

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (PREVENTION OF POLLUTION BY GARBAGE
FROM SHIPS) REGULATIONS 2020

2020 No. 621

1. Introduction

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

2. Purpose of the instrument

- 2.1 These Regulations implement Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) to the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 (“MARPOL”) an international convention agreed in the International Maritime Organization (“IMO”) for the prevention of pollution from ships (and offshore installations). The Regulations implement the latest version of Annex V including amendments to Annex V made since 2013 which impose greater restrictions on the discharge of garbage into the sea, prohibiting all such discharges unless they are specifically permitted under regulations 4, 5, 6 or 7 of Annex V. They also incorporate into Annex V the requirements of the Polar Code which came into force on 1st January 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee for Statutory Instruments

- 3.1 The Secondary Legislation Scrutiny Committee, in its 21st Report of Session 2017-19, included an exchange of correspondence between the Committee and the Department in relation to the implementation backlog of international maritime conventions. The Committee, in its 17th Report of Session 2019-21, included further correspondence from the Department which described steps it was taking to address the backlog. These Regulations are one of the statutory instruments, identified in that correspondence, which implement outstanding international obligations to which the Department referred in that correspondence.

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, controlled waters or anywhere else in the world. It

also applies to non-United Kingdom ships in United Kingdom waters and 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 international regime contained in Annex V to MARPOL. Annex V has been amended by subsequent resolutions of the IMO and these Regulations incorporate all amendments which are currently in force. Annex V applies to all ships, subject to limited exceptions.
- 6.2 Annex V was previously implemented by the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Regulations 2008 (S.I. 2008/3257) (the “2008 Regulations”). The 2008 Regulations also implemented Annex IV (Regulations for the Prevention of Pollution by Sewage from Ships) of MARPOL. Due to differences in both the technical requirements and in the application of these two Annexes, the opportunity has been taken to simplify domestic law and deal with the two subjects separately. The Regulations to which this memorandum relates deal only with garbage. The provisions in relation to the prevention of pollution by sewage from ships can now be found in the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2020 (S.I. 2020/620), which also revoke the 2008 Regulations and come into force simultaneously with these Regulations.
- 6.3 This instrument contains an ambulatory reference provision in regulation 3. The effect is that references in the instrument to MARPOL, an Annex to MARPOL, the International Maritime Solid Bulk Cargoes Code and to the Polar Code will be construed as a reference to those instruments as amended from time to time. This means that the Regulations will continue to refer to updated international requirements without the need for further amendment. The use of ambulatory referencing offers greater legal certainty for industry by ensuring that United Kingdom law remains consistent with the international requirements which must be satisfied by ships globally.
- 6.4 Proposed changes to Annex V, and the other instruments to which ambulatory reference is made, will continue to be scrutinised (and, if necessary, objected to) by the United Kingdom in the IMO, and the impact of these changes will continue to be assessed well before any amendment is due to come into force. If an amendment is objected to, the Secretary of State retains the power to prepare additional secondary legislation in order to prevent an amendment becoming part of United Kingdom law by way of ambulatory reference. An amendment that is accepted will be publicised in advance of the date that it comes into force 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 Maritime and Coastguard Agency (“MCA”), Spring Place, 105 Commercial Road, Southampton SO15 1EG and on www.gov.uk.
- 6.5 Implementing the amendments to Annex V requires United Kingdom ships to comply with the latest requirements laid down by the international community, thus enabling them to operate freely throughout the world. As all international ships coming into United Kingdom waters and controlled waters are also bound by the relevant

amendments to Annex V, the United Kingdom coastline and marine environment is further protected from the risk of pollution by garbage from ships.

7. Policy background

What is being done and why?

