

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (PREVENTION OF OIL POLLUTION)
REGULATIONS 2019

2019 No. 42

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 Annex I (Regulations for the Prevention of Pollution by Oil) of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1998 (“MARPOL”), an International Convention made by the International Maritime Organization (IMO) for the prevention of pollution from ships (including offshore installations). The instrument applies to all United Kingdom ships, with specified exceptions, and to foreign ships while they are in United Kingdom waters. The Regulations establish a survey and certification regime for ships, and prescribe technical requirements relating to the construction and operation of ships and on-board equipment.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is all United Kingdom ships, whether within United Kingdom waters or anywhere else in the world. It also applies to non-United Kingdom ships in United Kingdom waters.
- 4.3 Regulations 25 and 26 also apply to any discharge into the sea from any ship which has caused, or is likely to cause, pollution within United Kingdom waters or controlled waters.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 These Regulations implement the revised international regime contained in Annex I (Regulations for the Prevention of Pollution by Oil) to MARPOL. The regime has been amended by subsequent resolutions of the IMO and these Regulations incorporate those amendments. Annex I of MARPOL applies to all ships, subject to certain exceptions.
- 6.2 Annex I of MARPOL was previously implemented by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 (“the 1996 Regulations”) (S.I. 1996/2154). These Regulations, and those which amend them, are revoked. Other amendments and partial revocations are also made by this instrument.
- 6.3 This instrument makes use of the power in section 306A of the Merchant Shipping Act 1995 to make ambulatory references to international instruments. The effect is that references in the instrument to specific provisions in Annex I of the MARPOL Convention, and to the IMO Code for Recognised Organizations and the Polar Code, will be to those instruments as amended from time to time by the IMO. This means the regulations will continue to refer to updated international technical requirements without the need for further amendment.
- 6.4 The use of ambulatory referencing is in its early stages in maritime law, the power having been inserted into the Merchant Shipping Act 1995 by section 106 of the Deregulation Act 2015. The use of ambulatory referencing offers greater legal certainty for industry by ensuring United Kingdom law remains consistent with the requirements which must be satisfied by international shipping.
- 6.5 Although the ambulatory reference procedure under section 306A will allow future amendments to the technical provisions in Annex I to be incorporated automatically into domestic law, proposed changes will nevertheless continue to be scrutinised in an international arena (in the IMO), and the impact assessed well before any amendment is due to come into force, which will inform decision making. United Kingdom industry and workers’ representatives will also be involved at the stage that the United Kingdom negotiating strategy is being formulated and will be able to influence it. The Secretary of State at all stages retains the power to request Parliament to take action to prevent an amendment becoming part of United Kingdom law by way of ambulatory reference. An amendment will be publicised in advance of its in force date by means of a Parliamentary Statement to both Houses of Parliament and by way of a Marine Guidance Note, which will be available from the MCA from Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk>.
- 6.6 Implementing the amendments to Annex I requires United Kingdom flagged vessels to comply with the latest requirements laid down by the international community, thus enabling them to operate freely throughout the world. As all international vessels coming into United Kingdom waters (and those which have caused, or are likely to cause, harm in United Kingdom controlled waters) are also bound by the relevant amendments to Annex I, the United Kingdom coastline and marine environment is further protected from the risk of oil pollution from ships.

7. Policy background

What is being done and why?

- 7.1 MARPOL Annex I entered into force on 2nd October 1983. Its purpose is to ensure that all ships (subject to specified exceptions) are safely built and operated and are constructed to reduce the amount of oil spilled in the event of an accident. It focuses on the prevention of pollution by oil from operational measures as well as from accidental discharges. Implementation into United Kingdom law was achieved in 1996.
- 7.2 Annex I applies to all United Kingdom ships, wherever they may be, and all other ships within United Kingdom waters. It also applies to certain discharges by ships which have caused, or are likely to cause, pollution within United Kingdom waters or controlled waters. It does not apply to any warship, naval auxiliary or other ship owned or operated by the State and used for the time being on Government, non-commercial service. The amendments now being implemented into United Kingdom law by these regulations, some of which date back to 2004, aim to take on board new design and construction developments, new attitudes and new events in order to help towards the prevention of incidents involving oil pollution, therefore improving safety at sea and the environment.
- 7.3 The changes take into account technical improvements to machinery spaces and ship operation management requirements in order to reduce further the risk of an oil pollution event. Areas such as the strengthening of a ship's pump room protection; new design, construction and location of oil fuel tanks; and new software technologies to aid ship stability, oil pollution emergency plans and outflow performance are some of the amendments made to MARPOL Annex I.
- 7.4 As a member of the IMO, the United Kingdom is committed to introducing into national legislation those conventions and treaties to which it is a signatory, of which MARPOL Annex I is one. The United Kingdom therefore has a duty to amend existing legislation to reflect international changes.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This instrument revokes the 1996 Regulations, and regulations which amend them, but re-enacts those parts which are extant.

10. Consultation outcome

- 10.1 The Maritime and Coastguard Agency informally engaged with key players throughout the process of amending Annex I. A consultation on the draft Regulations took place in June and July 2018.
- 10.2 Notifications of the consultation were sent to more than 200 shipping and marine industry companies, plus in excess of 40 Government Departments and maritime bodies with professional and specialist functions.
- 10.3 A total of six responses were received, from the UK Chamber of Shipping (the main representative body for United Kingdom shipowners), the Law Society of Scotland,

Oil and Gas UK, the British Rig Owners Association, Bluewater Energy Services and, the Department of Agriculture Environment and Rural Affairs (DAERA) Northern Ireland. Not all respondents answered all the questions posed. Some additional comments have been received. These have been fully considered.

- 10.4 The consultation and post consultation report can be found at:
<https://www.gov.uk/government/consultations/consultation-on-recasting-the-merchant-shipping-prevention-of-oil-pollution-regulations>

11. Guidance

- 11.1 Further guidance on the requirements for oil or oily mixture discharges for offshore installations engaged in oil and gas operations on the United Kingdom Continental Shelf is available in Marine Guidance Note 603, published by the Maritime and Coastguard Agency.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 The Impact Assessment was treated as De Minimis as it fell within the scope required. Therefore, there is no impact as the costs and benefits to business are expected to fall below the +/- £5m net threshold in any one year.
- 12.4 The level of analysis undertaken is in line with the depth of available information. It should be noted that the majority of costs identified within the Impact Assessment have already been incurred and would not represent a future burden to business. However, they were included as they have been assessed against the baseline of no implementation of MARPOL Annex I.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. In practice, however, the owners of ships which are large enough to fall under the Convention are by necessity larger entities.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is in line with policy on new legislation. The Regulations contain a statutory review provision requiring the Secretary of State to review the operation of these Regulations five years after they come into force, at which point their approach and effectiveness will be reviewed, and every five years thereafter.

15. Contact

- 15.1 Steven Dexter at the Maritime and Coastguard Agency Telephone: 0203 81 72378 or email: steve.dexter@mcga.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Katy Ware, Director of the Department of Maritime Safety and Standards can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State at the Department for Transport, Nusrat Ghani, can confirm that this Explanatory Memorandum meets the required standard.