

**EXPLANATORY MEMORANDUM TO**  
**THE MERCHANT SHIPPING (ANTI-FOULING SYSTEMS) REGULATIONS 2024**

**2024 No. 509**

**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 His Majesty.

**2. Declaration**

2.1 Lord Davies of Gower, Parliamentary Under Secretary of State at the Department for Transport, confirms that this Explanatory Memorandum meets the required standard.

2.2 Katy Ware, Director for United Kingdom Maritime Services at the Maritime and Coastguard Agency, confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

3.1 Megan Cousins-Booth at the Maritime and Coastguard Agency, Telephone: 07769 284548 or email: [megan.cousins-booth@mcga.gov.uk](mailto:megan.cousins-booth@mcga.gov.uk), can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

4.1 These Regulations implement the latest version of the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (“the Convention”), including amendments to the Convention made by International Maritime Organization (IMO) Resolution MEPC.331(76).

4.2 These Regulations revoke and replace Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14th April 2003 on the prohibition of organotin compounds on ships and the Merchant Shipping (Anti-Fouling Systems) Regulations 2009 (S.I. 2009/2796) (both of which implemented the previous version of the Convention), and apply, with certain limited exceptions, to United Kingdom ships wherever they are (including those engaged on domestic voyages) and to non-United Kingdom ships when in United Kingdom waters or controlled waters (regulation 4).

*Where does the legislation extend to, and apply?*

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

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all United Kingdom ships, whether within United Kingdom waters or anywhere else in the world, and non-United Kingdom ships while in United Kingdom waters or controlled waters.

## 5. Policy Context

### *What is being done and why?*

- 5.1 These Regulations implement the up-to-date version of the Convention. The Convention aims to protect the marine environment and human health from the adverse effects of anti-fouling systems. Anti-fouling systems are the coating, paint, surface treatment, surface or device put on the outside of a ship's hull to prevent the attachment of unwanted organisms. Anti-fouling systems work largely by releasing biocides into the water, therefore keeping the hulls clean and protected from erosion and corrosion. They also have environmental benefits, such as improving fuel efficiency and preventing the spread of invasive non-native species. Unfortunately, they can also be harmful to marine life. Some of the compounds found in certain anti-fouling systems can accumulate in marine organisms and find their way into other marine wildlife and further up the food chain. The Convention therefore allows for the prohibition of certain compounds where required.
- 5.2 Following the entry into force of the Convention in 2008, concerns around the use of the biocide, cybutryne, as an active substance in ships' anti-fouling systems increased. A number of studies became available setting out the environmental and ecological impacts of cybutryne, with findings showing that cybutryne leaches into the environment following the anti-fouling systems natural deterioration. Significant negative impacts on the marine environment were observed, such as toxicity for a variety of maritime organisms, and consequently the European Union ("the EU") implemented a ban on cybutryne as a biocide for EU countries from January 2017 (in Commission Implementing Decision (EU) 2016/1078). Consequently, in 2017 cybutryne was 'not approved' by the Health and Safety Executive for use in anti-fouling systems. This prevented the manufacture or sale of anti-fouling systems that contain cybutryne in the United Kingdom.
- 5.3 Following a successful prohibition of cybutryne in the EU, the International Maritime Organization amended Annex 1 to the Convention to include the prohibition of cybutryne in 2020 (Marine Environment Protection Committee 76) with corresponding amendments to the International Anti-Fouling System Certificate to reflect the changes. These amendments entered into force for new ships on 1 January 2023 whilst existing ships were given a 60-month rolling implementation period to replace or seal existing anti-fouling system if it contains cybutryne.
- 5.4 These Regulations therefore implement this latest amendment to the Convention to prohibit the use of cybutryne in anti-fouling systems, as well as introduce provision for ambulatory referencing and revoke and replace the earlier implementing instruments to consolidate the United Kingdom's anti-fouling systems regulatory framework.
- 5.5 The intended effects of this measure are (a) to continue to protect United Kingdom waters from prohibited substances in anti-fouling systems, (b) to rely on ambulatory referencing to reduce legal uncertainty and red tape for industry by always giving effect to the most up to date relevant international obligations, and (c) to consolidate the UK's anti-fouling systems regulations to assist all users of the legislation.
- 5.6 The survey and certification requirements remain largely the same with certificates for existing ships being replaced during the routine cycle of surveys. These Regulations align the survey and certification requirements with those in the Convention, and these differ from the previous requirements under Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14th April 2003 on the prohibition of

