

Title: Merchant Shipping (Registration and Counting of Persons Onboard Passenger Ships) (Amendment) Regulations 2023 Date: 22/08/22 DMA No: DfTDMA246 Lead department or agency: Maritime & Coastguard Agency Other departments or agencies: None		De Minimis Assessment (DMA)	
		Stage: Consultation	
		Source of intervention: Domestic	
		Type of measure: Secondary	
Summary: Rationale and Options		Contact for enquiries: Matt Giacomini (matt.giacomini@mcga.gov.uk)	
Total Net Present Value £0.00m	Business Net Present Value £0.00m	Net cost to business per year <small>(EANDCB in 2016 prices)</small> £0.00m	

Rationale for intervention and intended outcomes

Intended changes:

- a) the adjustment of the drafting so that the words “*after which it shall be erased without undue delay*” applies to both r8(2)(a) and r8(2)(b) of the target (1999) Regulations as amended by the 2021 Regulations; and
- b) the revision of the reference to the EU to be a reference to the Safety of Life at Sea (SOLAS) Convention to reflect the UK’s departure from the EU;
- c) amendment of the exemption provision to provide additional flexibility for the Secretary of State when granting exemptions;
- d) a postponement of the deadline by which seagoing passenger ships must report persons data electronically through the specified methods;
- e) the amendment of the ambulatory reference provision in Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020 to exclude Regulation 27 of Chapter III of SOLAS.

The Joint Committee on Statutory Instruments (JCSI) a House of Commons Committee, have commented on the Regulations as per (a) and (b) above. The Department for Transport (DfT)/Maritime Coastguard Agency (MCA) are therefore seeking to take action on the comments, and have given an undertaking that they will do so.

While the JCSI comments were the original reason for creating these regulations, DfT identified the regulations as a convenient vehicle for introducing other relaxations and a correction which were deemed helpful. The rationale for the widening of the exemption provisions is the restrictive nature of the current provisions as per EU requirements. It is believed that the effect of the current wording is that there is a lack of vires to issue exemptions in some instances where such an exemption would be entirely safe, reasonable and proportionate.

Describe the policy options considered

“**Do nothing**” – The DfT/MCA are required to action the JCSI’s changes, and leaving JCSI recommendations unactioned will not reflect well on the Department and is not considered a realistic option.

Option 1 – Update the Regulations in line with the JCSI instructions, change passenger to person in one place, broaden the SoS exemption powers and defer deadline date for electronic reporting until 20 December 2025.

Option 2 - Update the Regulations in line with the JCSI instructions only.

Our preferred option is Option 1 because it rectifies all issues with the earlier regulations and offers some deregulation.

Rationale for DMA rating

The regulations make minor amendments to existing 1999 regulations as amended, making changes to requirements brought in through the 2021 amendments, which imposed obligations on ships on voyages of over 20 miles to capture some additional items of persons data over and above the items already required to be captured. It also imposed a deadline for seagoing passenger ships to report the data electronically through the Maritime National Single Window or (persons numbers only) through the Automatic Identification System (AIS) by 20 December 2023.

As argued below (see impacts section), these new proposed Regulations impose no additional requirements on businesses and will therefore generate no substantive costs. The only impacts are likely to be small benefits to a small number of businesses, who will effectively be exempt from parts of the requirements introduced in 2021.

Quantification of impacts on this occasion is not provided as this would be disproportionate. However, at the time of 2021 amendments, DfT produced a de minimis assessment (DMA) ("the 2021 DMA") which quantified the impacts on business, finding a total business net present value of -£0.11m, very far below the de minimis threshold of £5m equivalent annual net direct cost to business per year. These regulations effectively disapply parts of those requirements from a small number of businesses. This means that, if the impacts were to be quantified, they would be expected to show a positive business net present value of a fraction of that amount.

Total impacts will not exceed the impacts appraised in that DMA because they relate to only a small part of those regulations. Therefore, a very high degree of confidence is warranted that impacts will not exceed the de minimis threshold.

