

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (PREVENTION OF AIR POLLUTION FROM SHIPS)
(AMENDMENT) REGULATIONS 2023

2023 No. 384

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 In June 2021, the International Maritime Organization (IMO) adopted amendments to Annex VI (Air Pollution) of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (the "MARPOL Convention"). This was part of the IMO's strategy to decarbonise international shipping. The amendments require certain types of ships that are over 400 gross tonnes (GT) to adopt new measures to reduce their carbon intensity. This instrument implements these amendments into UK domestic law.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is to the whole of the United Kingdom. It also applies to UK registered ships ("UK ships") wherever they may be in the world and non-UK ships while in UK 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 This instrument amends the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I. 2008/2924) ("the 2008 Regulations"), which were made to implement Annex VI of the MARPOL Convention. The UK has been a party to the MARPOL Convention since 1980 and to Annex VI since 2004. This instrument is needed to implement amendments to Annex VI agreed by the Marine Environment Protection Committee ("MEPC") of the IMO in June 2021, which are set out in document MEPC 76/15/Add.1. The latest amendments to Annex VI introduce changes to Chapter 4 of Annex VI dealing with the carbon intensity of international shipping.

- 6.2 Annex VI of the MARPOL Convention deals generally with air pollution and was originally adopted by a 1997 Protocol. Its original focus was to control pollutant emissions from ships – principally emissions of sulphur dioxide and nitrogen dioxide. These provisions, contained in Chapter 3 of Annex VI, have been the subject of subsequent IMO amendments, most recently those implemented by the Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021(SI 2021/1108 – the “2021 Regulations”).
- 6.3 However, since 2013, measures have been adopted in Chapter 4 of Annex VI aimed at reducing greenhouse gas (“GHG”) emissions from ships. The measures require relevant ships to record, manage and reduce carbon dioxide (CO₂) emissions - a significant GHG which contributes towards climate change. These Chapter 4 measures originally included an energy efficiency design standard for new ships (adopted by the IMO in 2013) and a reporting requirement relating to fuel oil consumption for ships (adopted in 2019). Those were implemented by the Merchant Shipping (Prevention of Air Pollution from Ships) (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/940 – the “2019 Regulations”) which amended the 2008 Regulations. This instrument makes further amendments to the 2008 Regulations to implement the latest changes to Chapter 4 concerning the introduction of the Energy Efficiency Existing Ship Index (EEXI) and the Carbon Intensity Indicator (CII).
- 6.4 The amendments to the 2008 Regulations made by the 2021 Regulations included the insertion of an ambulatory provision (within the meaning of section 306A(4) of the Merchant Shipping Act 1995), new regulation 2A, and this instrument amends that provision to include references to the Polar Code and relevant IMO Guidelines which are to be taken into account under the Regulations. The Polar Code is the IMO International Code for Ships Operating in Polar Waters (the North and South Poles). This amendment and inclusion of the ambulatory provision means that future changes to the Polar Code and the relevant IMO Guidelines at the IMO, in so far as those instruments are referred to in the 2008 Regulations (as amended by this instrument), will have automatic effect in domestic law. Nevertheless, the UK will continue to scrutinise, and if necessary, object to, proposed changes to them, which are considered at the IMO and assess their impact well before any amendment is due to come into force. UK industry and workers’ representatives will also be able to influence and be involved at an early stage when the UK negotiating strategy is being formulated.
- 6.5 If the UK strongly objects to an amendment to the Polar Code or IMO Guidelines which is relevant to Annex VI of the MARPOL Convention and which is due to come into force at the international level, the Secretary of State may make amending legislation to prevent that amendment having effect in domestic law. An amendment which is accepted will be publicised in advance of its coming into force date by means of a Parliamentary Statement to both Houses of Parliament. It will also be publicised by way of a Marine Guidance Note, which will be available from the Maritime and Coastguard Agency (MCA) at Spring Place, 105 Commercial Road, Southampton, SO15 1EG and at <https://www.gov.uk>.
- 6.6 As a result of regulation 2A of the 2008 Regulations, certain amendments to Annex VI of MARPOL took effect in domestic law automatically on 1st November 2022 independently of this instrument. These include the form of the International Energy Efficiency Certificate in Appendix VIII to Annex VI of the MARPOL Convention, referred to in regulations 11A and 13A of the 2008 Regulations, and the form of the

Statement of Compliance in Appendix X to Annex VI, referred to in Schedule 4 of the 2008 Regulations.

