

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (CARGO SHIP) (BILGE ALARM) REGULATIONS
2021

2021 No. 592

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 The purpose of these Regulations is to ensure appropriate safety standards by requiring cargo ships, which are less than 500 gross tons and 24 metres or more in length, to be fitted with a system of detectors and alarms to alert those on board to the accumulation of bilge water within the internal spaces of the hull of a ship that could threaten the buoyancy and stability of that ship. The Regulations implement recommendation 2009/141 of the Marine Accident Investigation Branch (“MAIB”) report concerning the flooding and sinking of the grab hopper dredger Abigail H in the Port of Heysham.

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 to United Kingdom ships wherever they may be and to all other ships whilst those ships are within 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 Part IV of the Merchant Shipping Act 1995 provides the legal framework for securing safety in respect of ships, including United Kingdom ships and persons on them, as well as other ships and persons on them while they are within United Kingdom waters. Section 85 enables the Secretary of State to make regulations for those

purposes and which may make provision with respect to the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment; the use of the machinery and equipment of a ship and of anything on a ship which is not cargo, machinery or equipment; and the arrangements for ensuring communication between persons in different parts of a ship and between persons in the ship and other persons.

7. Policy background

What is being done and why?

- 7.1 There is currently no legal requirement for a cargo ship which is 24 metres or more in length and less than 500 gross tons to be fitted with bilge water level detectors and alarms.
- 7.2 There are 425 ships listed on the UK Ships Register (as of 02/02/21) that are 24 metres or more in length and less than 500 gross tons. Nine instances of flooding have been reported on such ships to the MAIB since 1996.
- 7.3 One such incident concerned the flooding and sinking of the grab hopper dredger Abigail H in the Port of Heysham in November 2008. An undetected ingress of water in the engine room of Abigail H eventually caused the vessel to sink. The crew had been sleeping onboard and exposed to risk as a result. The Abigail H incident was investigated by the MAIB which subsequently issued recommendation 2009/141 for the Maritime and Coastguard Agency (“MCA”) to introduce a legal requirement for the fitting of bilge water level detectors and alarms that would notify those on board of flooding that may threaten the buoyancy and stability of a ship. The recommendation also noted that such an alarm should sound in all accommodation spaces and be capable of waking sleeping crew in sufficient time for appropriate action to be taken and that the alarm should function when the main power supply of the ship was not in operation.
- 7.4 As an executive agency of the Department for Transport, the MCA has responsibility for a wide range of regulations and continually reviews the priority of the regulatory changes needed to meet our domestic goals and international obligations to address maritime safety and environmental concerns. The MCA accepted MAIB recommendation 2009/141 but whilst this recommendation and its enacting Regulations are important, it relates to a relatively small number of vessels and as such alternatives to mandatory regulation were explored, in dialogue with the MAIB, prior to agreeing that a regulatory response was required to fully address the recommendation. These Regulations implement recommendation 2009/141.
- 7.5 The intended outcome of this instrument is that all ships greater than 24 metres and less than 500 gross tons will have to be fitted with a bilge water detection and alarm system that will inform the crew of any ingress of water so appropriate action can be taken. The requirement applies to new ships from the date the Regulations come into force, and to existing ships from a year later. This will enhance the safety of these ships by reducing the risk of sinking and capsizing due to ingress of water into bilge and other spaces.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union so does not require statements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 These are standalone requirements which do not amend another instrument.

10. Consultation outcome

- 10.1 The MCA provided an 8-week consultation period, ending on 2nd December 2020. Documentation and reports relating to the consultation can be found at <https://www.gov.uk/government/consultations/consultation-on-the-proposed-merchant-shipping-cargo-ship-bilge-alarm-regulations-2021>. Paper copies may be obtained by emailing: infoline@mcga.gov.uk or writing to: MCA, Spring Place, 105 Commercial Road, Southampton SO15 1EG.
- 10.2 A total of 2 responses were received: one from a marine surveyor and one from the Legal Society of Scotland. Both responses have been considered and answers have been recorded within the consultation report.
- 10.3 Consultees were asked direct questions on issues ranging from the costs associated with compliance with the planned amendments, their views on whether any costs or benefits had been omitted from the De Minimis Assessment and any wider impacts as a result of the proposed Regulations. No significant issues were raised and no changes in policy resulted.
- 10.4 It should be noted that respondents did not answer all the questions posed and that additional comments were made. The responses resulted in minor amendments to the definitions within the Regulations in order to aid clarity and consistency across maritime legislation, changes to the Schedule to ensure understanding of the measurement of tonnage and minor amendments to the Maritime Guidance Note (“MGN”) to reflect the result of the consultation. Further consideration was given to the cost implications of the proposals as highlighted by one of the respondents and it was determined that the proposal was not overly burdensome to those with more than one vessel.

11. Guidance

11.1 Guidance which explains the requirements of the Regulations is available in MGN 651 (M), which will be published on www.gov.uk or can be obtained by emailing or writing to the MCA at the addresses given in paragraph 10.1.

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 A De Minimis Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on www.legislation.gov.uk
- 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 been identified as minor and to have a limited impact per vessel.

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) given that the substance of the measure provides for a minimum acceptable level of safety.

14. Monitoring & review

14.1 A statutory review clause has not been included in the Regulations as the Minister does not consider such to be appropriate having considered the statutory guidance issued under section 31 of the Small, Business, Enterprise and Employment Act 2015. The annualised net impact on business is expected to be significantly less than £5 million and there are no other factors that would make it desirable to include a review clause. Furthermore, the cost of undertaking a review would be disproportionate as the requirements introduce standards which are considered necessary in order to protect the safety of ships and persons on them and which cannot be adapted without reducing those protections.

15. Contact

15.1 Leanne Page at the Maritime and Coastguard Agency can answer any queries regarding this instrument. Leanne can be contacted by telephone on 020 3817 2450 or by email at Marinetechology@mcga.gov.uk

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 Robert Courts MP, Parliamentary Under Secretary at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.