation**

- 9.1 The 2010 Regulations were amended by a number of subsequent instruments, most significantly by the Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2012 (S.I. 2012/742) and the Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2017 (S.I. 2017/837). This instrument consolidates the 2010 Regulations, all of the subsequent amendments and reinstates the legislation which was disapplied by the sunset clause on 1st April 2019.

## **10. Consultation outcome**

- 10.1 The Department conducted a 6 week consultation with harbour authorities, interested parties in Southwold and other stakeholders in November 2015 as part of the PIR of the 2010 Regulations. The aim of the PIR was to assess whether the regime based on the 2010 and 2012 Regulations was working and was still required. Although the number of ship-to-ship transfers had declined over the review period, the consultation found that the existing regime was meeting its objectives, was working well and that stakeholders were generally in favour of it being retained. Based on this exercise and the information held by the MCA on ship-to-ship transfer activity, the Department concluded that the 2010 Regulations should be retained and reviewed again after a

further five-year period. The 2010 Regulations were disapplied on 1st April 2019 due to the sunset clause and therefore are restated in these Regulations.

- 10.2 Separately, the Department has discussed with industry representatives, the extension of the Secretary of States powers of exemption for cargo transfers to include harbour authority waters (paragraph 7.12 refers). All confirmed that they support the new provision.

## **11. Guidance**

- 11.1 Guidance for industry about the operation of the ship-to-ship transfer regime in United Kingdom waters has been published by the MCA in Merchant Shipping Notice 1829, which has been revised as a result of the introduction of the Regulations. It also includes a contingency planning template which ship operators can use to manage ship-to-ship transfer operations between vessels. A copy of MSN 1829 can be found at <https://www.gov.uk/government/collections/merchant-shipping-notice-1829>.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is a low impact on business. The Department's de-minimis assessment concluded that the annual monetised costs to business of implementing these Regulations would be between £0 and £11,584, with a best estimate of just under £6,000.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that it will be very rare for small businesses to undertake this type of activity. The Department estimates that around 3% of ships on the United Kingdom Ship Register (approximately 25 ships) are owned by companies which employ 50 people or fewer. Most of these companies operate support vessels (e.g. tug boats), and small domestic passenger ferries which would not be involved in transferring oily cargo between ships. There might be some small United Kingdom businesses involved in supporting these operations (for example, providing incident mitigation equipment in the permit area) but, if so, they would be benefitting from this regime.

## **14. Monitoring & review**

- 14.1 The approach to monitoring this legislation is that the Department and the MCA will review the effectiveness of the Regulations on an ongoing basis.
- 14.2 A statutory review clause is included in the Regulations and it requires a PIR to be published by 26th February 2025. Although the 2017 PIR in relation to the 2010 Regulations indicated that the Department would retain a sunset clause in any future legislation, the Department no longer considers that this is justified. In part, this is because the 2017 PIR concluded that the previous Regulations were effective in controlling transfer activities in United Kingdom waters, helping to reduce the risk of oil spills near environmentally sensitive sites. The Department also considers that it

would be disproportionate to include a sunset clause, given the modest costs of compliance and the fact that few, if any, small companies on the United Kingdom Shipping Register are affected by the Regulations. The PIR will provide an opportunity to reflect on any necessary amendments.

**15. Contact**

- 15.1 Ian Timpson at the Department for Transport Telephone: 020 7944 4446 or email: [ian.timpson@dft.gov.uk](mailto:ian.timpson@dft.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 Roger Hargreaves, Maritime Director at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nusrat Ghani MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.