The regulations are not novel, contentious, or controversial, as they do not significantly affect obligations on business. There is not expected to be any opposition from industry. Small businesses will not be disproportionately affected (see the small and micro business assessment below).

Impact

Expansion of the exemption powers introduces no new requirements and will therefore impose no cost on business (no businesses will have to report more data than they otherwise would). The wider scope of exemptions is intended to be used to reduce reporting requirements for some businesses, so the change is expected to create a small benefit for a small number of businesses. The number of businesses who may be in scope of the new exemptions is not known but will be small; the 2021 DMA estimated that 149 vessels were in scope of the regulations, and the number who would be considered for an exemption under the proposed new powers is likely to be only a fraction of those. Therefore, although the value of total benefits to business is not quantified, it will be very small.

Similarly, delaying implementation of the electronic reporting requirements also introduces no new requirements and will therefore impose no cost on business. (The reporting requirements the provision relates to have already been legislated and will be imposed in all cases including the do-nothing option.) As above, there may be a small benefit to some businesses, as the proposed delay to implementation will allow longer for businesses to become compliant, which may allow some businesses additional flexibility, or to defer implementation of more costly systems by an additional two years. No businesses will need to undertake extra work: if a business is already on track to be complaint for the previous deadline, they will not be affected. As above, the value of total benefits is not quantified (and quantification would be disproportionate) but is expected to be very small.

The minor amendments to wording are not expected to have any substantive impacts on businesses. Any familiarisation costs will be extremely small. Businesses are already familiar with the existing regulations, and the amendments proposed are minor and do not impose new burdens on business.

Will the policy be reviewed? No		If applicable, set review date: N/A		
Are these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes

Senior Policy Sign-off:	<input type="checkbox"/>	Date:	DD/MM/YYYY
Peer Review Sign-off:	<input type="checkbox"/>	Date:	DD/MM/YYYY
Better Regulation Unit Sign-off:	<input type="checkbox"/>	Date:	DD/MM/YYYY

Supporting Evidence

Background

Persons Counting legislation

The Merchant Shipping (Registration and Counting of Persons on Board Passenger Ships) (Amendment) Regulations 2021 (SI 2021/81) (“the 2021 Regulations”) came into force on 22 February 2021, implementing Directive 2017/2109/EU (“the 2017 Directive”) and amending the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999 (SI 1999/1869) (“the 1999 Regulations”).

Passenger ships on voyages of over 20 nautical miles were already required under the 1999 Regulations to collect a number of items of persons data, namely:

- a) number of persons
- b) family names of persons
- c) forenames or initials;
- d) their gender;
- e) an indication of age category (i.e., adult, child, infant)' or age; or year of birth and to which category each person belongs;

The measures in the 2021 Regulations, implementing the 2017 Directive, included additional items of data to be reported by passenger ships on voyages of over 20 miles, namely:

- a) full forenames (instead of the option of simply initials);
- b) dates of birth (rather than just years of birth or age categories);
- c) nationality; and
- d) when volunteered by a passenger, a contact telephone number in case of emergency.

Passenger ships on voyages of less than 20 miles were required under the 1999 Regulations to report persons numbers only, and this was not changed by the 2021 Regulations.

Another requirement imposed by the 2017 Directive and therefore by the 2021 Regulations was that seagoing passenger ships must report persons data through specified electronic methods from 20 December 2023. The specified methods were through the Maritime National Single Window (NSW) or (for persons numbers only) through the Automatic Identification System (AIS).

UK implementation of Directive 2017/2109/EU lagged as it was expected that the Directive would take effect after Brexit, and would therefore not need to be implemented in the UK, but the deferment of Brexit meant the Directive took effect prior to the end of the Implementation Period (IP), and therefore had to be implemented.

