

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (ADDITIONAL SAFETY MEASURES FOR BULK
CARRIERS) REGULATIONS 2022

2022 No.

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 This instrument implements the most up to date requirements of Chapter XII in the Annex to the International Convention for the Safety of Life at Sea, 1974 (“the Convention”) to ensure improved safety standards for ships which are bulk carriers. The instrument revokes and replaces the Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 1999 (S.I. 1999/1644) (“the 1999 Regulations”) and makes other consequential amendments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument revokes subordinate legislation made under section 2(2) of the European Communities Act 1972. It therefore engages the procedural and publication requirements of paragraphs 13 to 15 of Schedule 8 to the European Union (Withdrawal) Act 2018, which have been complied with.
- 3.2 The Secondary Legislation Scrutiny Committee, in its 21st Report of Session 2017-19, included an exchange of correspondence between the Committee and the Department in relation to the implementation backlog of international maritime conventions. The Committee, in its 17th Report of Session 2019-21 and in its 11th Report of Session 2021-22, included further correspondence from the Department which described the steps it was taking to address the backlog. These Regulations are one of the statutory instruments, identified in that correspondence, which implement outstanding international obligations to which the Department referred in that correspondence. On 19th October 2021, Robert Courts MP appeared before the Committee to provide a further update on the backlog and to explain how it will be discharged by the Department, and the Committee reported on the outcome in its 17th Report of Session 2021-22.

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 bulk carriers, wherever they may be in the world. It also applies to non-United Kingdom bulk carriers while in United Kingdom waters.

5. European Convention on Human Rights

- 5.1 Robert Courts MP has made the following statement regarding Human Rights:
“In my view the provisions of the Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 2022 are compatible with the Convention rights.”.

6. Legislative Context

- 6.1 The Regulations implement outstanding amendments to Chapter XII of the Convention, which contain additional safety measures for bulk carriers. This fulfils the United Kingdom’s international obligation as a signatory to the Convention. These amendments to Chapter XII took effect since its most recent implementation into United Kingdom domestic law in the Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 1999, which were amended in 2004 by S.I. 2004/2151 to implement updates to the Convention. Although the 1999 Regulations were amended again in 2018, this was only to make minor amendments relating to the United Kingdom’s exit from the European Union. The Regulations revoke and replace the 1999 Regulations and the instruments that amend them.
- 6.2 The outstanding amendments to Chapter XII are contained in International Maritime Organization (IMO) resolutions MSC.168(79), MSC.169(79), MSC.170(79) and MSC.216(82).
- 6.3 Further amendments affecting bulk carriers are made to Chapter II-1 of the Convention (which relates to the construction of ships). These amendments are contained in MSC.215(82), MSC.216(82) and MSC.341(91). These amendments will be implemented in separate regulations implementing Chapter II-1 and will come into force in early 2022.
- 6.4 All the IMO resolutions are available from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR or found on the Foreign, Commonwealth and Development Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch/>).
- 6.5 The Regulations include an ambulatory reference provision in regulation 4 to ensure future amendments to the Convention referenced in the Regulations are automatically incorporated into United Kingdom law. This ensures that United Kingdom domestic law remains in line with the requirements of the Convention. The United Kingdom will continue to be able to scrutinise and, if necessary, object to, any proposed changes in an international arena (in the International Maritime Organization), and to assess the impact of the changes well before any amendment is due to come into force. This will inform decision making. United Kingdom industry and workers’ representatives will also be involved at the stage at which the United Kingdom negotiating strategy is being formulated and will be able to influence it. If the United Kingdom objects to an amendment that is due to come into force internationally, and which is referenced in the Regulations, then the Secretary of State will make amending secondary legislation to prevent that amendment from becoming incorporated into domestic law by way of ambulatory reference. An amendment that is accepted by the United Kingdom will be publicised in advance of its in force date by a Parliamentary Statement to both Houses of Parliament, and by a Marine Guidance Note, which will be available from the MCA from Spring Place, 105 Commercial Road, Southampton, SO15 1EG, and on GOV.UK.

7. Policy background

What is being done and why?