organotin compounds on ships (“the EC Regulation”). These Regulations require ships of 400 gross tonnage and above that are engaged on international voyages to be subject to the survey and certification requirements. This is to ensure that their anti-fouling system fully complies with the Convention requirements. Ships of less than 400GT and of 24 metres or more in length, engaged on international voyages, are required to carry a Declaration which must be accompanied by appropriate documentation (for example, a paint receipt). The EC Regulation applied survey and certification requirements to ships engaged on all voyages and not just those engaged on international voyages as is the case in accordance with the Convention. The survey and certification requirements do not apply to fixed or floating platforms, floating storage units or floating production storage and off-loading units.

- 5.7 Legislation has been identified as the most effective method to achieve the intended outcomes of protecting the marine environment by prohibiting the use of harmful substances in anti-fouling systems, not least by facilitating effective enforcement of breaches in United Kingdom waters. It also fulfils the United Kingdom’s international obligations, maintains the United Kingdom’s reputation as a responsible flag state and party to the Convention and ensures a level playing field for United Kingdom ships.

*What was the previous policy, how is this different?*

- 5.8 The Convention was previously implemented by a combination of the EC Regulation (formerly part of Retained EU Law), and the Merchant Shipping (Anti-Fouling Systems) Regulations 2009 (S.I. 2009/2796) (“the 2009 Regulations”).
- 5.9 The basis for the new approach is described in paragraphs 5.2 to 5.4. These Regulations consolidate existing policy whilst updating domestic legislation so as to give effect to the latest amendments to the Convention i.e. the prohibition of cybutryne. The basis for the need to legislate is set out in paragraph 5.7.

## **6. Legislative and Legal Context**

*How has the law changed?*

- 6.1 The Convention, adopted on 5th October 2001, came into force internationally on 17th September 2008 and contains provision to ensure that anti-fouling systems do not contain substances which are harmful to marine life and the marine environment. The Convention was implemented in the United Kingdom by virtue of the adoption by the European Community of the “EC Regulation”, and in addition by the 2009 Regulations.
- 6.2 Annex 1 to the Convention prohibits the use of specified substances in anti-fouling systems. The IMO adopted Resolution MEPC.331(76) on 17th June 2021, which amended Annex 1 to the Convention to prohibit the use of a new specified substance (cybutryne) in anti-fouling systems, and this prohibition entered into force for new ships on 1st January 2023. These Regulations give effect in the United Kingdom to the amendment made by IMO Resolution MEPC.331(76).
- 6.3 To consolidate the United Kingdom’s regulatory framework for controlling the use of anti-fouling systems into a single, comprehensive instrument, these Regulations revoke and replace the EC Regulation and the 2009 Regulations. This also serves the purpose of revoking former Retained EU Law (now assimilated law) and tidying up the statute book.
- 6.4 Although the ambulatory reference provision in regulation 5 will allow future amendments to the requirements or prohibitions in the Convention to be incorporated

automatically into domestic law, the United Kingdom will, nevertheless, be able to continue to scrutinise (and, if necessary, object to) proposed changes in an international arena (in the IMO) and assess their impact well before any amendment is due to come into force, which will inform decision making. United Kingdom industry and workers' representatives will also be involved at the stage that the United Kingdom negotiating strategy is being formulated and will be able to influence it. If an amendment is objected to by the United Kingdom but will come into force internationally, the Secretary of State will make amending secondary legislation to prevent that amendment coming into force domestically. An amendment that is accepted will be publicised in advance of its in force date by means of a Parliamentary Statement to both Houses of Parliament and by way of an M-Notice, which will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk>.

