

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (CONTROL OF HARMFUL ANTI-FOULING
SYSTEMS ON SHIPS) ORDER 2022

2022 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

- 2.1 This Order will enable the Secretary of State to make regulations to give effect to the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (“the Convention”). The Convention aims to protect the marine environment and human health from the adverse effects of anti-fouling systems.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 Lucy Frazer MP, has made the following statement regarding Human Rights:
- “In my view, the provisions of the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 128(1)(e) of the Merchant Shipping Act 1995 (“the 1995 Act”) provides that His Majesty may by Order in Council make such provision as He considers appropriate for the purpose of implementing any international agreement not mentioned in paragraphs (a) to (da) of that section which has been ratified by the United Kingdom and which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships.
- 6.2 This Order authorises the making of regulations by the Secretary of State to give effect to the Convention. The Convention was adopted on 18th October 2001 at a diplomatic conference convened by the International Maritime Organization (“the IMO”) and entered into force internationally on 17th September 2008.
- 6.3 The Convention was implemented in the United Kingdom by virtue of the adoption by the European Community of Regulation (EC) No 782/2003 of the European

Parliament and of the Council of 14th April 2003 on the prohibition of organotin compounds on ships, and in addition by the Merchant Shipping (Anti-Fouling Systems) Regulations 2009 (S.I. 2009/2796).

- 6.4 Annex 1 to the Convention prohibits the use of specified substances in anti-fouling systems. The IMO adopted Resolution MEPC.331(76) on 17th June 2021, which amends Annex 1 to the Convention, to prohibit the use of a new specified substance (cybutryne) in anti-fouling systems, and this prohibition comes into force on 1st January 2023. The amendment made by IMO Resolution MEPC.331(76) will be given effect in the United Kingdom by regulations authorised by this Order.

7. Policy background

What is being done and why?

- 7.1 This Order provides the Secretary of State with the power to make regulations to implement the Convention. The purpose of the Convention is to protect the marine environment and human health from the adverse effects of anti-fouling systems. It achieves this by prohibiting the use of certain substances in anti-fouling systems, or at least prohibiting their use on the outer coating of the hull of a ship. These substances are specified in Annex 1 to the Convention.
- 7.2 The United Kingdom played a key role in negotiating the Convention and is fully supportive of it. The United Kingdom is a party to the Convention and is bound by the amendments to it, so it is therefore appropriate to have powers to give effect to the Convention in domestic law. In particular, implementing the Convention will protect United Kingdom waters from harmful effects of the use of prohibited substances on United Kingdom ships and non-United Kingdom ships visiting the United Kingdom.

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 The purpose of this instrument is to provide the Secretary of State with the power to make regulations to implement the Convention. Similar or related legislation is not in place and 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 continue to implement the Convention into United Kingdom 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 An 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 solely to facilitate the use of powers contained in the 1995 Act to provide powers in secondary legislation to give effect to the requirements of the Convention, monitoring and review is not considered necessary.

15. Contact

- 15.1 Lorraine Weller at the Maritime and Coastguard Agency Telephone: 020 381 72448 or email: Lorraine.Weller@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 Lucy Frazer MP, Minister of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.