

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (RADIOCOMMUNICATIONS) (AMENDMENT)
REGULATIONS 2021

2021 No. 1316

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 on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations implement the latest version of Chapter IV of the Annex to the International Convention for the Safety of Life at Sea, 1974 (“SOLAS”), relating to radiocommunications requirements for ships engaged on international voyages, including amendments to Chapter IV made since 1st July 2002. Subject to specified exceptions, these Regulations apply to ships engaged on international voyages, specifically United Kingdom ships wherever they are and non-United Kingdom ships in United Kingdom waters. These Regulations also amend the Merchant Shipping (Radio Installations) Regulations 1998 (S.I. 1998/2070) (“the 1998 Regulations”) in respect of ships engaged on non-international voyages.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on 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 and in its 11th Report of Session 2021-22, included further correspondence from the Department which described the 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. On 19th October 2021, Robert Courts MP appeared before the Committee to provide a further update on the backlog and to explain how it will be discharged by the Department, and the Committee reported on the outcome in its 17th Report of Session 2021–22.

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 while in United Kingdom 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 outstanding amendments to the international regime for radiocommunications in respect of ships engaged on international voyages contained in Chapter IV of the Annex to SOLAS. These amendments to Chapter IV took effect since its most recent UK implementation in the 1998 Regulations, which are amended by this instrument to the effect that they no longer apply to ships engaged on international voyages. The outstanding amendments to Chapter IV were made by Maritime Safety Committee Resolutions MSC.69(69), MSC.123(75), MSC.152(78), MSC.201(81), MSC.256(84) and MSC.436(99), which are available from the International Maritime Organization (“the IMO”) of 4 Albert Embankment, London SE1 7SR or on the Foreign and Commonwealth Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch/>). Chapter IV of SOLAS applies to all ships engaged on international voyages, subject to certain exceptions.
- 6.2 These Regulations amend the 1998 Regulations in two respects: first, the 1998 Regulations now only apply to ships not engaged on international voyages; secondly, the carriage requirements for radio equipment which were formerly contained in regulations 8 and 11 to 15 of the 1998 Regulations are now set out in Merchant Shipping Notice (MSN) 1903(M). In addition, MSN 1690 (M) Amendment 1 makes reference to requirements in MSN 1903(M). The MSNs can be found at <https://www.gov.uk/government/collections/merchant-shipping-notices-msns> or are available from the Maritime and Coastguard Agency (“the MCA”) of Spring Place, 105 Commercial Road, Southampton SO15 1EG. Other amendments made by these Regulations include the revocation of Part III of the 1998 Regulations, which contain technical requirements which no longer apply to any ships.
- 6.3 These Regulations (regulations 9 to 12) incorporate the requirements in Chapter IV which create obligations relating to ships by direct references to those requirements. Regulation 7 operates to make the application of those requirements ambulatory so that all future amendments to them are automatically given direct effect in the United Kingdom by these Regulations. In the same way, regulation 7 also operates to make the reference to Article 47 of the Radio Regulations ambulatory. The remaining requirements in Chapter IV are obligations on States, which do not require implementation in domestic law. Fuller background about the application of certain requirements is set out in Marine Guidance Note (MGN) 641, which is available from the MCA and on <https://www.gov.uk/government/collections/marine-guidance-notices-mgns>.
- 6.4 Although the ambulatory reference provision in regulation 7 will allow future amendments to the requirements in Chapter IV to be incorporated automatically into domestic law, the United Kingdom will, nevertheless, be able to continue to scrutinise (and, if necessary, object to) proposed changes in an international arena (in the IMO) and assess their impact 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. If an amendment is objected to by

the United Kingdom but will come into force internationally, the Secretary of State will make amending secondary legislation to prevent that amendment coming into force domestically. An amendment that is accepted 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 an M-Notice, which will be available from the MCA and on <https://www.gov.uk>.

- 6.5 Once a future amendment to SOLAS comes into force it can be obtained in copy from the IMO of 4 Albert Embankment, London SE1 7SR, or found on the Foreign and Commonwealth Office online treaties database: <http://treaties.fco.gov.uk/treaties/treaty.htm>. Until such publication is made on the treaties database an amendment will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk>. The IMO now adopts and gives effect to amendments to the Annexes to SOLAS on a quadrennial cycle; on this basis, the most recent amendments came into force on 1 January 2020 and the next amendments are expected to come into force 1 January 2024.
- 6.6 These Regulations contain provision in regulation 13 for offences. A ship may also be detained under regulation 14 where it does not comply with these Regulations. These sanctions are applicable in respect of both United Kingdom ships and non-United Kingdom ships visiting United Kingdom ports.

