

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARINE EQUIPMENT) (AMENDMENT ETC.) (EU
EXIT) REGULATIONS 2018 (“REGULATIONS”)

[2018] No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 These Regulations, which are made under powers in section 8(1) of the European Union (Withdrawal) Act 2018¹ (“the Act”), amend the Merchant Shipping (Marine Equipment) Regulations 2016² (“2016 Regulations”) to address failures of the 2016 Regulations to operate effectively and other deficiencies arising as a result of the United Kingdom’s exit from the European Union (“EU”). The purpose of these Regulations is to ensure that the UK can continue to comply with its international obligations by applying international standards to marine equipment placed on UK ships and enforce those standards. These Regulations require marine equipment to be approved by a UK Approved Body³ and provide for the acceptance of marine equipment which has been approved in the EU by an EU Notified Body⁴. These Regulations also make a minor consequential amendment to the Merchant Shipping (Fire Protection) Regulations 2003⁵ (“2003 Regulations”) and revoke Commission Implementing Regulation (EU) 2018/733⁶ (“EU Implementing Regulation”).

Explanations

What did any relevant EU law do before exit day?

- 2.2 EU Directive 2014/90/EU⁷ (“the Directive”) on marine equipment provides for the uniform application of international standards for equipment placed or to be placed on board ships registered in the EU and for the enforcement of those standards. The Directive provides for conformity assessment procedures to test marine equipment to ensure they meet relevant design, construction and performance requirements with such equipment to be approved by an EU Notified Body (an organisation designated by an EU country to assess the conformity of marine equipment before being placed on the market or on board EU ships). The 2016 Regulations implemented the Directive into domestic law.

¹ 2018 c.16.

² S.I. 2016/1025.

³ Approved body is defined in regulation 2(5) of these Regulations

⁴ Notified body is defined in regulation 2(13) of these Regulations.

⁵ S.I. 2003/2950, amended by S.I. 2005/2114 and S.I. 2016/1025.

⁶ OJ L123, 18.5.2018, p.89.

⁷ OJ L257, 28.8.2014, p.146.

Why is it being changed?

- 2.3 The 2016 Regulations will be preserved in UK law by operation of the Act. International maritime law requires flag States to ensure that marine equipment complies with certain safety requirements and to establish a system of certification and control. These Regulations make the necessary changes to the preserved 2016 Regulations to ensure that the law continues to operate effectively after the UK has left the EU.

What will it now do?

- 2.4 These Regulations provide for the application of international standards for marine equipment placed on board UK ships and for the enforcement of those international standards. They require marine equipment to comply with international design, construction, and performance standards. They establish UK conformity assessment procedures for marine equipment placed or to be placed on board a UK ship. They provide that compliance of marine equipment with applicable international standards is to be approved as such by a UK Approved Body (an organisation designated by the Secretary of State to assess the conformity of marine equipment). They also enable marine equipment which meets EU requirements and is approved by an EU Notified Body to be placed on the UK market or on board a UK ship.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 This instrument is being laid in draft for sifting under the Act.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is all United Kingdom ships whether in the United Kingdom or anywhere else in the world.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

“In my view, the provisions of The Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2018 are compatible with the Convention Rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8(1) of the Act. The Act makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in UK law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK’s obligations as a member of the EU. The Act also

contains temporary powers to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the UK's legal system continues to function properly outside the EU. The Act does not preserve EU directives. Amendments are made under section 8 of the Act to the relevant legislation which implements an EU directive in the UK.

- 6.2 The 2016 Regulations implement the Directive on marine equipment, providing for the application of international safety standards for equipment placed on board ships and setting out conformity approval procedures to ensure those applicable international standards are met. The 2016 Regulations are supplemented by Merchant Shipping Notice (MSN) 1874⁸ which gives technical information and guidance about the procedures for obtaining approval in accordance with the Directive. The MSN includes in Annex 1 a list of all the marine equipment to which these Regulations apply. This MSN is also being updated to reflect the changes necessary as a consequence of the UK leaving the EU. A draft of this revised MSN accompanies this memorandum.
- 6.3 The international instruments which set the standards for marine equipment are the 1972 Convention on the International Regulations for Preventing Collisions at Sea (Colreg); the 1973 International Convention for the Prevention of Pollution from Ships (Marpol); and the 1974 International Convention for the Safety of Life at Sea (Solas) together with the resolutions and circulars of the International Maritime Organization (IMO) giving effect to those conventions.
- 6.4 Following the UK's exit from the EU, the UK will no longer be an EU Member State and will need to establish a system for approving marine equipment placed or to be placed on board UK ships in accordance with the international instruments.
- 6.5 These Regulations will do this by making the necessary amendments to the 2016 Regulations to address failures of the 2016 Regulations to operate effectively and other deficiencies arising as a result of the UK's exit from the EU, as well as making a minor consequential amendment to the 2003 Regulations and revoking the EU Implementing Regulation.
- 6.6 Together with the revised MSN 1874 Amendment 3, these Regulations establish a UK conformity assessment system for marine equipment providing for the application of international standards for marine equipment placed on UK ships and for the enforcement of those international standards.

