

**EXPLANATORY MEMORANDUM TO**  
**THE MERCHANT SHIPPING (SHIP-TO-SHIP TRANSFERS) (AMENDMENT)**  
**REGULATIONS 2017**

**2017 No. 837**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This Statutory Instrument amends the text in the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 (“the 2010 Regulations”). It restates the Secretary of State’s power to exempt from the general prohibitions contained in regulation 3 of the 2010 Regulations both the ship-to-ship transfer of cargo oil, and the ship-to-ship transfer of bunker oil (fuel).

**3. Matters of special interest to Parliament**

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

- 3.1 This instrument is being issued free of charge to all known recipients of S.I. 2012/742.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The 2010 Regulations as originally drafted prohibited both cargo and bunker transfers under regulation 3(1), unless the transfer took place in harbour authority waters. Regulation 6(1) gave the Secretary of State the power to exempt a cargo transfer or bunkering operation from the provisions of regulation 3(1). Changes made under the Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2012 (“the 2012 Regulations”) retained the underlying prohibition on both cargo and bunker transfers, and the Secretary of State’s power to exempt cargo transfers from the prohibition. It has become apparent, however, that the amendments to the 2012 Regulations were not fully reflected in the Secretary of State’s powers to exempt transfers of bunker fuels.
- 4.2 This is because, in order to provide greater clarity as to the circumstances under which bunkering operations are permitted, the general prohibition on bunkering operations was set out in a new regulation 3(2A), such that regulation 3(1) now prohibits cargo transfers only. Regulation 6(1) was not amended by the 2012 Regulations. The power to exempt transfers from the general prohibitions to which they are subject refers only to regulation 3(1), the prohibition on cargo transfers.

- 4.3 The intention was and remains that the Secretary of State should be able to exempt bunker transfers. This is clear both from regulation 6(1) and the remaining subparagraphs of regulation 6. Regulation 6(1) explicitly states that the Secretary of State has the power to exempt both cargo transfers and bunkering operations, and regulation 6(3) also refers to the ability to exempt bunkering operations. The Department now seeks to put beyond doubt the Secretary of State's power to exempt bunkering operations by including in regulation 6(1) a reference to regulation 3(2A).

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

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

## **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 It has become apparent that the 2012 Regulations as amended did not fully reflect the revised structure of the prohibition on the transfer of bunker fuels in the exemption provisions. New regulations are needed to put beyond doubt the Secretary of State's powers to exempt the transfer of bunker fuels between ships, outside of harbour authority waters.
- 7.2 Exemptions to the general prohibition on the ship to ship transfer of bunker fuels are necessary. They are usually granted to vessels which are constrained by their operations, where a move from their work site to refuel at a port would significantly interfere with the type of operations being undertaken. Examples have been: accommodation vessels supporting offshore renewable operations, which remain moored at sea; cruise ships; cable/pipe layers (where to cut the cable/pipe impacts on cable/pipe continuity and/or integrity and thus the vessel is required to remain at sea for the duration of the task), and heavy lift vessels that are for the most part static at a particular location because of the nature of their work.
- 7.3 Where permitted, ship-to-ship transfers are carried out according to stringent safety procedures. No incidents have been reported to the Maritime and Coastguard Agency since the coming into force of the 2012 Regulations.

### *Consolidation*

- 7.4 The Department does not intend to consolidate these Regulations at the current time, as they are standalone provisions.

## **8. Consultation outcome**

- 8.1 There has been no consultation.

## **9. Guidance**

- 9.1 There is no accompanying guidance as no guidance is considered necessary.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to ensure that the legal requirements for ship-to-ship transfers are clear.

## **12. Monitoring & review**

- 12.1 The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 (as amended), already include a review provision and sun-setting clause. A post implementation review of the 2010 Regulations and the 2012 Regulations was published on 7 July 2017<sup>1</sup>.

## **13. Contact**

- 13.1 Ian Timpson at the Department for Transport can answer any queries regarding the instrument. Telephone: 020 7944 4446 or email: [ian.timpson@dft.gsi.gov.uk](mailto:ian.timpson@dft.gsi.gov.uk).

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<sup>1</sup> The Post Implementation Review can be found online at <https://www.gov.uk/government/publications/ship-to-ship-transfer-regulations-post-implementation-review>.