

EXPLANATORY MEMORANDUM TO
THE SHIP RECYCLING (REQUIREMENTS IN RELATION TO HAZARDOUS
MATERIALS ON SHIPS) (AMENDMENT ETC.) REGULATIONS 2018

2018 No. 1122

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.

2. Purpose of the instrument

- 2.1 These Regulations implement the requirements placed on ships by Regulation (EU) No. 1257/2013 on ship recycling. The Regulations will allow for the inspection and, in cases of non-compliance, detention of UK flagged ships and non-UK flagged ships in UK ports. Fines and/or imprisonment for failure to comply could be applied, depending on the decision of the courts.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and is not expected to be 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 This instrument implements, so far as is necessary, the requirements placed on ships by Regulation (EU) No. 1257/2013 of the European Parliament and of the Council of 20th November 2013 on ship recycling and amending Regulation (EC) No. 1013/2006 and Directive 2009/16/EC (“the EU Regulation”). In addition to requirements placed on ships, the EU Regulation also sets out standards for ship recycling facilities. These have been implemented by the Department for Environment, Food and Rural Affairs in the Ship Recycling Facilities Regulations 2015.
- 4.2 These Regulations put in place measures intended to ensure the enforcement of the directly effective EU Regulation. In particular they set out who, in the United Kingdom, is assigned certain roles under the EU Regulation and support enforcement of its requirements, by providing for criminal offences for breaching the EU Regulation. They ensure that the survey regime provided for in the EU Regulation works as intended in respect of the United Kingdom and ships in United Kingdom waters. Ship surveys on UK registered ships (under the UK Flag), that are required under international and EU law, are carried out by the Maritime and Coastguard Agency (“MCA”) or by one of the classification societies (e.g. Lloyd’s Register) recognised by the MCA. The Regulations also apply the existing Port State Control inspection regime to ship recycling requirements, with the effect that port state control

inspectors will be able to verify whether ships calling at UK ports comply with the requirements set down by the EU Regulation. In the UK, port state control inspection is carried out by the MCA.

- 4.3 The Regulations are enforced through criminal sanctions. The ship owner (or, in the case of a ship flying the flag of a state other than a Member State, the ship owner and the master of the ship) are guilty of an offence if, in breach of the requirements of the EU regulation, certain hazardous materials are installed or used, or if there is not a valid inventory of hazardous materials on board, or if the ship does not comply with duties related to the preparation of a ship for recycling. Offences are also provided for in order to enforce detention notices and the powers of inspectors. The offences make offenders liable to a fine if tried summarily, or to a fine or imprisonment up to two years if tried on indictment.
- 4.4 The costs of carrying out these functions are met by those seeking certificates (usually the shipowner) and subject to inspection. Regulation 8 applies the regime in the Merchant Shipping (Fees) Regulations 2018 (S.I. 2018/1104) to these Regulations, so that the approach for a certificate or an inspection in respect of these Regulations is the same as applied by the MCA in other contexts.
- 4.5 On 23rd June 2016, a referendum on the United Kingdom's membership of the EU took place which concluded in a vote to leave the EU. The Government's intention is that the UK will cease to be a Member State of the EU on 29th March 2019. A further instrument will be necessary to make the relevant changes to this instrument so that it can continue to operate properly after that date.

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 and United Kingdom ships wherever they may be.

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 Ships have a normal life span of between 25 and 40 years before they are sent for recycling. In 2009, some 200 ships flagged to EU Member States, with a total volume of about two million gross tonnes, were dismantled to recycle the steel, equipment and other materials. However, most ships (especially older vessels) contain hazardous materials including asbestos, polychlorinated biphenyls (PCBs), and tributyltin – which need to be properly managed, stored and disposed of during the recycling process.
- 7.2 In 2015, about 75% of total dismantled shipping tonnage was recycled on beaches in India, Pakistan and Bangladesh – where financial returns for shipowners are highest. Poor standards is one reason why these yards can offer ship owners a better financial returns, but it is also because the value of recycled materials from ships is significantly higher in these markets, than it is in Europe.

- 7.3 Vessels in European waters going for dismantling and recycling are currently classified as ‘hazardous waste’ under the Waste Shipment Regulation 1013/2006/EC (“the WSR”). This regulation implements into EU law the provisions of the Basel Convention on the Trans-boundary Movements of Hazardous Waste and their Disposal, as well as banning the export of hazardous waste (including end of life ships) to any country which is not a member of the Organization for Economic Co-operation and Development (“OECD”).
- 7.4 The WSR stipulates a procedure of prior notification and consent before cross borders of all hazardous waste and certain non-hazardous wastes. The requirements in the WSR were principally designed to control the trans-boundary movements of hazardous cargo, to developing countries which do not have controls and infrastructure to manage these wastes. It was not designed with ships in mind, which move freely around the world throughout their operational life, and which can be re-registered (reflagged) to another country at any stage. As a consequence, the WSR has proved to be ill-suited to addressing the issues raised by ship recycling, is difficult for Member States to enforce and has failed - with the exception of a handful of Chinese yards (which do not dismantle ships on beaches) - to improve the safety and environmental standards of ship recycling facilities in Asia. Under the current regime many vessels circumvent the current legislation and continue to be dismantled in conditions which offer little protection to human health or to the environment.