7. Policy background

What is being done and why?

- 7.1 These Regulations are being made to ensure that the United Kingdom meets its international flag-state obligations under Chapter IV of the Annex to SOLAS. This will ensure that the most up-to-date provision for radiocommunications installations is given effect in United Kingdom law when amendments to Chapter IV come into force.
- 7.2 Whilst United Kingdom ships subject to SOLAS must comply with the Chapter IV requirements for the purposes of certification, implementing the amendments to Chapter IV enables the United Kingdom to enforce compliance with the latest requirements agreed in the IMO. This applies to all ships subject to SOLAS, whether United Kingdom flagged ships throughout the world or non-United Kingdom ships which enter United Kingdom waters.
- 7.3 As a result of these Regulations, maritime radiocommunications installations will be covered by two separate statutory instruments; one governing ships to which Chapter IV applies (essentially ships engaged on international voyages) and the other governing ships to which the 1998 Regulations continue to apply (essentially larger ships, with some exceptions, not engaged on international voyages).
- 7.4 The new legislation governing SOLAS ships includes an ambulatory reference provision which will ensure that any future amendments to Chapter IV will automatically have effect in the United Kingdom as soon as they enter into force internationally. This will avoid the need in future to make new legislation to give effect in the UK to amendments to Chapter IV, steps which are time consuming and resource intensive.
- 7.5 The outstanding IMO amendments (the relevant IMO Resolutions are listed in section 6.1 above) which have amended Chapter IV since the 1998 Regulations came into

force were reviewed and risk assessed in relation to their impact on the regulation of maritime safety.

7.6 The IMO resolutions which require implementation, relate to:

- The automatic or manual updating of a ship's position not exceeding four hour intervals in the mandatory radio installations.
- The testing intervals and maintenance of satellite emergency position indicating radio beacons.
- The alternative of Automatic Identification System (AIS) search and rescue transmitter on SOLAS ships for search and rescue locating.
- The recognition of new mobile satellite service providers other than Inmarsat as part of the Global Maritime Distress and Safety System.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Department currently has no plans to consolidate this legislation.

10. Consultation outcome

10.1 The Department informally engaged with key players throughout the process of negotiating amendments to Chapter IV in the IMO. Moreover, a public consultation on the draft proposals which these Regulations have implemented took place between 16th March to 11th May 2021.

10.2 Notification of the consultation was sent to approximately sixty shipping and marine industry companies, as well as maritime bodies with professional and specialist functions.

10.3 In total, there were four responses to the public consultation; these were from one individual, the Royal Navy, The Law Society of Scotland and the UK Chamber of Shipping. All four responses supported the Department's proposals with only the Law Society of Scotland commenting on question 1, Section 5.1 of the Consultation Questions "...it remains important that there are suitable opportunities for consultation and scrutiny...".

10.4 The radiocommunications consultation and post consultation report can be found at <https://www.gov.uk/government/consultations/>.

11. Guidance

11.1 Further guidance on implementation to supplement legislation is available in Merchant Shipping Notice (MSN) 1690 (M) Amendment 1 and Marine Guidance Note (MGN) 641 (links to these documents are set out in sections 6.2 and 6.3 above).

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 UK ships engaged on international voyages would comply with Chapter IV in any event to avoid enforcement action for breaches of SOLAS requirements while operating within another country's waters. Therefore, the costs comprise mainly sunk costs which have already been incurred, and any future or ongoing costs are expected to be very small.

13. Regulating small business

- 13.1 The legislation applies to all businesses, including small and micro businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses. Very few of the vessels in scope are thought to be owned by small businesses (it is estimated that around 3% of ships on UK Shipping Register are owned by companies which employ fewer than 50 people), and any impact on such businesses is expected to be insignificant and disproportionately small.
- 13.3 Radio communication requirements in SOLAS are related to safety, and it would not therefore be appropriate to consider exemptions based on business size (which reflects the approach taken in SOLAS).

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 these Regulations, and every five years thereafter.
- 14.2 A statutory review clause is included in the instrument.

15. Contact

- 15.1 Steve Austin at the Maritime and Coastguard Agency Telephone: 020 381 72423 or mail: steve.austin@mcga.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Katy Ware, Director for Maritime Safety and Standards, at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.