

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (INSPECTION OF RO-RO PASSENGER SHIPS AND
HIGH-SPEED PASSENGER CRAFT) REGULATIONS 2023

2023 No. [XXXX]

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument revokes and replaces the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001 (S.I. 2001/152) (“the 2001 Regulations”).
- 2.2 The Regulations provide for an inspection regime for ro-ro passenger ships and high-speed passenger craft to prevent accidents and loss of life. They detail the scope and frequency of inspections which are to be conducted. In doing so, they simplify the existing safety inspection regime by removing the overlap with risk-based port state control inspections that are conducted in accordance with the Paris Memorandum of Understanding (“the Paris MOU”) as prescribed in the Merchant Shipping (Port State Control) Regulations 2011. The Regulations keep parity with current EU standards to ensure consistency across all ferry routes to and from the UK, regardless of route, for the operational and safety benefit of UK industry and passengers.

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 as an outstanding measure to be completed.
- 3.3 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. Further correspondence from Robert Courts MP and Trudy Harrison MP,

providing detail on the progress made to clear the backlog, was included in the Committee's 37th Report of Session 2021-22.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is ro-ro passenger ships and high-speed passenger craft which are United Kingdom ships, wherever they may be, and ro-ro passenger ships and high-speed passenger craft which are non-United Kingdom ships, while they are within United Kingdom waters, and which are operating-

(a) a regular service between a port in the United Kingdom and a port of a country other than a Member State of the European Union, or

(b) a regular service between ports in the United Kingdom in sea areas in which ships of Class A may operate in accordance with the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000 (S.I. 2000/2687).

5. European Convention on Human Rights

5.1 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport, has made the following statement regarding Human Rights:

“In my view the provisions of the Merchant Shipping (Inspections of Ro-Ro Passenger Ships and High-Speed Passenger Craft) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

6.1 The 2001 Regulations implemented Council Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.99, p.1). This was revoked and replaced by Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC. The obligation to implement any further EU law ceased on the Implementation Period (IP) completion day, but the desire to retain a distinct safety inspection regime for ro-ro passenger ships and high-speed passenger craft which has parity with that of neighbouring European States remains. UK registered ro-ro passenger ships and high-speed passenger craft visiting EU countries will be subject to inspection by those countries under the European legislation. The Regulations will provide a consistent inspection regime for ro-ro passenger ships and high-speed passenger craft so that the same standards have to be met by all such vessels operating out of the UK, regardless of the route they take.

6.2 The requirements for pre-commencement inspections and regular inspections are set out in regulations 5 and 7 respectively. Regulation 6 provides for exceptions to the requirement to carry out a pre-commencement inspection.

6.3 Regulation 8 makes provision for detention of ships and service of prohibition of departure notices prohibiting a ship's departure where any deficiencies confirmed or revealed by an inspection undertaken by the UK Maritime Authority, in accordance

with these Regulations in relation to the ship have not been rectified and the deficiencies are hazardous to health and safety.

- 6.4 These Regulations make use of the power in section 306A of the Merchant Shipping Act 1995 to make ambulatory references to international instruments, and the relevant provision is contained in regulation 2. The effect is that references to each of the international conventions are to be construed as references to the international convention as modified from time to time in accordance with its relevant articles, and if it is replaced, as a reference to the replacement. This means the Regulations will continue to refer to updated international technical requirements without the need for further amendment. The international conventions referred to in the Regulations are the International Convention on Load Lines 1966, the International Convention for the Safety of Lives at Sea 1974, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, the Convention on the International Regulations Preventing Collisions at Sea 1972 and the International Convention on Tonnage Measurements for Ships 1969.
- 6.5 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, 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 Maritime & Coastguard Agency (MCA) from Spring Place, 105 Commercial Road, Southampton, SO15 1EG, and on <https://www.gov.uk>.

7. Policy background

What is being done and why?

- 7.1 The new Regulations replace the 2001 Regulations. The 2001 Regulations provided for safety rules and standards for ro-ro passenger ships and high-speed passenger craft in accordance with Directive 1999/35 to introduce rules for passenger ship safety, stressing the importance of ensuring the highest standards of safety in EU waters. Whilst it was a member of the EU, the UK supported the objectives of the Directive. Following the European Commission regulatory fitness and performance programme review (REFIT) to simplify existing European law, the 1999 Directive was replaced by the 2017 Directive which simplified the regime and avoids overlap with the Port State Control Inspection Regime, a concurrent initiative impacting all vessels not just ro-ro passenger ships and high-speed passenger craft.
- 7.2 The UK is a signatory to the Paris MOU for Port State Control Inspections (implemented by the Merchant Shipping (Port State Control) Regulations 2011 (SI 2011/2601)) which establishes an inspection regime for all internationally sailing vessels based on risk-based assessment. There are 27 signatories to the Paris MOU, many of which are EU member States, and it includes inspection standards, scope and

frequency, minimum qualifications for inspectors and training expectations. UK compliance with the Paris MOU was not affected by the EU Exit and we still meet our Port State Control obligations, sharing the inspection effort in the region with our partners. Vessels subject to these Regulations operating on international voyages within the Paris MOU Region are already subject to priority-based inspection in accordance with the Merchant Shipping (Port State Control) Regulations 2011. Such inspections will continue at a frequency determined in accordance with the level of risk for each vessel.