The new EU Regulation

- 7.5 The EU Regulation, which was published in the Official Journal on 10th December 2013 and applies to shipowners and ship recycling facilities when it comes into effect on 31st December 2018. These Regulations will come into force on the same day.
- 7.6 The EU Regulations is based on the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (“the Hong Kong Convention”). The purpose of the Hong Kong Convention is to address concerns about safety, health, environmental damage and welfare matters in the ship recycling industry, by regulating the whole lifecycle of the vessel, and outlining the controls and practices which ship recycling facilities need to adopt. Although the Hong Kong Convention was adopted in May 2009 it is unlikely to come into force for several years. The EU Regulation is intended to put Member States in a position to comply with the Hong Kong Convention before it comes into force.
- 7.7 Ninety-five per cent of all ship recycling takes place in Asia (in countries outside the OECD). Moreover, not all of the OECD yards are accessible to EU flagged vessels - for example, some prioritise the refitting of ships, or the recycling of naval vessels rather than the merchant fleet. The European Commission concluded that there is insufficient capacity within the OECD to recycle all ships flagged to EU Member States, but also recognised that there were ship recycling yards outside the OECD, which could recycle vessels to a high standard.
- 7.8 Once in place, the EU Regulation will remove ships over 500 gross tonnes flagged in EU Member States from the scope of the WSR, providing a legitimate method to recycle a European flagged vessel at an ‘approved’ ship recycling yard, either inside or outside the OECD. It introduces a regime which applies to the whole life of the vessel. It controls the installation of new hazardous materials on ships during its operational life (materials such as asbestos, ozone-depleting substance, and PCBs) referred to in Annex 1 of the EU Regulation. It requires ships to carry on-board a

valid inventory of hazardous materials, which includes materials in Annex 1 and additional substances (such as lead, cadmium and polybrominated biphenyl) listed in Annex II of the EU Regulation. The inventory for new EU flagged ships (and existing ones by the end of 2020) needs to be surveyed every five years and certified. All EU ships will need a final survey - and with the help of the approved ship recycling facility, develop a ship recycling plan which must be approved by competent authority (for the UK, this will be the MCA along with the Health & Safety Executive) - prior to being sent to an approved recycling facility.

- 7.9 All EU flagged ships must use a ship recycling facility on the ‘European list’ of approved facilities which meet the safety and environmental permitting standards required under EU legislation. Owners will be required to inform the MCA if they intend to recycle a ship and provide details of where and how recycling will be carried out. The first version of the European list was published at the end of 2016, and the latest iteration is expected to include some non-EU facilities which have been validated by inspectors appointed by the European Commission and approved by European Member States. There are currently four UK facilities on the European list – Abel UK, Swansea Drydocks Ltd, Harland & Wolff and Dales Marine Services Ltd.
- 7.10 The new regulations should give shipowners more choice of approved ship recycling facilities to use for end of life vessels. Consideration was given to ratifying the Hong Kong Convention at the same time as implementing these UK Regulations, however due to the primary legislation required for this to happen it was deemed unrealistic. Nevertheless, there is evidence that the Hong Kong Convention and the EU Regulation has led to improvements in standards in some non-OECD yards. A number of facilities in non-OECD countries have made substantial improvements to their recycling facilities in recent years, and some of the best have applied for inclusion on the European list of approved facilities. To be approved, yards must achieve safety and environmental standards which are broadly equivalent to those in the EU, which should help to reduce the disparities between these yards and those in the UK.

Consolidation

- 7.11 Ship recycling is a new policy area and therefore this consideration does not arise.

8. Consultation outcome

- 8.1 A public consultation on the Regulations and Regulatory Triage Assessment (“RTA”) took place over an eight week period with it closing on 15th September 2017. Nine comments were received which were generally supportive of the draft Regulations and RTA. None of the comments have warranted a significant change to the Regulations or RTA. The outcome of the consultation can be found at: <https://www.gov.uk/government/consultations/consultation-on-the-draft-ship-recycling-regulations-2017>.

9. Guidance

- 9.1 A Marine Guidance Note will be prepared in order to provide guidance on both this instrument and the application of the EU Regulation generally. This will be available on the MCA’s website when this instrument comes into force. Hard copies can also be obtained from the MCA.

10. Impact

- 10.1 There is minimal impact on business and no impact on charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument. As the net financial impact on business is estimated to be less than £1 million per annum, this implementation was deemed as Fast Track and a RTA (which is published alongside the instrument and this Memorandum) was completed in July 2016.
- 10.4 The total impact of the Regulations is expected to be approximately £4,800 per annum, arising from the cost of additional inspections carried out and certificates issued. Even in an extreme scenario where all ships are inspected over a single year, the gross annual cost for that year will be approximately £23,500. The MCA aims to operate on a full cost recovery basis for inspections of UK ships, so these costs will be recovered from industry. The costs are recovered on the same basis that the MCA recovers other costs, by associating the costs involved with those set out by the Merchant Shipping (Fees) Regulations 2018 (S.I. 2018/1104).

11. Regulating small business

- 11.1 The legislation is unlikely to apply to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The EU Regulation only applies to medium to large merchant ships of 500 gross tonnes or more. The MCA considers that the high value and operating costs of those vessels suggest that firms owning and operating such vessels are unlikely to be classified as small.

12. Monitoring & review

- 12.1 In accordance with statutory requirements, the proposed Regulations contain a statutory review clause requiring the Secretary of State to review the operation of the Regulations five years after they come into force and at five yearly intervals after that.

13. Contact

- 13.1 Ian Timpson at the Department for Transport, Telephone: 0207 944 4446 or email: ian.timpson@dft.gov.uk who can answer any queries regarding the instrument.