

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (HIGH SPEED OFFSHORE SERVICE CRAFT)
REGULATIONS 2022

2022 No. 41

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 The Purpose of this Instrument is to provide a domestic legal underpinning for High Speed Offshore Service Craft (HSOSC) to operate and to transport ‘Industrial personnel’ to and from offshore energy installations such as wind turbines, to carry out the building and maintenance of them.
- 2.2 The Instrument is made under the enabling provisions in sections 85(1), (1B) (3), (5), (6) and (7) and 86(1) of the Merchant Shipping Act 1995.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 There are no matters of specific interest to the Joint Committee as this is domestic legislation to support growth in the offshore renewable energy sector through providing a better regulatory framework for the attending vessels and those on board.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is to any United Kingdom high speed offshore service craft, or a non-United Kingdom high speed offshore service craft operating 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 is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

- 6.1 This Statutory Instrument is made under Section 85 of The Merchant Shipping Act 1995 (“MSA”) to provide domestic legislation setting standards for HSOSC vessels enhancing safety at sea. Without these provisions in place the vessel operators are required to comply with all of the domestic and international legislation for larger High-Speed Craft which is not always applicable thus requiring operators to undergo a lengthy process to acquire exemption certificates to operate which is burdensome and costly both administratively and operationally.

- 6.2 These Regulations introduce a Code for the operators to follow which details the standards applicable and what is required for safe operations.
- 6.3 These Regulations apply to High Speed Offshore Service Craft (“HSOSC”). Which is either a United Kingdom high speed craft, or any other high speed craft in United Kingdom waters and operating at sea, or in Category A, B, C or D waters. These categories are specified within the Merchant Shipping Notice 1837 (M).
- 6.4 The Regulations apply to only vessels which are less than 500 tons gross tonnage and engaged in transportation of persons from one place to another, including any part of that operation where they are not on board, and carrying at least one industrial personnel, and no more than 12 persons who are not industrial personnel or the master or crew. In addition. The vessel is to carry no more than 60 persons on board.
- 6.5 The HSOSC Regulations provide for the offence of failure to comply with the HSOSC Code and could trigger enforcement action this is under regulation 5 of the HSOSC Regulations. The Maritime and Coastguard Agency (MCA) surveyors have enforcement and sanction powers which can be applied locally to ships calling at UK ports. The MCA’s powers to use civil sanctions are primarily contained in the MSA. These powers, including improvement and prohibition orders, are limited in scope and available only for specific purposes. Other than the power to detain a ship, it is not possible to replicate all the civil sanctions in the MSA in secondary legislation implementing international obligations or other policy objectives as there is no power to do so in the MSA.
- 6.6 These Regulations make the following necessary changes to existing Statutory Instruments:
- The Merchant Shipping (Survey and Certification) Regulations 2015 regulation 2. It is necessary to include HSOSC and to require a specific safety certificate for HSOSC to enable them to operate appropriately.
 - References to HSOSC and High-Speed Craft (HSC) are made in the Survey and Certification Regulations, Regulation 3 this ensures these Regulations are consistent and relevant.
 - Regulation 9a, prescribes the surveys necessary of the vessels structure and safety, equipment, radio installations and other equipment including the intervals of surveys which are required.
 - Regulation 13a, provides the power for the Certifying Authority to issue a certificate once the vessel has successfully passed its inspections.
 - In line with existing vessel certification procedures the period of validity of the Certificate will be no more than 5 years.
 - Regulation 25 limits the numbers of persons on board in line with what is detailed on the vessel’s safety certificate.

7. Policy background

What is being done and why?

- 7.1 The purpose of these Regulations is to introduce legislation that will give legal force to the UK High Speed Offshore Service Craft (HSOSC) Code which has been developed to ensure that such craft are able to operate legally and safely within UK waters.