Problem under consideration

The government is seeking to correct the following issues with the 1999 Regulations, particularly as amended by the 2021 Regulations:

- a) to ensure the words “*after which it shall be erased without undue delay*” apply to scenarios in both Regulation 8(2)(a) and r8(2)(b) of the target (1999) Regulations as amended by the 2021 Regulations. This change is to apply the obligation to erase data when it is no longer necessary for the purpose of the Regulations as well as at the moment the ship’s voyage is safety completed (which may be the same moment). It was identified by the Joint Committee on Statutory Instruments (JCSI) that Regulations could currently be read as the phrase applying only to the latter scenario; and
- b) the removal of the word “other” before the term “member states” (referring to European Union member states) in Regulation 3(4) of the 2021 Regulations. This is because the UK has now left the EU and legislation should no longer refer to “other” EU member states but simply to EU members states as the UK is no longer numbered among them. This issue was also identified by the JCSI.

At the same time the Department intends to make the following changes (not identified by the JCSI) namely:

- c) the amendment of the word “Passengers” to read “Persons” on one occasion in the Regulations (Regulation 5(4B)), as crew data must also be reported, so the term “passenger” is too narrow and should be replaced with “Persons”.
- d) it is proposed that it would be expedient for the deadline date of 20 December 2023, which was set by the Directive and the 2021 Regulations for seagoing ships to report data by means of the Maritime National Single Window or (for persons numbers only) the Automatic Identification System (AIS), to be deferred for two years to allow more time for both government and operators to prepare for compliance. It is the Department’s position that the UK is now in a position to make this unilateral change as it is no longer a member of the EU.
- e) it is also considered advisable that the wording of the Exemption Regulation should be widened to increase the Secretary of State’s (SoS) exemption powers to remove restrictions on the type of exemptions which may be granted, allowing the SoS to exempt ships in whatever circumstances and to whatever extent is believed to be appropriate. For ships which are also subject to the International Convention on the Safety of Life at Sea 1974 (SOLAS) exemptions will be limited to the extent permitted under SOLAS. The rationale for expansion of the Secretary of State’s power to grant exemptions is to provide flexibility around exemptions.

Additionally, it has been identified that some of the obligations contained in the 1999 Regulations as amended by the 2021 Regulations are duplicated in the Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020 (“the 2020 Regulations) by virtue of the fact that the ambulatory reference in those Regulations currently covers the whole of Chapter III of SOLAS. The new Persons Counting Regulations therefore amend the ambulatory Reference in 2020 Regulations to exclude Regulation 27 of Chapter III from its scope.

Government intervention

Government intervention is necessary as legislative changes need to be made to achieve the necessary outcomes.

The Joint Committee on Statutory Instruments (JCSI) a House of Commons Committee, have commented on the Regulations. The DfT/MCA are therefore seeking to take action on the comments. They relate to:

- a) currently the phrase “*after which it shall be erased without undue delay*” is contained in Regulation 8(2)(b) but not 8(2)(a). This could logically be interpreted as meaning that the phrase applies to 8(2)(b) but not 8(2)(a), whereas it should apply to both scenarios; and
- b) the use of the word “other” before the term “member states” (referring to European Union member states) in Regulation 3(4) of the 2021 Regulations. This is incorrect because the UK has now left the EU and legislation should no longer refer to “other” EU member states, but simply to EU member states as the UK is no longer numbered among them.

At the same time government intervention is necessary address the following (not identified by the JCSI):

- c) the word “Passengers” is used instead of “Persons” on one occasion in the Regulations (Regulation 5(4B)). This suggests that data relating to passengers must be reported but data relating to crew does not, which is incorrect, and inconsistent with the remainder of the Regulations;
- d) it is proposed that the deadline date of 20 December 2023 which was set by the Directive and the 2021 Regulations for seagoing ships to report data by means of the Maritime National Single Window or (for persons numbers only) the Automatic Identification System (AIS) should be deferred for two years to allow more time for both government and operators to be ready for compliance. Amendment to the 1999 Regulations (as amended by the 2021 Regulations) is required to achieve this. It is the Department’s position that the UK is now in a position to make this unilateral change as it is no longer a member of the EU.
- e) the Exemption provision (Regulation 9) in the 1999 Regulations as amended by the 2021 Regulations implements the EU Exemption policy. It is considered by the UK overly restrictive. This means that it is not possible to exempt operators from some or all of the Regulations when it is safe and pragmatic to do so, resulting in situations where disproportionately heavy burdens are imposed on operators where this is unnecessary. Legislative intervention is required to change this.