7. Policy background

What is being done and why?

- 7.1 In April 2018 the IMO agreed its “Initial Strategy on Reduction of GHG Emissions from Ships”. This commits parties to MARPOL to reducing GHG emissions from international shipping by at least 50% by 2050 (compared to a 2008 baseline), while pursuing efforts, as a matter of urgency, to fully phase them out as soon as possible this century. The Initial Strategy sets out a timeline for policy measures to be considered to reduce GHG emissions from ships in the short-, medium- and long-term. Short-term measures are those which could be finalised by the MEPC between 2018 and 2023. In autumn 2020, MEPC 75 agreed a package of short-term technical and operational energy efficiency measures for new and existing ships. These measures were supported by the UK during negotiations at the IMO.
- 7.2 As part of the short-term measures to reduce GHG emissions from ships, the IMO adopted two new measures in June 2021, which amended Chapter 4 of Annex VI of the MARPOL Convention. The measures build on the existing carbon reduction measures: the energy efficiency design standard for new ships (introduced in 2013) and a reporting requirement related to fuel oil consumption for ships (introduced in 2019).
- 7.3 The new measures that were adopted by the IMO in 2021 focus on reducing carbon emissions from ships and on the technical design and operational efficiency of ships respectively. The new measures came into effect internationally on 1 January 2023 and this instrument implements these new IMO measures into domestic law. The Energy Efficiency Existing Ship Index (EEXI) is a technical design measure aimed at improving the energy efficiency of a ship’s design by tightening energy efficiency improvements on existing ships. The Carbon Intensity Indicator (CII) is an operational measure designed to calculate a ship’s annual carbon emission performance. This operational measure will grade ships on their carbon intensity, rating ships between A - E. Ships rated “D” for three consecutive years or “E” for any year will be required to undertake corrective actions to improve their rating.
- 7.4 Certifying authorities are ship classification societies that are authorised to survey and issue certificates on behalf of the MCA. Certifying authorities will be responsible for rating a ships carbon intensity. Where a ship is rated “D” for three consecutive years or “E” for any year, the owner of a ship will be required to submit within one month, a revised Ship Energy Efficiency Management Plan (SEEMP), which must also include their plan of corrective action to improve their rating. The certifying authority can then issue a statement of compliance when the revised SEEMP meets the required standards.
- 7.5 This instrument also makes amendments to the 2008 Regulations to make the enforcement provisions more effective. The amendments clarify that both UK ships anywhere in the world, and non-UK ships when in UK waters, which meet the relevant conditions, must carry on board an International Energy Efficiency Certificate (IEE Certificate), a Ship Energy Efficiency Management Plan (SEEMP) and a Statement of Compliance with the IMO fuel oil consumption reporting requirements. Failure to carry an IEE Certificate, SEEMP and a Statement of

Compliance is a criminal offence. These amendments clarify the application provisions relating to the energy efficiency measures implemented by the 2019 Regulations, set out in regulation 3 of the 2008 Regulations, in particular the application of regulation 19A (prohibition on non-UK ships proceeding to sea without an IEE Certificate). The Maritime and Coastguard Agency will enforce these requirements for UK ships undertaking international voyages and for non-UK ships when they are in UK waters.

- 7.6 Other amendments are being made to regulation 3 of the 2008 Regulations so that they better reflect the scope of the IMO measures by referring in more detail to the types of ship to which the measures apply and to clarify that the measures only apply to ships on international voyages. The instrument also corrects an error in the definition of “annual survey” which was made by the original 2008 Regulation.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This instrument does not consolidate existing legislation and there are no current plans to consolidate the 2008 Regulations.

