



Maritime &  
Coastguard  
Agency

# Consultation on the proposal to make the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2023

## **Consultation Outcome Report**

Summary of consultee comments and government responses  
to them

April 2023

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## Section 1: Introduction

1. The Maritime and Coastguard Agency (MCA), an executive Agency of the Department for Transport (DfT), carried out a public consultation from **28 February** to **28 March 2023** on the proposal to make the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2023. The Regulations amend the Merchant Shipping (Counting and Registration of Persons On Board Passenger Ships) Regulations 1999 (“the 1999 Regulations”) and the Merchant Shipping (Counting and Registration of Persons On Board Passenger Ships) (Amendment) Regulations 2021 (“the 2021 Regulations”). The consultation was published on [GOV.UK](https://www.gov.uk), and notifications of the consultation were sent to marine industry stakeholders, government Departments and maritime bodies with professional and specialist functions.
2. Amending the Regulations is necessary to implement drafting improvements proposed by the Joint Committee on Statutory Instruments (JCSI), a House of Commons parliamentary Committee, which were agreed by DfT. The government saw these Regulations as a convenient legislative vehicle to make some other improvements to existing legislation on Persons Counting, including the exploitation of two post EU-Exit opportunities.
3. The Regulations therefore make amendments relating to:
  - a) the adjustment of the drafting so that the words *“after which it shall be erased without undue delay”* (currently contained in r8(2)(b)) are moved to the end of r8(2) so they apply to both r8(2)(a) and r8(2)(b) of the target (1999) Regulations as amended by the 2021 Regulations. This change is to clarify 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 safely completed (which may be the same moment). This was proposed by the JCSI and agreed by DfT; and
  - b) the removal of the term “other member states” (referring to European Union member states). 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 member states as the UK is no longer numbered amongst them. This was proposed by the JCSI and agreed by DfT;
  - c) the amendment of the word “Passengers” to read “Persons” on one occasion in the Regulations, as crew data must also be reported, so the term “passenger” is too narrow and should be replaced with “Persons”. This brings it into line with the rest of the Regulations which already have this effect;
  - d) the postponement of the deadline date of 20 December 2023 which was set by EU Directive 2017/2109/EU and the 2021 Regulations for seagoing ships to report data by means of the Maritime National Single Window (MNSW) or (for persons numbers only) the Automatic Identification System (AIS) should be deferred for two years to allow more time for both operators and government to

be ready for compliance. The UK is now in a position to make this unilateral change as it is no longer a member of the EU;

- e) the widening of 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 any passenger ships in whatever circumstances and to whatever extent is believed to be appropriate, except for passenger ships which are subject to the International Convention on the Safety of Life at Sea 1974 (SOLAS) where exemptions to such requirements is limited to the extent permitted by SOLAS. The rationale for expansion of the SoS's power to grant exemptions is to provide greater flexibility around exemptions. Currently, a small number of vessels have to comply with more onerous and costly reporting requirements due to technicalities or unusual occasional circumstances. The proposed change will give the government more discretion to relieve this burden on business in a small number of cases, for example operators who ordinarily perform activities insufficient to qualify for the more stringent reporting requirements but risk being brought into scope due to very rare instances of voyages which are longer or go further out from shore than normal. This change includes the removal of definitions of "Sea Area D", "Regular Service", "Regular Community Service" and "High Speed Craft" as reference to them in the Regulations will no longer be required, because they will no longer be factors when determining exemption eligibility;
- f) the amendment of the Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020 ("the 2020 Regulations") to disapply the ambulatory reference which exists in those Regulations to the persons data obligations contained in Regulation 27 of Chapter III of SOLAS. This will correct a legislative duplication which currently exists, and to keep all the persons counting obligations together.

## Section 2: Consultation

4. The consultation was carried out between **28 February** and **28 March 2023**.
5. A total of **seven** responses were received. Three of these were from ferry operators, one from an energy exploration / production company, one from a seafaring officer, one from a shipowners' representative body and one from a MCA surveyor who is not directly associated with producing the Regulations.

## Section 3: Consultation outcome

### 6. Questions posed

#### Question 1

Do you agree with the proposed postponement of the deadline for electronic reporting of persons data through the Maritime National Single Window (MNSW) or (persons numbers only) through the Automatic Identification System (AIS) from 20 December 2023 to 20 December 2025?

#### Responses

All but one respondent confirmed they agreed with the proposal. The one who did not agree mentioned the importance of having available, in the event of an accident, a quick and reliable register of persons on board.

#### Government comments

The government appreciates the support of the majority of respondents for this measure. In response to the comments of the one who answered “no” to the question, the government emphasises that the postponement of the measure only relates to the electronic reporting of the data, and does not remove any existing requirement to gather the data and deposit it ashore. So, the persons data will be available prior to 20 December 2025, for emergency use as required, but will not need to be reported by the specified electronic reporting methods.

#### Question 2

Do you agree with the proposed flexibility to be introduced to the Exemption provision in the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999?

#### Responses

All respondents responded in the affirmative to this question.