Rationale for intervention and intended objectives

- a) to perform the tasks which the JCSI have requested and **which the Department for Transport have undertaken to complete** as detailed above. This change is to require operators to erase personal data when it is no longer necessary to retain it for the purpose of the Regulations (as per Regulation 8(2)(a)), as well as at when moment the ship’s voyage is safety completed as per Regulation 8(2)(b) (although this may be the same moment);
- b) to correct a case of **defective drafting** Regulation 3(4) of the 2021 Regulations where the term “EU member states” is preceded by the word “other”, indicating that the UK is still an EU member, which it is not. This is to ensure the Regulations are clear and consistent to operators, avoiding confusion during compliance;
- c) to correct one instance of **incorrect terminology** in Regulation r5(4B) of the version of the 1999 Regulations as amended by the 2021 Regulations, where the word “passenger”

has been used instead of “person”. “Person” is the correct term because the word “passenger” excludes crew, which should also be included in the reference. This change is to ensure that the Regulations are clear and consistent to operators, avoiding confusion during compliance.

- d) to **postpone the deadline for electronic reporting** of persons data to allow more time for both operators and the government to get a suitable system in place for this and to test it. Also, to have the effect of **spreading the costs of any new equipment imposed by the 2021 Regulations, thereby providing a benefit for industry.**
- e) to amend the exemption provision to **allow the Secretary of State more discretion to exempt a passenger ship from the Persons Counting requirements** where this is considered appropriate and pragmatic. This also has the potential to be **a financial benefit** for a few operators, in that they may not need to incur an additional expense for voyages they only engage in occasionally.

Risks of not meeting the objectives of these Regulations

The risk of not applying the obligation to erase data to Regulation 8(2)(a) and well as (b) is that it operators will not erase data in the 8(2)(a) scenario, resulting in a data breach, and it will not be possible to enforce this obligation on the operator in a court of law.

The risk of not removing the term “other” before member states in Regulation 3(4) of the 2021 Regulations is that the drafting would remain defective and misleading as to the status of the UK in relation to the EU.

The risk of not changing the word “passengers” to “persons” in Regulation r5(4B) of the version of the 1999 Regulations as amended by the 2021 Regulations is that crew are excluded from this provision and operators will derive an incorrect meaning from it. This means that the lack of clarity will continue and the Regulations may be mis-interpreted.

The risk of not deferring the deadline for electronic reporting is that the opportunity to allow operators to spread to cost of compliance over an additional two years will be lost, and the risk of the government not having the electronic reporting functionality in place in the Maritime National Single Window by the deadline will not be decreased.

The risk of not widening the scope of the Secretary of State’s exemption powers in Regulation 9 of the 1999 Regulations as amended by the 2021 Regulations is that it will not be possible to exempt operators from some or all of the Regulations when it is safe and pragmatic to do so, resulting in situations where disproportionately heavy burdens are imposed on operators where this is unnecessary.

1. **Review status:** Please classify with an ‘x’ and provide any explanations below.

	Sunset clause		Other review clause		Political commitment		Other reason		X	No plan to review
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2. Rationale for PIR approach:

A formal PIR would be disproportionate, due to their being no costs and very small and unquantifiable benefits. There will be light touch monitoring and evaluation. The number of exemptions issued will be recorded, and those issued against the new criteria will be reviewed. This will show up whether the changes are having large effects.

The DMA for the 2021 Regulations mentioned that there would be a review of the electronic reporting system and what impacts it has on businesses. It is intended that that review will be deferred for 2 years due to the delayed introduction of the obligation.