10. Consultation outcome

- 10.1 UK shipping industry stakeholders were represented at the IMO through non-governmental organisations when the short-term measures, EEXI and CII, were agreed. They were involved throughout the process of developing the policy. This included attending and contributing to working and drafting groups as well as plenary sessions of the MEPC.
- 10.2 The IMO requirements are widely known across the sector. The Department did not conduct a formal consultation exercise on this instrument. However, a draft of this instrument was shared with key stakeholders, including Lloyds Register and the UK Chamber of Shipping for their comments.
- 10.3 Stakeholders are supportive of the aim of this instrument. Specific feedback we received related to uncertainty about whether the IMO energy efficiency measures applied to UK ships that only undertake domestic voyages, arising from the drafting of the 2008 Regulations (as amended by the 2019 Regulations). Stakeholders considered that this instrument should amend the 2008 Regulations to clarify that these IMO energy efficiency measures only apply to UK ships on international voyages (and non-UK ships visiting the UK), since the IMO measures were not designed with short domestic routes in mind. DfT’s view is that the IMO measures should not apply at this stage to domestic UK shipping and amendments are being made to regulation 3 of the 2008 SI to clarify the scope of the energy efficiency measures. DfT will continue to develop UK domestic policy to reduce emissions from the UK maritime sector. The IMO is due to review the carbon reduction measures in 2026 and DfT will consult with maritime stakeholders on whether the measures should apply to domestic operators and carry out further analysis on the potential impacts ahead of this IMO review.

11. Guidance

- 11.1 The Maritime and Coastguard Agency will update the Marine Guidance Notice (MGN 462) concerning the UK's implementation of the IMO's measures to reduce GHG emissions from ships and this will be available on www.gov.uk or from the Maritime and Coastguard Agency at Spring Place, 105 Commercial Road, Southampton, SO15 1EG. The relevant IMO Guidelines relating to these measures are available from IMO Publishing, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications; sales@imo.org; telephone 0207 7357611.

12. Impact

- 12.1 The Equivalent annual net direct cost to business (EANDCB) has been estimated at £42.6 million per year (in 2019 prices, 2020 present value). This is the estimated costs per year to UK owned ships that perform international voyages in order to comply with the amendments to Annex VI of the MARPOL Convention. In this section of the explanatory memorandum, UK owned ships are defined as UK registered ships that are owned by UK businesses. As the UK is party to the MARPOL Convention, we are required to bring those amendments into domestic UK law, which is the purpose of this instrument. However, this instrument is not expected to result in any additional compliance costs for UK registered ships. This is because UK registered ships operating internationally are expected to comply with the amendments to Annex VI to avoid enforcement action and fines from other IMO states.
- 12.2 However, the following costs associated with this instrument have been identified. The familiarisation costs to UK registered ships that perform international voyages have been estimated at around £0.1m (in 2023 prices, 2023 present value). The familiarisation costs are the costs to vessel operators of familiarising themselves with the requirements of this instrument. Total public sector enforcement costs have been estimated at around £0.6m between 2023 and 2030 (in 2023 prices, 2023 present value).
- 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 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken does not go beyond what is required to comply with international law.
- 13.3 The basis for the final decision on what action to take to assist small businesses is constrained by what is permitted under international law. For the UK to exempt small businesses would risk non-compliance with IMO obligations, thus failing a policy objective.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause as a review clause is already included in regulation 38 of the 2008 Regulations (which are the Regulations amended by this instrument). This provides for a review of the 2008 Regulations (as amended) at least every five years.

15. Contact

- 15.1 Darren Smith at the Department for Transport: 07816 088923 or email darren.smith2@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sandra Dewhurst and Sarah Francis, Deputy Directors for Maritime, Environment, Technology and International (METI) and Eamonn Beirne, Deputy Director for UK Shipping Office for Reducing Emissions, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere, Parliamentary Under Secretary for Aviation, Maritime and Security at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.