One respondent suggested clarification on the position of exemptions for vessels which do not strictly fall under the international Convention for the Safety of life at Sea 1974 (SOLAS) but are required to comply with SOLAS standards.

Another respondent encouraged transparency to promote consistency of application of the exemptions.

#### Government comments

The government welcomes the unanimous support for this measure. The government will consider clarification for the position relating to vessels which are not strictly subject to SOLAS but to which SOLAS is applied in the MSN 1794(M) amendment.

The government will encourage transparency to promote consistency.

### **Question 3**

Do you believe there will be any positive or negative impacts to businesses as a result of this measure?

#### **Responses**

Three respondents welcomed the additional flexibility that the measure would afford to businesses.

One agreed there would be impacts but did not specify what they thought they would be, or whether they would be positive or negative.

One respondent answered “no” to the question but their supporting comments indicated they thought these measures would require passengers to provide additional information in advance of travelling, which they do not.

One respondent answered “no” to the question, but their supporting comments indicated they thought these measures would require further modification of their systems, which they do not. It is believed they were thinking of the introduction of electronic reporting through the MNSW or AIS by the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2021, which came into force on 22 February 2021.

One respondent did not answer the question.

#### **Government comments**

The government appreciates the responses to this question which seem to confirm that impacts are positive.

It is believed that confusion has arisen where two respondents seem to think that these Regulations are introducing the electronic reporting requirements (through MNSW or AIS) which is actually not the case – those requirements are actually already in place. These Regulations are postponing the deadline for compliance with the electronic reporting obligation, permitting the data to be communicated in the way it currently is for two additional years.

### **Question 4**

Do you believe there will be any impacts on small or micro businesses?

#### **Responses**

Three respondents answered that they did not think there would be any impacts on small or micro businesses.

One respondent answered that it would allow them more time for compliance.

One respondent answered that they thought it would create a little more paperwork for them.

Two respondents did not answer this question.

#### **Government comments**

The government agrees that one of the proposed measures, the delaying of the electronic reporting deadline, will allow more time for compliance for small or micro businesses. However, this has the potential to benefit many businesses not just small and micro businesses.

The government does not agree that any additional paperwork will be created by the introduction of these measures, except that if a small or micro business applies for an exemption this may require a little paperwork. However, if an operator makes such an application, this is optional, and presumably means that they feel the benefits outweigh the small amount of additional paperwork required.

The government does not believe that any of these responses have highlighted any issues where small or micro businesses are prejudiced.

### **Question 5**

Is the draft Merchant Shipping Notice (MSN) amendment accurate and free from errors?

#### **Responses**

Six of the seven respondents considered the MSN was accurate and free from errors.

The remaining respondent pointed out that some comments had been left in the document from earlier pre-publication drafts, and this was rectified as soon as it was brought to the government's attention. The respondent did not raise any errors or omissions with the substance of the MSN.

#### **Government comments**

The government thanks respondents for their comments, and the respondent for pointing out the remaining comments in the document.

### **Question 6**

Do you have any additional comments to add to the response?

#### **Responses**

a) A respondent mentioned that the proposed delay to the electronic reporting deadline would allow operators more time to adopt a new system and put in place any necessary training for it.

b) A respondent commented they were not clear if the change from "passengers" to "persons" would have an effect on ships operating under the Small Seagoing Passenger Ships (SSPS) Code or the High Speed Offshore Service Craft (HS-OSC) Code requirements when carrying more than 12 persons.

c) A respondent requested that details of the MNSW inputs is shared as soon as possible so they could make the necessary IT changes.



d) A respondent extolled the benefits of persons data collection and reporting, and seemed to be suggesting that additional data should be collected on persons on board even where only persons numbers are currently required.

e) One respondent broadly welcomed the proposals as they considered the proposed flexibilities useful, and the proposals would help decisions to be made at a more local level.

Additionally, one respondent commented on the government's approach to dealing with legislation which has European Union origins, which are noted but are outside the scope of this consultation, and one respondent had no comments to add.

#### Government comments

a) The government appreciates the confirmation that the postponement of the deadline for electronic reporting would be welcomed.

b) The change from "passengers" to "persons" is simply to bring that word in line with the remainder of the obligations in the Regulations, and does not change the effect of the Regulations.

c) The government intends to share any necessary detail in relation to the MNSW as early as possible. However, these proposed Regulations seek to delay the deadline for compliance with the electronic reporting obligation, giving a longer time-period for operators to make software changes.

d) The government is very much in favour of gathering passenger data for search and rescue purposes. The amount of data which needs to be collected needs to be balanced with other factors, such as the length of the voyage and practical considerations. This is why passenger vessels on voyages of under 20 miles are required to record persons numbers only. The government will keep this under review, although it falls outside the scope of this consultation.

e) The government appreciates the positive comments on the proposals.

## **Section 4: Next steps**

7. The government will finalise the Regulations with a view to bringing them into force during July 2023.

8. The government would like to take this opportunity to thank all who responded to this consultation.