- 7.1 This legislation is being made to ensure that the United Kingdom meets its international obligations in relation to Chapter XII of the Convention, therefore ensuring that the most up-to-date standards for bulk carriers are put into United Kingdom domestic law.
- 7.2 Bulk carriers are ships which transport in bulk unpackaged cargo such as grain, coal, iron ore, and cement. Following the sinking of the bulk carrier the MV Derbyshire in 1980 with the loss of 44 lives, there was a move to improve safety standards for bulk carriers and the seafarers who work on them. This process was initiated by the IMO with the introduction of Chapter XII of the Convention. This was implemented into United Kingdom law by the 1999 Regulations. The 1999 Regulations were amended in 2004 to implement IMO amendments, and were updated again in 2018 to make minor amendments relating to the United Kingdom's exit from the European Union. Since 2004, the six resolutions referred to in section 6 have been agreed in the IMO to further improve safety standards for bulk carriers.
- 7.3 The Regulations increase safety standards for bulk carriers by implementing the most up to date requirements of the Convention affecting bulk carriers, primarily contained in Chapter XII. These include amendments to requirements for bulk carriers of double-side skin construction constructed on or after 1st July 2006, standards and criteria for side structures of bulk carriers of single-side skin construction and standards for owner's inspection and maintenance of bulk carrier hatch covers. The specific changes are set out in paragraphs 7.4 to 7.6.
- 7.4 MSC.170(79) amended and replaced Chapter XII and came into force on 1st July 2006. It included the following amendments to Chapter XII:
- bulk carriers of double-side skin construction of 150m or above constructed on or after 1st July 2006 to comply with the same damage stability requirements as single-side skin constructed vessels;
 - requirement for double-side skin constructed bulk carriers constructed on or after 1st July 2006 to comply with the requirements for single-side skin constructed bulk carriers in order to have sufficient strength to withstand flooding of any one cargo hold to the water level outside the ship;
 - construction standards for bulk carriers of double-side skin construction;
 - requirements for bulk carriers not being capable of complying with regulation 4.3 of Chapter XII (when loaded to the summer load line, being able to withstand flooding of the foremost cargo hold in all loading conditions and remain afloat in a satisfactory condition of equilibrium);
 - amendment of survey reference to recognise enhanced programme of surveys;
 - requirement for a loading instrument capable of providing information on the ship's stability in the intact condition;
 - requirement for bulk carriers of 150m in length and over 10 years old not to sail with any hold empty (loaded to less than 10% of the hold's maximum allowable cargo weight).

- 7.5 MSC.168(79) took effect on 1st July 2006. This resolution contains the standards for side structures within the cargo area of single-side skin bulk carriers of 150m and above, carrying solid bulk cargo having a density of 1780kg/m³. It also includes a further annex providing the renewal criteria for side shell frames and brackets in single-side skin bulk carriers not built in accordance with the standards for side structures in single-side skin bulk carriers. It is referenced and made mandatory in regulation 14 of Chapter XII (restrictions from sailing with any hold empty) by MSC.170(79).
- 7.6 MSC.169(79) took effect on 1st July 2006. This resolution contains the standards for owners' inspections and maintenance of bulk carrier hatch covers. It is referenced and made mandatory in regulation 7 of Chapter XII (survey and maintenance of bulk carriers) by MSC.170(79).
- 8. European Union Withdrawal and Future Relationship**
- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 ("the 2018 Act") but relates to the withdrawal of the United Kingdom from the European Union because it revokes subordinate legislation made under section 2(2) of the European Communities Act 1972.
- 8.2 In accordance with the requirements of the 2018 Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- 9. Consolidation**
- 9.1 As the 1999 Regulations are replaced by this instrument, there is no need for consolidation.
- 10. Consultation outcome**
- 10.1 The Department conducted an eight-week public consultation that ran from 16th June – 10th August 2021. Industry stakeholders, including the Devolved Administrations of Scotland, Wales and Northern Ireland, Trade Unions, operators of bulk carriers, Class Associations, and others, were notified of the consultation and invited to respond by a letter sent by email. An email reminder was also sent to these industry stakeholders two weeks prior to the consultation closing. The consultation was also publicised on the Maritime and Coastguard Agency's social media channels, and a press release was issued.
- 10.2 A total of one response was received from the Law Society of Scotland. Not all questions posed in the Consultation Document were answered. The answers given have been fully and carefully considered with no resulting alterations made to the Regulations or associated documentation.
- 10.3 The consultation and the consultation report can be found at <https://www.gov.uk/government/consultations/consultation-on-additional-safety-measures-for-bulk-carriers-2021>.
- 11. Guidance**
- 11.1 The Department has published a Marine Guidance Note (MGN XXX) which sets out the policy approach and explains the requirements of the Regulations. It is available

on www.gov.uk/topic/ships-cargoes/m-notices and from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

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 instrument relates to the updating and maintenance of existing regulatory standards and no, or no significant, impact on the private or voluntary sector is foreseen. Of the 29 bulk carriers currently registered on the United Kingdom flag, all 29 are classified with the International Association of Classification Societies, which has already implemented these requirements into their own rules. Therefore, all United Kingdom flagged vessels are already compliant with the requirements for bulk carriers in the Convention, which these Regulations implement.

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 is to analyse the companies owning United Kingdom registered ships in order best to determine any impact. It is estimated that around 3% of ships (approximately 25 ships) on the United Kingdom Shipping Register are owned by companies which may employ fewer than 50 people. The vast majority of companies owning United Kingdom registered ships are large multinational, or subsidiaries of multinational, companies, and would therefore fall outside of the scope of the small firms' impact test.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the Chapter XII amendments are primarily concerned with safety measures for bulk carriers. In the interests of safety, it is not possible to justify different requirements just because a company has fewer employees. The benefits of lives potentially saved, even amongst smaller operators, greatly outweigh the impact. All operators are expected to comply with the same standards and, therefore, there will be no disproportionate impact upon one smaller business relative to another.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to review the Regulations. A report of that review will be published 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 instrument.