- 7.3 These Regulations will simplify the existing safety inspection regime for ro-ro passenger ships and high-speed passenger craft operating out of the UK and will do so in a way that maintains high standards of safety for UK passenger ships or passenger ships in UK waters. The Regulations will ensure that the UK's inspection regime for these ships remains in step with standards applied by our European neighbours and provides a level playing field for the future benefit of this sector of the industry. These Regulations eliminate any overlaps between Port State Control inspections and the current inspection regime applicable to ro-ro passenger ships and high-speed passenger craft in regular service. They will reduce the inspection effort of the Maritime and Coastguard Agency (MCA) without a reduction in safety standards and will benefit the shipping industry by providing a level of certainty about when inspections will take place and the requirements that will need to be met.
- 7.4 These Regulations do not affect the right of UK inspectors to board vessels in UK waters at any reasonable time for the purposes of carrying out an inspection under existing provisions in the Merchant Shipping Act 1995. These Regulations set out a formal framework for the scope, frequency and purpose of inspections. The Regulations will help clarify the requirements to be met for a successful inspection so that they are able to plan ahead and maintain key transport services.

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 2001 Regulations are replaced by this instrument there is no need for consolidation.

10. Consultation outcome

- 10.1 The Department conducted a public consultation between 19th July and 16th August 2021. The consultation documents were posted on www.gov.uk. Industry stakeholders, including the Devolved Administrations of Scotland, Wales and Northern Ireland, Trade Unions, the relevant industry associations and all companies which operate vessels affected by the Regulations were notified of the consultation and invited to respond by a letter sent by email by the Maritime and Coastguard

Agency. The consultation was also publicised on the Maritime and Coastguard Agency's social media channels, and a press release was issued.

- 10.2 Two responses were received, from the UK Chamber of Shipping and one individual. Both requesting clarity on minor points relating to the scope of the policy. There were no responses to the questions posed in the consultation document. The MCA has responded by modifying the guidance to clarify the intent and scope of the policy.
- 10.3 The consultation and the consultation report can be found [here](#). A hard copy version can be obtained from the Maritime and Coastguard Agency of Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone 020 3817 2000 and email info@mcga.gov.uk).

11. Guidance

- 11.1 Guidance regarding the operation of the Regulations has been published by the MCA in Marine Guidance Note MGN 635. Copies of this MGN 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.

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 because the level of impact of the instrument was assessed to be extremely low, putting it well below the Government's threshold of £5m per year. The affected known fleet at the time of the analysis consisted of 34 vessels and the policy was subjected to a proportional cost benefit analysis. This instrument is not expected to have substantial broader social, environmental, financial or economic impacts.

13. Regulating small business

- 13.1 The legislation may apply 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. At consultation stage no evidence was found that any ships affected by these Regulations were owned by small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the instrument is primarily concerned with safety inspections. 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 and 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 Suzanne Chesson, Head of Inspection Operations UK Maritime Services at the Maritime and Coastguard Agency can be contacted with any queries regarding the instrument. Telephone: 07827990552 or email: Suzanne.Chesson@mcga.gov.uk
- 15.2 Katy Ware, Director of UK Maritime Services, at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

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.
Appropriateness	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, Baroness Vere has made the following scrutiny statement in accordance with paragraph 14(4) of Schedule 8 to the European Union (Withdrawal) Act 2018:
- 1.2 “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 (Inspection Of Ro-Ro Passenger Ships and High-Speed Passenger Craft) Regulations 2023 was published on the GOV.UK website and on [] the Written Ministerial Statement ‘Draft Legislation: The Merchant Shipping (Inspections of Ro-Ro Passenger Ships and High-Speed Passenger Craft) Regulations 2023’ 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.”

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, Baroness Vere, 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.
- 2.2 “In my opinion, there are good reasons for the Merchant Shipping (Inspections of Ro-Ro Passenger Ships and High-Speed Passenger Craft) Regulations 2023 to revoke the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001. This is because of the need to simplify the existing safety inspection regime for ro-ro passenger ships and high-speed passenger craft and to ensure that the UK’s inspection regime for these ships remains in step with our international obligations for the future benefit of this sector of the industry. The existing legislation was made over 20 years ago to implement Council Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.99, p.1). This was revoked and replaced by Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and it is therefore considered that new legislation including an ambulatory reference provision to apply where international conventions are referenced is appropriate. New legislation will eliminate any overlaps between Port State Control inspections and the current inspection regime applicable to ro-ro passenger ships and high-speed passenger craft in regular service. The obligation to implement any further EU law requiring implementation of an EU inspection regime ceased on the Implementation

Period (IP) completion day, but the desire to retain a distinct safety inspection regime for ro-ro passenger ships and high-speed passenger craft which has parity with that of neighbouring European States remains.”

DRAFT