- 7.2 The introduction of the SI and Code will provide industry with a formal framework on which those involved in the offshore supply and service industry can safely construct, maintain and operate vessels and transport personnel. In addition, all vessels certified to the new HSOSC Code will be legally obliged, by the SI, to be assessed to the same standards of practice helping to ensure a level playing field across the sector and enable the sector to expand swiftly, keeping pace with increasing demand for services.
- 7.3 The introduction of the new SI and Code will increase the efficiency of the certification process and reduce the amount of time required to assess certification applications as there will be a specific standard to which the certifying authorities will assess vessels. This new approach will allow for a more rapid expansion of the fleet required to support a dynamically growing sector.
- 7.4 As well as providing a firm basis for certification of HSOSC, we will provide clear and concise instructions to the sector to ensure owners and operators understand what is required for the safe construction and operation of a high speed craft in the offshore industry within UK waters.
- 7.5 As the offshore renewable sector grows there has been an increased need to transport personnel to their place of work. The limitation of 12 passengers does not allow for the efficient movement of personnel and the requirements for a High Speed Offshore Service Craft to become a passenger vessel is overly onerous for the functions it is carrying out - transporting personnel from shore to place of work.
- 7.6 The offshore personnel such as technicians support the operational building and maintenance of wind turbines. They are trained and required to be fit and have marine safety and survival training (to industry standards), so on that basis are not considered as 'passengers' in the normal sense of the word. These Regulations define the personnel as 'Industrial Personnel'.
- 7.7 These Regulations would only apply to those operators, operating these vessels who carry out these types of operations.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.8 Prior to this SI there was no specific legislation for HSOSC transporting of Industrial Personnel, rather the High-Speed Craft legislation for over 500gt vessels was relied upon with exemptions for the transport of these persons. This approach was not fit for purpose as the majority of smaller vessels are unable to fully comply with certain aspects of these regulations.

Why is it being changed?

- 7.9 This is a simplification providing legal clarity to industry on standards and the Code that operators of HSOSC should follow. Other Administrations have similar Regulations which their operators are able to work under, introducing a level playing field which would allow the UK to remain competitive and is welcomed by industry.

What will it now do?

- 7.10 Bespoke legislation for these specific vessels will be available and will support the UK offshore renewable energy sector.

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 A targeted public consultation took place over a period of six-weeks from 10 August 2021 to 21 September 2021. The consultation and relevant documentation can be found here:

<https://www.gov.uk/government/consultations/consultation-on-the-merchant-shipping-high-speed-offshore-service-craft-hsosc-regulations-2021-and-accompanying-code>

10.2 The Devolved Administrations were notified of the public consultation; however, no responses were received from them.

10.3 Responses were received from: The Workboat Association, RMT, BMT, Seacat Services, YBDSA, Law Society of Scotland, Offshore Transfer Systems, MAIB, Orsted, Njord Offshore and one Individual.

10.4 A total of 11 responses were received. Overall, they were positive and welcomed these measures. There were a small number of responses requesting clarification and consistent terminology this has been noted and suitable amendments have been made to the Code and draft Statutory Instrument. Two out of the 11 respondents thanked the Department for the opportunity to respond but confirmed they had no comments to make.

10.5 With regards to the question on whether the Code is considered fit for purpose a number of respondents considered it to be fit for purpose addressing areas that were historically difficult to comply with and removing the cumbersome exemption process.

10.6 In terms of Dangerous Goods responses have been carefully considered by the Department, some of which specified the types and quantities of Dangerous Goods (DG) that operators may carry for duties on the turbines etc. In doing so however, they must fully comply with the IMDG code. The Department will keep this under review post implementation and amend the Code if needed.

10.7 Consideration has been given to the use of sleeping berths for Industrial Personnel, summarising consultee views on this whilst some saw merit for the larger vessels the general tenor was it is not an appropriate time as this is something that continues to be discussed in the International Fora.

10.8 On the assumptions of costings, the views received either provided no comment or agreed with the Department's costings in the DMA. None of the respondents indicated that small businesses would be disproportionately affected by these measures.

10.9 A summary of responses with the Governments comments will be published on the Gov.UK website in due course.

11. Guidance

- 11.1 Guidance regarding the changes introduced by the SI is contained in the High Speed Offshore Service Craft Code. Copies of this Code may be obtained free of charge at www.gov.uk or in hard copy from the Maritime and Coastguard Agency (MCA), Survey Operations of Spring Place, 105 Commercial Road, Southampton, SO15 1EG. A hard copy can be obtained from the MCA office only if pre-arranged.

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 full Impact Assessment has not been prepared for this instrument because the MCA has produced a de minimis assessment (DMA) arguing that the impacts are negligible (and therefore not quantified). The DMA certifies that the cost to business falls well below the Better Regulation threshold of £5m per year, hence a full Impact Assessment is not required.
- 12.4 This SI and Code is necessary to futureproof the international competitiveness of the UK flag and safety of UK-flagged vessels. The Code is also deemed as being uncontroversial and non-contentious, as it has been welcomed and requested by industry.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people). The measure is designed to provide more certainty to operators and replaces the need to apply for exemptions with a simpler regulatory environment. Therefore, it is expected that small businesses will benefit from the changes.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to review the Regulations and publish a report 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 the Regulations.

15. Contact

- 15.1 Joanne Wake at the Maritime and Coastguard Agency. Telephone: 0203 8172250 or email: Joanne.Wake@mca.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gwilym Stone, Assistant Director of UK Maritime Services Ship Standards can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts M.P., The Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard