

EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS) REGULATIONS 2022

2022 No. 737

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 the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 ("the Convention"), an international Convention made through the International Maritime Organization ("IMO"). The Regulations establish standards and procedures for the management and control of ships' ballast water and sediments, establish a survey and certification regime for ships and prescribe technical requirements relating to ballast water management systems installed on ships. They also require the provision of sediment reception facilities at shipyards where the cleaning or repair of ballast tanks occurs where the tanks are those of ships to which the Regulations apply.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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, wherever they may be. 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 Convention. The Convention was adopted on 13th February 2004 at a diplomatic conference convened by the IMO.
- 6.2 The Convention entered into force internationally on 8th September 2017, one year after at least 30 states representing 35% of the world's merchant shipping tonnage had ratified or acceded to it. The United Kingdom ratified the Convention on 26th May 2022. Article 18 of the Convention provides that any instrument of ratification deposited after the date on which the Convention enters into force will take effect

three months after the date of deposit; thus, it will enter into force for the United Kingdom on 26th August 2022.

- 6.3 These Regulations are made using powers provided by the Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Order 2022 (S.I. 2022/629), which in turn was made using powers provided by section 128 (prevention of pollution from ships) of the Merchant Shipping Act 1995 (c. 21).
- 6.4 The Regulations implement all amendments to the Convention which are in force at the date the Regulations are made.

7. Policy background

What is being done and why?

- 7.1 Ships routinely take onboard and discharge ballast water to maintain stability and safe operating conditions; large ships require many thousands of tonnes of water to ballast. This ballast water contains thousands of microscopic organisms that will be carried to new destinations by the ship. These species, if they survive, may establish themselves in a new area and can become invasive, outcompeting native species which can have serious consequences for the environment, the economy and peoples' health. The Convention prohibits the discharge of any unmanaged ballast water or sediments into the sea in order to prevent the spread of invasive non-native species.
- 7.2 Scientific studies have shown that untreated ballast water from ships poses a substantial risk to the aquatic environment. Ballast water has been found to be a significant factor in introducing invasive non-native species around the world and into UK waters. The spread of invasive non-native species is a great risk to the global ecology and economy. With increasing trade and traffic volume, without improved ballast water management the issue is likely to get worse. It has been estimated that in the next 20 years up to 48 new invasive non-native species¹ will establish themselves in UK ecosystems. These Regulations will help to reduce the impact that invasive non-native species from ballast water may have on the UK economy and ecosystems. They will bring the UK in line with the 90 States that have already acceded to the Convention.
- 7.3 With specific exceptions the Regulations apply to all United Kingdom ships and to all non-United Kingdom ships while they are in United Kingdom waters or controlled waters where those ships carry ballast water which is subject to discharge and operate in the waters of more than one State. The Regulations prohibit the discharge of ballast water or sediments unless they are subject to ballast water management which meet the requirements specified in the Regulations. They provide for exceptions in certain circumstances, for instance, discharge to a reception facility. The Regulations also require shipyard owners and operators to provide sediment reception facilities where the cleaning or repair of ballast water tanks (of ships to which the Regulations apply) occurs.
- 7.4 The Convention requires ships to which it applies of 400 gross tonnage and above, excluding floating platforms, floating storage units and floating production storage and offloading units, to be subject to surveys to ensure that the provisions of the Convention are complied with. The Convention also requires that appropriate

¹ <https://publications.parliament.uk/pa/cm201919/cmselect/cmenvaud/88/8808.htm>

measures are taken for ships not covered by this survey regime. The Government has decided that it is appropriate to extend the survey regime to all ships to which the Regulations apply. Ships which comply with the Regulations will be issued with an International Ballast Water Management Certificate (IBWM Certificate) and will be required to carry this, as well as a ballast water record book and a type approval certificate if fitted with a ballast water management system that is used to comply with these Regulations.

- 7.5 To enforce these obligations, the Regulations allow for the inspection of ships, together with the power to prohibit the discharge of ballast water or detain the ship where it does not comply with the Regulations. They also introduce offences and penalties to facilitate compliance with their requirements.

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 2018.

9. Consolidation

- 9.1 The Regulations do not consolidate any existing legislation. Similar or related legislation is not in place and there is accordingly no scope for consolidation.

10. Consultation outcome

- 10.1 A full twelve-week public consultation on the draft Regulations took place between 24th March and 16th June 2021. Notifications of the consultation were sent to more than 80 organisations including shipping and marine industry companies, government departments and agencies, and other interested parties. A total of 11 responses were received from Class NK, NatureScot, Chartered Institute of Ecology and Environmental Management, Ballast Water Equipment Manufacturers Association, SGS, Orkney Islands Council Harbour Authority, Peel Ports, UK Chamber of Shipping, Port of London Authority, Associated British Ports and Robert Wynn & Sons. Not all respondents answered all the questions posed and some additional comments were received. These have been fully considered.
- 10.2 The consultation and post consultation report can be found at <https://www.gov.uk/government/consultations/consultation-on-draft-regulations-for-the-control-and-management-of-ships-ballast-water-and-sediments>.
- 10.3 Whilst the policy content of these Regulations is merchant shipping, which is a reserved matter, the Devolved Administrations were consulted informally and again as part of the formal public consultation and have no objections to the Regulations.

11. Guidance

- 11.1 Guidance regarding the operation of the Regulations has been published by the MCA in Marine Guidance Note 675 (M+F). Merchant Shipping Notice 1908 (M+F) contains technical detail of requirements referred to in the Regulations. Copies of these documents 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.
- 11.2 There are also guidelines associated with the Convention which stakeholders can refer to. These guidelines are available from the IMO Library of 4 Albert Embankment, London, SE1 7SR or on the IMO website and can be accessed here:

<https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/Compilation%20of%20relevant%20Guidelines%20and%20guidance%20documents%20-%20April%202021.pdf>.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is estimated to be £24.4 million per year.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 United Kingdom 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 constrained by what is permitted under the Convention. The United Kingdom is committed to fully implement the Convention even where this applies to ships owned by such businesses. In deciding to extend the survey regime to all ships to which the Regulations apply engagement was carried out with industry groups through public consultation. The Government considered that it would not be practical to apply different standards to ships operated by these companies and any attempt to do so could distort competition and undermine the aims of the Regulations. However, the Convention and the Regulations do include exemption provisions and alternate methods of compliance.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to review the Regulations.
- 14.2 A statutory review clause is included in the instrument requiring the Secretary of State to review the operation and effects of these Regulations five years from the coming into force of the Regulations and every five years thereafter.

15. Contact

- 15.1 Megan Cousins at the Maritime and Coastguard Agency, Telephone: 07769 284548 or email: megan.cousins@mca.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Katy Ware, Director for United Kingdom Maritime Services, 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.