- 7.1 MARPOL Annex V entered into force on 31st December 1988. It seeks to reduce and ultimately eliminate the amount of garbage being discharged into the sea from ships in order to further protect the marine environment from ship generated waste. In 2005 the UN General Assembly invited the IMO to review Annex V to assess its effectiveness in addressing sea-based sources of marine debris from shipping. Research showed that the oceans were still suffering from high levels of marine debris and the IMO were asked if more could be done in relation to Annex V. Through the review it was identified that Annex V should set a general prohibition and only allow certain types of garbage to be discharged under certain conditions, depending on whether the ship, whilst en route, is inside or outside a designated special area.
- 7.2 The amendments to Annex V, some of which date back to 2013, are being implemented into United Kingdom law by these Regulations and aim to reduce the impact of garbage pollution from ships. The amendments include prohibiting the discharge of all garbage into the sea with limited exceptions, extending the definition of garbage, for example to include animal carcasses, cooking oil, fishing gear and cargo residues, enhancing the amount of information recorded as part of garbage record-keeping and incorporating the requirements of the Polar Code in Polar waters.

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 / trigger the statement requirements under the European Union (Withdrawal) Act 2018 (c. 16).

9. Consolidation

- 9.1 The 2008 Regulations implemented Annex IV and Annex V to MARPOL in United Kingdom law. The provisions in relation to sewage can now be found in the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2020 (S.I. 2020/620), which also revoke the 2008 Regulations and an amending instrument, and come into force simultaneously with these Regulations.

10. Consultation outcome

- 10.1 The MCA engaged with stakeholders throughout the process of amending Annex V. A consultation on the draft Regulations took place between 3rd February and 30th March 2020.
- 10.2 Notifications of the consultation were sent to more than 100 shipping and marine industry companies, plus in excess of 30 Government Departments and maritime bodies with professional and specialist functions.
- 10.3 A total of five responses were received; one from the Law Society of Scotland, one from Oil and Gas UK Association, plus one from Class NK, one from the Forestry Commission and one from the Department of Agriculture Environment and Rural Affairs (DAERA) Northern Ireland. Not all of the respondents answered all of 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-the-draft-merchant-shipping-prevention-of-pollution-by-garbage-from-ships-regulations-2020>.

11. Guidance

- 11.1 Guidance regarding the operation of the Regulations has been published by the MCA in Marine Guidance Note MGN 632 (M+F). Copies of this MGN may be obtained free of charge at www.gov.uk or in hard copy from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

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 An Impact Assessment has not been prepared for this instrument because the Department's de-minimis assessment concluded that the costs and benefits to business are expected to fall below the +/- £5 million 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 de minimis 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 V.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people). It is estimated that around 3% of ships (approximately 25 ships) on the UK Shipping Register are owned by small businesses. The vast majority of companies owning UK registered ships are large multinational, or subsidiaries of multinational, companies.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the United Kingdom is committed to fully implement Annex V even where this applies to ships owned by such businesses. When originally developing Annex V in the 1980s consideration was given to the burden of regulation on the differing sectors of the shipping industry. Small businesses tend not to operate larger ships and so it was decided to alleviate the burdens to small business through limiting the requirements for placards to ships of 12 metres or more in length, for garbage management plans to ships of 400 gross tonnage and above, and for garbage record books to ships of 400 gross tonnage and above and certain ships on international voyages. The amendments to Annex V have retained these limitations, save that the size threshold for requiring a garbage management plan has fallen from 400 to 100 gross tonnage. In this way Annex V has balanced regulation for reducing pollution by garbage from shipping whilst limiting the impact on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to review the Regulations and a report of that review will be published no later than five years from the coming into force of the Regulations, and every five years thereafter.
- 14.2 A statutory review clause is included in these Regulations.

15. Contact

- 15.1 Lorraine Weller at the Maritime and Coastguard Agency Telephone: 0203 8172448 or email: lorraine.weller@mca.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Katy Ware, Director of Maritime Safety and Standards and UK Shipping Register can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State at the Department for Transport, Kelly Tolhurst MP, can confirm that this Explanatory Memorandum meets the required standard.