

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (SHIP-TO-SHIP
TRANSFERS)(AMENDMENT)(No. 2) REGULATIONS 2011**

2011 No. 2183

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**

In July-September 2010, a review of the *Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010*, SI 2010 No. 1228, was conducted in view of concerns expressed about those Regulations.

The *Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2010*, SI 2010 No. 1769, delayed the commencement provisions of SI 2010 No. 1228 for six months (ie so that the earliest date any of its provisions would come into force was 1 April 2011), to ensure the provisions of SI 2010 No. 1228 did not come into force before the completion of the review.

Amending Regulations which took account of the outcome of the review were drafted, but consideration of the impact of those regulations on business was on going. Consequently, *Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2011*, SI 2011 No 974, further delayed commencement provisions of SI 2010 No. 1228 for an additional six months (ie so that the earliest date any of its provisions would come into force was 1 October 2011), to ensure the provisions of SI 2010 No. 1228 did not come into force before the consideration of their impact was completed.

It has still not been possible to complete the assessment of the impact of the amending regulations.

Accordingly, the purpose of this instrument is to delay the commencement provisions of SI 2010 No. 1228 for a further six months (until the next Common Commencement Date, which is 1 April 2012), to ensure that the provisions of SI 2010 No. 1228 do not come into force in their unamended form.

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

Unless action is taken to prevent it, SI 2010 No. 1228 will enter into force unamended on 1 October 2011. This would have a number of unwanted consequences, of which the most significant would be that no ship-to-ship transfers could take place anywhere within the 12 nautical mile limit of the UK territorial sea except within a harbour authority area, and consequently all ship-to-ship transfers off the Suffolk coast would be temporarily prohibited. On the basis of figures for 2009 and 2010, more than 25 ship-to-ship transfers

are carried out in those waters – on average – each month, so this would be a matter of significant concern to the industry.

The only way to prevent this from occurring is to make this instrument, deferring the entry into force of SI 2010 No. 1228, and bring it into force before SI 2010 No. 1228's entry into force date of 1 October 2011.

4. Legislative Context

One of the recommendations in the report “Safer Ships Cleaner Seas” overseen by Lord Donaldson of Lynton 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 became aware that concerns about SI 2010 No. 1228 had been expressed in some quarters, while support for that instrument had been demonstrated in other quarters.

The Government's key objective is to ensure that SI 2010 No. 1228 does the job for which it was intended and does not apply additional, unnecessary burdens to industry.

Accordingly, the Government carried out a review of the effect of SI 2010 No.1228 from 8 July to 30 September 2010 inclusive and, on the basis of the representations received, concluded that the Government's policy intention was:

- to change the policy on ship-to-ship transfers outside harbour authority areas. Instead of a general prohibition, there would be a regime which would:
 - restrict ship-to-ship transfers outside harbour authority areas to a single designated area within the UK Territorial Sea (specifically the waters off Southwold in Suffolk where ship-to-ship transfers were already being carried out under the supervision of the Maritime and Coastguard Agency);
 - establish a system of permits issued by the MCA; and
 - give effect at the same time to the new chapter 8 of Annex I to the MARPOL Convention.
- to maintain, without change, the policy of requiring oil transfer licences for harbour authorities. Harbour authorities which already had a history of hosting ship-to-ship transfers would continue to benefit from transitional arrangements.
- to take account, in reshaping the policy, of some specific instances where a type of ship or a type of activity needed to be treated in a way which departed from the general rules, or where the application of the rules needed to be adjusted to allow normal harbour activities to continue unhindered.

Amending Regulations which take account of the outcome of the review have now been prepared, but consideration of the impact of those regulations on business is still ongoing and is now unlikely to be completed until December 2011 at the earliest.

The purpose of this instrument, therefore, is to defer the entry into force of SI 2010 No. 1228 so that the provisions of that instrument do not come into force in their unamended form.

Consolidation

As this instrument simply amends the commencement dates in SI 2010 No. 1228 (as amended by SI 2010 No. 1769 and again by SI 2011 No. 974), 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 in their unamended form.

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 a further 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 a further 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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Jim.Spooner@dft.gsi.gov.uk can answer any queries regarding the instrument