

**EXPLANATORY MEMORANDUM TO  
THE MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY  
AT WORK) (CHEMICAL AGENTS) (AMENDMENT) REGULATIONS 2012**

**2012 No. 1844**

**1.** This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the Instrument**

2.1 The Regulations complete implementation of EU Directive 2009/161/EU of 17 December 2009, which amends Directive 98/24/EC (as supplemented by Directives 2000/39/EC and 2006/15/EC) on the introduction of measures to protect workers from risks related to exposure to chemical agents at work. They extend to the maritime sector the employer's duty to reduce the risk to their employees' health from exposure to chemical agents at work. The Directive was implemented for land-based workers by means of an updated version of the Health and Safety Executive (HSE) publication EH40/2005: Workplace Exposure Limits (WELs) which now includes the third list of Indicative Occupational Exposure Limit Values set by Directive 2009/161/EU.

2.2 These Regulations also correct an error identified in the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Chemical Agents) Regulations 2010, which omitted a reference to the list of exposure limits in Directive 2000/39/EC.

2.3 These Regulations, in line with Government policy, also insert a review clause into the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Chemical Agents) Regulations 2010. It requires the Secretary of State to review the amended Regulations at five yearly intervals, calculated from the commencement of these Regulations, and to publish a report containing the conclusions of that review.

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

3.1 None.

**4. Legislative Context**

4.1 Council Directive 89/391/EEC (the "Framework Directive") introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962) (the "General Duties" Regulations).

4.2 Council Directive 98/24/EC introduced minimum safety and health requirements for the protection of workers from the risks related to exposure to chemical agents at work. These requirements were subsequently supplemented by the provisions of Directives 2000/39/EC and 2006/15/EC, which introduced Community indicative occupational exposure limit values for specified chemical agents. Member States were required to set national indicative occupational exposure limit values which took into account the Community limit value for the substances concerned.

- 4.3 Directive 2009/161/EU does not make significant changes to 98/24/EC (as supplemented), but simply adds to that Directive a further 18 chemical agents for which Community indicative occupational exposure limit values have been set and for which Member States are required to establish national indicative occupational exposure limit values which take into account the Community limit value for the substances concerned.

## **5. Territorial Extent and Application**

- 5.1 This instrument applies to all United Kingdom ships whether in the United Kingdom or anywhere else in the world, to all seafarers on such vessels irrespective of nationality, ethnic origin, religion, gender etc. They also apply to non-UK ships when in UK waters.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- *What is being done and why*

- 7.1 These Regulations amend the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Chemical Agents) Regulations 2010 in order to complete the UK implementation of Directive 2009/161/EU. The aim of the proposals is the protection of workers from the risks related to exposure to chemical agents at work. A Transposition Note is at Annex 1. Such protection is already provided for land-based workers by means of the updated version of the (HSE) publication EH40/2005: Workplace Exposure Limits (WELs) which includes the third list of Indicative Occupational Exposure Limit Values set by Directive 2009/161/EU. It is however necessary to make these Regulations to complete UK implementation of the Directive by applying it to workers in the Merchant Shipping and Fishing Sectors. This also avoids disparity of regulatory coverage between land-based and maritime workers. This is especially relevant at the water margin, i.e. in dock and port areas, where land-based workers (e.g. stevedores and other dock workers) could be working on board a ship alongside members of the crew.

- 7.2 The policy objective of Directive 98/24/EC, as previously supplemented by Directives 2000/39/EC and 2006/15/EC and now by Directive 2009/161/EU, is to protect the health of workers from the risks arising from long-term exposure to hazardous chemical agents at work. Whilst some provisions of the Directive could apply to all vessels, other provisions may only be relevant to vessels carrying hazardous cargoes. It is for this reason that Directive 98/24/EC and the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Chemical Agents) Regulations 2010, which implemented it, require employers to identify which of their employees may be at risk, and from which chemical agents, to assess the degree of risk and to introduce measures to eliminate or, where that is not possible, minimise the risk.

- *Consolidation*

- 7.3 There was no legislation, other than a general requirement to safeguard health and safety contained in the General Duties Regulations and regulations relating to the carriage of hazardous cargoes, which remain in force, prior to the introduction of the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Chemical Agents) Regulations 2010 to protect workers in the maritime sector from the risks to their health and safety arising from exposure to chemical agents at work. At this time little point is seen in producing Regulations to consolidate the 2010 Regulations and these amending Regulations. However consolidation will be borne in mind should there be a further amending Directive in due course.

## **8. Consultation outcome**

- 8.1 A full 12 week consultation on the proposals to implement Directive 2009/161/EU was undertaken. As the Directive only added 18 new chemical agents for which national limits are to be established to those already covered by the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Chemical Agents) Regulations 2010, plus 1 amended limit, the consultees were limited to 73 organisations including individual ship and fishing vessel operators; trade associations and trades unions and others who might be affected by the proposals or have useful comments to make on what was being proposed. The proposals were also included on the MCA website during the consultation period.
- 8.2 Consultation resulted in only two responses being received neither of which offered any comment on what was being proposed. The proposals were also considered by the National Maritime Occupational Health and Safety Committee (NMOHSC), which comprises representatives of both sides of industry as well as the Maritime and Coastguard Agency. No comments were however received from NMOHSC.

## **9. Guidance**

- 9.1. In line with usual practice a Marine Guidance Note, produced by the Maritime and Coastguard Agency, will be issued to industry and will provide guidance on the requirements of the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Chemical Agents) (Amendment) Regulations 2012. Further guidance will also be included in the “Code of Safe Working Practices for Merchant Seamen published by The Stationery Office.