- 6.5 Once a future amendment to Convention comes into force, it can be obtained in copy from the IMO of 4 Albert Embankment, London SE1 7SR, or found on the Foreign, Commonwealth and Development Office online treaties database: <https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/>. Until such publication is made on the treaties database an amendment will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk>.

*Why was this approach taken to change the law?*

- 6.6 The Department considers that this is the most appropriate means of legislating to make the necessary changes. The need to implement the recent international amendment to the Convention presented an opportunity to consolidate the existing assimilated law (which comprised two separate pieces of legislation) with the provision to implement the international amendment into a single instrument.

## **7. Consultation**

*Summary of consultation outcome and methodology*

- 7.1 A four-week public consultation on the draft of these Regulations took place between 13 November and 11 December 2023. Notifications of the consultation were sent to more than 250 organisations including shipping and marine industry companies, government departments and agencies, and other interested parties. A total of 4 responses were received from Natural England, Port of London Authority, Scottish Environment Protection Agency and the National Federation of Fishermen's Organisations. These have been fully considered.
- 7.2 The consultation can be found at: <https://www.gov.uk/government/consultations/consultation-on-draft-merchant-shipping-anti-fouling-systems-regulations-2024>
- 7.3 The post consultation report can be found at: <https://www.gov.uk/government/consultations/consultation-on-draft-merchant-shipping-anti-fouling-systems-regulations-2024/outcome/consultation-outcome-report-consultation-on-draft-merchant-shipping-anti-fouling-systems-regulations-2024#section-1-introduction>
- 7.4 Whilst the policy subject area of these Regulations is merchant shipping, which is a reserved matter, the Devolved Administrations were consulted as part of the formal public consultation and they expressed no objections to these Regulations.

## **8. Applicable Guidance**

- 8.1 Further guidance on the implementation and effect of the Convention to supplement these Regulations is available in Marine Guidance Note 398 (M+F) Amendment 1 which is available from the Maritime & Coastguard Agency (MCA) of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk/government/collections/marine-guidance-notice-mgns>.

## **Part Two: Impact and the Better Regulation Framework**

## **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for this instrument because as the net costs to businesses per year are small, impacts are below the £5 million thresholds in annual net costs to businesses.

### *Impact on businesses, charities and voluntary bodies*

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument represents a minor update to the existing regulations. The main group impacted will be ship owners and operators who apply anti-fouling systems outside of the United Kingdom, EU or USA where the use of cybutryne has already been prohibited. The cost for those affected is expected to be minimal, below the +/- £5 million threshold in net annual costs to businesses required for a full impact assessment.
- 9.3 The legislation does impact small or micro businesses.
- 9.4 No specific action is proposed to minimise regulatory burdens on small or micro businesses. The basis for the final decision on what action to take to assist small or micro businesses is informed by what is permitted under the Convention. The United Kingdom is committed to fully implement the Convention even where this applies to ships owned by such businesses. To minimise the impact of the requirements on small businesses the survey and certification regime established by the Convention only applies to ships over 400 gross tonnage (GT) and above engaged in international voyages. Ships of less than 24 metres or more in length but less than 400GT engaged in international voyages require a self-declaration signed by the owner or the owner's authorised agent.
- 9.5 There is no, or no significant, impact on the public sector because this instrument represents a minor update to the existing regulations. Consequently, MCA personnel engaged in ship inspections will need little time to familiarise themselves with the changes and will need little extra time to check the Anti-Fouling Certificate during inspections of ships. The use of ambulatory referencing represents a cost saving for the public sector as the legislation will take less time to update.

## **10. Monitoring and review**

### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 The approach to monitoring this legislation is to undertake a post-implementation review no later than five years from the coming into force of these Regulations, and every five years thereafter. This review will be published. The impacts of these Regulations will be reviewed by monitoring MCA data on ship surveys and inspections and using stakeholder meetings. This will allow the evaluation of compliance, desired effects on safety and problems encountered after implementation.

10.2 A statutory review clause is included in the instrument.

**Part Three: Statements and Matters of Particular Interest to Parliament**

**11. Matters of special interest to Parliament**

11.1 None.

**12. European Convention on Human Rights**

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**13. The Relevant European Union Acts**

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).