

EXPLANATORY MEMORANDUM TO
THE HOVERCRAFT (APPLICATION OF ENACTMENTS) AND MERCHANT
SHIPPING (PREVENTION OF POLLUTION) (LAW OF THE SEA CONVENTION)
AMENDMENT ORDER 2022

2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350) (“the 1989 Order”) and the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996 (S.I. 1996/282) (“the 1996 Order”). It amends the 1996 Order to authorise the making of regulations under that Order to provide that a contravention of such regulations is an offence punishable on indictment by a sentence of up to a term of imprisonment not exceeding two years. It also amends the 1989 Order so as to extend the application of certain provisions in the Merchant Shipping Act 1995 (“the 1995 Act”), and the 1996 Order (as amended by this instrument) which apply in relation to ships, to hovercraft.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 Robert Courts MP, has made the following statement regarding Human Rights:
“In my view the provisions of the Hovercraft (Application of Enactments) and Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Amendment Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 1 of the Hovercraft Act 1968 confers power on Her Majesty to (amongst other things) make an Order in Council which applies in relation to hovercraft any enactment or instrument relating to ships. The 1989 Order makes such provision in respect of certain provisions in primary or secondary legislation applying to ships and saved or consolidated into the 1995 Act. Article 3 of the 1989 Order makes provision specifically to apply pollution prevention measures in relation to hovercraft.

- 6.2 This Order inserts references to sections 128 and 129 of the 1995 Act (powers to make an Order in Council to give effect to international pollution prevention agreements in the United Kingdom), and to the 1996 Order, into the prevention of pollution instruments listed in article 3 of the 1989 Order so as to apply the relevant provisions of those sections and the 1996 Order to, or in relation to, hovercraft and to persons connected with hovercraft. This Order also inserts new article 5 into the 1989 Order so as to apply section 47 of the Merchant Shipping Act 1995 (relating to the manning of ships) to, or in relation to, hovercraft and to persons connected with hovercraft.
- 6.3 Section 129(1) of the 1995 Act provides that Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of the United Nations Convention on the Law of the Sea for the protection and preservation of the marine environment from pollution by matter from ships (“the Convention”).
- 6.4 The 1996 Order was made under section 129(1) of the 1995 Act and in accordance with section 129(2)(a) of that Act authorises the making of regulations by the Secretary of State to give effect to the Convention. Article 2(2)(c) and (d) of the 1996 Order make provision that specified contraventions of the regulations made to give effect to the Convention are offences punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine, or offences punishable only on summary conviction by a maximum fine not exceeding level 5 on the standard scale.
- 6.5 This Order substitutes article 2(2)(c) of the 1996 Order so as to authorise the making of regulations under that Order to provide that a contravention of such regulations is an offence punishable on summary conviction by a fine or on conviction on indictment by imprisonment for a term not exceeding two years, or a fine, or both, and substitutes article 2(2)(d) of the 1996 Order to update the drafting of that provision.
- 6.6 This Order provides that the amendments to the 1996 Order will come into force before the amendments to the 1989 Order to ensure that the 1989 Order applies the 1996 Order as so amended to or in relation to hovercraft.

7. Policy background

What is being done and why?

- 7.1 The Hovercraft Act 1968 and the 1989 Order enable provision in the 1995 Act governing ships to apply in relation to hovercraft. This Order amends the 1989 Order to update the pollution prevention measures applicable to hovercraft and also for the first time extends provision relating to manning. This will ensure that provision in regulations proposed to replace the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (S.I. 2015/782) and, in due course, regulations proposed to implement the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 in United Kingdom law, apply in relation to hovercraft as well as to ships.
- 7.2 The 1996 Order provides the Secretary of State with the power to make regulations to give effect to any provision of the Convention relating to the protection and preservation of the marine environment from pollution by matter from ships. This Order amends the 1996 Order specifically to enable contraventions of requirements in

regulations made under the 1996 Order to attract stronger penalties and specifically a sentence of imprisonment on conviction on indictment.

- 7.3 Once amended, the 1996 Order will enable custodial penalties to be included in regulations proposed to replace the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (S.I. 2015/782) and, in due course, in regulations proposed to implement the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 in United Kingdom law, in so far as offences made under those proposed regulations relate to the prevention of pollution by ships.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 This Order amends existing legislation to extend provision for the prevention of pollution by ships to hovercraft, and to strengthen the sentencing available for contraventions of regulations made under the 1996 Order. Similar or related legislation is not in place and the Department considers that there is accordingly no scope for consolidation.

10. Consultation outcome

- 10.1 Consultation has not been undertaken for this instrument. Whilst this technical instrument is an important step in making the legislative changes required to amend the basis on which the Convention has been transposed into UK law, it itself has no impact on the public in general.

11. Guidance

- 11.1 Apart from this Explanatory Memorandum, no guidance is necessary for this instrument as it performs a purely technical function.

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 A full Impact Assessment has not been prepared for this instrument because it has no impact on the cost to business, charities or voluntary bodies.

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 this Order performs a purely technical function and therefore has no impact on small businesses.

14. Monitoring & review

- 14.1 As the purpose of this instrument is purely technical and simply extends existing powers in relation to ships to apply to hovercraft, and facilitates the use of powers contained in the 1995 Act to provide powers in secondary legislation to give effect to certain requirements of the Convention, monitoring and review is not considered necessary.

15. Contact

- 15.1 Harry Deans at the Maritime and Coastguard Agency Telephone: 07768 476933 or email: Harry.Deans@mcga.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Katy Ware, Director for United Kingdom Maritime Services, at the Maritime and Coastguard Agency, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts MP, Parliamentary Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.