## **10. Impact**

- 10.1 The impact on business is likely to be low as the existing Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 already require risk assessments to be undertaken, and appropriate measures to be taken to alleviate any risks identified. The Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Chemical Agents) Regulations 2010 built on those requirements by introducing provisions specifically relating to Chemical Agents and the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Chemical Agents) (Amendment) Regulations 2011 merely additional indicative exposure limit values for further chemical agents to those established by the earlier

Regulations. There might possibly be some effect on vessels such as chemical tankers or those carrying packaged hazardous cargoes. However even in such cases it is anticipated that legislation regarding the carrying of chemical cargoes may already have reduced the risks.

- 10.2 The impact on charities or voluntary bodies is also likely to be low as they are unlikely to operate chemical tankers or vessels carrying hazardous cargoes and, in addition, the Regulation apply to employed workers not unpaid volunteers.
- 10.3 Organisations or vessels undertaking search and rescue, or public service, operations, where exposure to chemical agents might occur during a mission, are covered by a limited derogation in respect of any provisions of the Regulations where compliance is not possible. Such derogation is however limited to the time where compliance is not possible.
- 10.4 The impact on the public sector is considered to be minimal as reviewing the application of the provisions of the Regulations on ships will be carried out as part of MCA's normal survey regime.
- 10.5 An initial Impact Assessment is attached to this memorandum at Annex 2

## **11. Regulating small business**

- 11.1 The legislation applies to small business.
- 11.2 There is little scope for minimising the impact of the requirements on firms employing up to 20 people, as EC Health and Safety Directives are required to be applied to all workers irrespective of the size of the company employing them. It is however policy when implementing an EC Directive to go no further than is necessary to implement the provisions of that Directive i.e. there is no "gold-plating" of the Directive requirements. In addition it is not envisaged that the Regulations will have any significant effect on small businesses as they are considered unlikely to operate the types of vessel most likely to be affected.

## **12. Monitoring & review**

- 12.1 The Maritime and Coastguard Agency will evaluate how the regulations have changed working practices. This will be assisted by any relevant data collected as a result of the implementation by the UK of the ILO Maritime Labour Convention 2006 which will require the Maritime and Coastguard Agency to be notified of any occupational seafarer injuries/diseases.
- 12.2 All health and safety Directives are also subject to a regular review by the EC to which MCA will contribute as appropriate. The next EC review for the Chemical Agents Directive is due in 2013. In addition it is proposed to monitor compliance to see if any problems arise which need to be resolved by amending the regulations, or associated guidance, to make matters clearer to those organisations/persons covered by the Directive's provisions.

12.3 The 2010 Regulations themselves will be subject to a five yearly review of their regulatory system as required by the review provision inserted by these Regulations.

### **13. Contact**

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can answer any queries regarding these proposals.

### **TRANSPOSITION NOTE Directive 2009/161/EU**

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) (Amendment) Regulations 2012

This note relates to the implementation for the maritime sector of Directive 2009/161/EU, which further supplements Directive 98/24/EC of 7 April 1998 (the fourteenth individual Directive within the meaning of Article 16(1) of the Framework Directive), as previously supplemented by Directives 2000/39/EC and 2006/15/EC, on the introduction of measures to protect workers from the risks related to exposure to chemical agents at work

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) (Amendment) Regulations 2012 implement Directive 2009/161/EU for the maritime sector, which includes all commercial sea-going and inland waterway merchant and fishing vessels of whatever size. The regulations also apply to commercial and private pleasure vessels on which workers are employed.

HSE have implemented Directive 2009/161/EU in respect of workers employed in land-based industries, by means of an updated version of their publication EH40/2005: Workplace Exposure Limits (WELs) which now includes the third list of Indicative Occupational Exposure Limit Values set by Directive 2009/161/EU.

The responsibility for implementation of Directive 2009/161/EU for the maritime sector rests with the Secretary of State through the introduction of new Regulations.

Maritime and Coastguard Agency  
Department for Transport  
11 July 2012

**TABLE RELATING TO IMPLEMENTATION OF ARTICLES OF DIRECTIVE 2009/161/EU**

Article or Paragraph of Directive	Purpose of Article or Paragraph in Directive	Implementation in the UK by
Article 1	In implementation of Directive 98/24/EC, a third list of Community indicative occupational exposure limit values is hereby established for the chemical agents listed in the Annex.	Transposition not required
Article 2	Member States shall establish national occupational exposure limit values for the chemical agents listed in the Annex, taking into account the Community values.	Regulation 2 of the 2012 Regulations inserting paragraph (d) into the definition of "national occupational exposure limit value" in regulation 2(1) of the 2010 Regulations 2010 as amended by regulation 2 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) (Amendment) Regulations 2012.
Article 3	In the Annex to Directive 2000/39/EC the reference to phenol is deleted.	Regulation 2(d) of the 2012 Regulations: reference to the list in the Annex is to it as amended from time to time.
Article 4(1)	<p>Member States shall bring into force the necessary laws, regulations and administrative provisions to comply with this Directive by 18 December 2011 at the latest.</p> <p>They shall forthwith communicate to the Commission the text of those provisions and a correlation table between the provisions and this Directive.</p> <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p>The 2012 Regulations.</p> <p>Notification to the Commission and this Table</p> <p>Regulation 2 and the Explanatory Note</p>
Article 4(2)	Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.	Notification to the Commission.

Article 5	This Directive shall enter into force on the 20th day following its publication in the <i>Official Journal of the European Union</i> .	Transposition not required.
Article 6	This Directive is addressed to the Member States.	Transposition not required.