

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (SHIP-TO-SHIP TRANSFERS)
(AMENDMENT) REGULATIONS 2010**

2010 No 1769

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**

A review has been announced of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010, SI 2010 No. 1228, in view of concerns expressed about those Regulations. This instrument defers the commencement provisions of SI 2010 No. 1228 for six months, so that the earliest date any of its provisions will come into force is 1 April 2011. The purpose of this deferral is to ensure the provisions of SI 2010 No. 1228 do not come into force before the completion of the review.

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

None

- 4. Legislative Context**

One of the recommendations in the report “Safer Ships Cleaner Seas” overseen by Lord Donaldson of Lymington following the Braer incident, was that the Government should bring new Regulations into force as soon as practicable to control transshipments, such as cargo transfer and bunkering transfer operations.

Part VI of the Merchant Shipping Act 1995, under which these Regulations and SI 2010 No. 1228 are made, provides powers to make regulations for the prevention of pollution.

- 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**

There is a practice known as “ship-to-ship transfer”. The term is generally used to describe the transfer of oil, carried as cargo, from one tanker to another tanker.

Prior to the making of SI 2010 No. 1228, cargo transfers, consisting wholly or partially of oil, and bunkering operations between ships at sea were unregulated in the UK. There was no statutory requirement for parties engaged in such transfers at sea to notify the UK authorities or have the necessary resources in place should a pollution incident occur, nor were there any powers to prevent such operations taking place.

The Government took the decision to regulate and manage the practice of ship-to-ship transfer so that it takes place only in the areas of harbour authorities which have suitable oil spill contingency plans and, in the case of cargo transfers, subject to licence following an environmental assessment. Accordingly SI 2010 No. 1228 was made on 8 April 2010 and laid on 9 April 2010

The Government is aware that concerns about SI 2010 No. 1228 have been expressed in some quarters, while support for that instrument has been demonstrated in other quarters.

The Government's key objective is to ensure that SI 2010 No. 1228 is fit for purpose and does not apply additional, unnecessary burdens to industry. The Government is also committed to ensuring that the policy and legislative processes associated with the passage of SI 2010 No. 1228 are fully consistent with the principles of better regulation.

Accordingly, the Government has announced its intention to review the effect of SI 2010 No. 1228 and has invited interested parties to make representations setting out their views by 30 September.

The purpose of this instrument, therefore, is to defer the entry into force of SI 2010 No. 1228 by six months so that the provisions of that instrument do not come into force before the completion of this review.

Consolidation

As this instrument simply amends the commencement dates in SI 2010 No. 1228, no consolidation is proposed.

8. Consultation outcome

This instrument has not been subject to consultation, as its effect is simply to ensure that the provisions of SI 2010 No. 1228 do not come into force before the conclusion of the review of that instrument.

SI 2010 No. 1228 was subject to two consultations. The Maritime and Coastguard Agency took account of the responses to those consultations and a summary of responses to the consultation was published on its website at <http://www.mcga.gov.uk>.

9. Guidance

As this instrument simply defers the date of commencement of the provisions of SI 2010 No. 1228, no guidance has been developed.

10. Impact

10.1 The impact on business of the deferral for six months of the commencement dates of SI 2010 No. 1228 is negligible.

10.2 The impact on the public sector of the deferral for six months of the commencement dates of SI 2010 No. 1228 is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation applies to small businesses, as SI 2010 No. 1228 applies to small businesses.

12. Monitoring & review

It is not proposed to monitor the effect of this instrument. The effect of SI 2010 No. 1228 is to be monitored.

13. Contact

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