15. Contact

- 15.1 Peter Rollason at the Maritime and Coastguard Agency Telephone: 020 3817 2081 or email: peter.rollason@mca.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gwilym Stone, Assistant Director for Ship Standards, 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.

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Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) Act 2018 or the European Union (Future Relationship) Act 2020

1. Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 1.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following scrutiny statement in accordance with paragraph 14(4) of Schedule 8 to the European Union (Withdrawal) Act 2018:

“I have taken the following steps to make the draft instrument published in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018 available to each House of Parliament. On [], a draft of the Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 2022 was published on the GOV.UK website and on [] the Written Ministerial Statement “Draft Legislation: The Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 2022” was tabled in the House of Commons. The clerks to the European Scrutiny Committee, the Transport Select Committee and the House of Lords Secondary Legislation Scrutiny Committee were also notified of the publication of the draft of the Regulations.

The Secondary Legislation Scrutiny Committee provided representations concerning the legislative backlog referred to in paragraph 3.2 of the Memorandum (matters of special interest to Parliament) in their 4th Report of Session 2021-22. The report asked for a fuller explanation in the scrutiny statement for the Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021 (“the 2021 Regulations”) about the lack of resources employed in resolving a longstanding problem which has left the Maritime and Coastguard Agency with “inadequate powers of enforcement”. It also stressed that the explanation should set out the extent of the remaining backlog and how long it will take to clear it completely. The scrutiny statement for the 2021 Regulations contained such an explanation, which I have outlined below, together with information on the latest developments.

My predecessor, Kelly Tolhurst MP, updated the Committee on the backlog of maritime legislation and our programme to rectify the situation on 8th June 2020. As the issues raised concerning the backlog have wider application and merit a more detailed response than would be appropriate to include in the final form of the Memorandum, I replied separately by letter to the Chair of the Committee on this subject on 5th July 2021.

On 21st September 2021, Baroness Vere of Norbiton wrote to the Committee, once again recognising the backlog of international measures, outlining progress made to date and detailing the full programme of maritime legislation expected to be delivered by 2023. On 19th October 2021, I appeared before the Committee to provide a further update on the backlog and to explain how it will be discharged by my Department.”.

2. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 2.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement, in accordance with paragraph 15(3) of Schedule 8 to the

European Union (Withdrawal) Act 2018, regarding regulations made under the European Communities Act 1972:

“In my opinion, there are good reasons for the Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 2022 to revoke the Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 1999 (“the 1999 Regulations”). This is because of the need to implement amendments to Chapter XII of the Annex to the International Convention for the Safety of Life at Sea 1974 (“the Convention”) which update the safety standards for bulk carriers. The existing legislation implementing Chapter XII was made more than 22 years ago and it was therefore considered that new legislation, incorporating the Convention requirements by cross-reference and including ambulatory reference provision, was appropriate. Regulation 13 of the 1999 Regulations (equivalents) also provides, for the purpose of granting an equivalence, for acceptance of a verification or test where that verification or test was carried out by a body or laboratory of an EEA State and in accordance with a standard, Code of Practice, specification or technical description of an EEA State. It is appropriate that the references to “EEA State”, the definition of which was amended in the 1999 Regulations by section 2(2) of the European Communities Act, be removed from the domestic implementing legislation as the same provision can be made by reference to a decision of the Secretary of State.”

- 2.2 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding regulations made under the European Communities Act 1972:

“Paragraph 15(3)(a): law which is relevant to the revocation:

Requirements relating to additional safety measures for bulk carriers are currently contained in the Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 1999 (“the 1999 Regulations”). The 1999 Regulations were amended by the Merchant Shipping (Additional Safety Measures for Bulk Carriers) (Amendment) Regulations 2004 (“the 2004 Regulations”) and the Merchant Shipping (Miscellaneous Provisions) (Amendments etc.) (EU Exit) Regulations 2018 (“the 2018 Regulations”), which amended the definition of “EEA State” by way of the power contained in section 2(2) of the European Communities Act. Paragraph 6.1 of the Memorandum (legislative context) explains the purpose of the 1999 Regulations.

Paragraph 15(3)(b): effect of the revocation on retained EU law

The Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 2022 (“the 2022 Regulations”) revoke the 1999 Regulations, the 2004 Regulations and the provisions in the 2018 Regulations amending the 1999 Regulations. The 2022 Regulations update the safety requirements for bulk carriers in accordance with Chapter XII of the Annex to the International Convention for the Safety of Life at Sea 1974. The effect of the revocation is also to remove the reference to “EEA State”, which was included in the 1999 Regulations in relation to the granting of equivalents; a verification or test carried out by a body or laboratory of an EEA State and in accordance with a standard, Code of Practice, specification or technical description of an EEA State, could be accepted for the purpose of granting such equivalence. Such provision is no longer needed as appropriate provision is made by reference to the decision of the Secretary of State.”