7. Policy background

What is being done and why?

- 7.1 The objective of the international instruments is to enhance safety at sea and to prevent marine pollution through the application of international design, construction and performance standards relating to marine equipment. They do this by ensuring equipment (e.g. life-saving appliances, firefighting equipment, navigation equipment, and pollution prevention/ reduction equipment) is approved by the Government of the flag a ship is entitled to fly, or an organisation recognised to do so on its behalf.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/634266/msn_1874.pdf

- 7.2 Under these Regulations, UK ships will have the choice of two types of approved marine equipment: (i) equipment which has EU approval under the Directive or (ii) equipment which has been approved under the UK system which these Regulations establish. These Regulations provide for the appointment of UK Approved Bodies to carry out the conformity assessment of marine equipment, and place specific obligations on manufacturers and other economic operators⁹ wishing to obtain UK conformity assessment approval.
- 7.3 There are currently 10 EU Notified Bodies under the Marine Equipment Directive that are based in the UK. These will be able to become UK Approved Bodies under these Regulations. The Regulations also provide for the Secretary of State to designate further Approved Bodies.
- 7.4 Where a ship is required to carry equipment specified in Annex 1 of Merchant Shipping Notice 1874 Amendment 3, the equipment must go through the relevant conformity assessment procedures specified in Schedule 2 of these Regulations and be issued with the relevant certification by a UK Approved Body, or hold valid certification issued by an EU Notified Body in accordance with the Directive.
- 7.5 The procedures for UK conformity assessment established by these Regulations will be familiar to economic operators and UK Approved Bodies (previously EU Notified Bodies) as they replicate in a domestic context those established procedures set out in the 2016 Regulations and the Directive used by economic operators and EU Notified Bodies.
- 7.6 These Regulations are unlikely to draw attention from the general public but will be of interest to UK manufacturers, UK conformity assessment bodies for marine equipment and UK ship operators.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 These Regulations do not consolidate other instruments.

10. Consultation outcome

- 10.1 The marine equipment industry has been informed of the Department's intention to make a statutory instrument using powers in the Act to correct deficiencies in retained EU law relating to marine equipment. This informal engagement has included regular meetings at long established forums with key industry stakeholders. The Department has also engaged existing UK Notified Bodies informing them of the intention of these Regulations to convert them into UK Approved Bodies and asking them to

⁹ Economic operators are defined in Regulation 2(1) of the 2016 Regulations as a manufacturer, authorised representative, importer or distributor.

confirm whether they intend to continue operating and giving them the option to not receive UK Approved Body status.

11. Guidance

- 11.1 The Department provides detailed guidance to the industry on the operation of the 2016 Regulations in the form of Marine Guidance Notes (MGNs) (<https://www.gov.uk/topic/ships-cargoes/m-notices>). These MGNs include guidance for UK applicant conformity assessment bodies (MGN 554), and relating to marine equipment market surveillance and enforcement (MGN 557). These MGNs will be updated by the Department to take account the amendments made by these Regulations and re-published on or before commencement of these Regulations.
- 11.2 Furthermore, Merchant Shipping Notice (MSN) 1874 (which contains technical details of the 2016 Regulations) will be updated by the Department and a copy of the updated MSN (MSN 1874 Amendment 3) will be published in draft alongside the Regulations at <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>. MSN 1874 Amendment 3 will be finalised once the Regulations have been made and be available to be downloaded from <https://www.gov.uk/topic/ships-cargoes/m-notices>. That website will also have details of any future amendments or replacements to MSN 1874 Amendment 3. Copies of MSN 1874 Amendment 3 can also be obtained by contacting M-Notices Subscriptions, PO Box 362, Europa Park, Grays, Essex RM17 9AY (telephone number 01375 484 548; fax 01375 484 556; email orders mnotices@ecgroup.co.uk).
- 11.3 In addition, the Department intends to issue a plain English, self-contained, guide to the practical changes in conformity assessment of marine equipment and how this affects each stakeholder group (e.g. manufacturers, conformity assessment bodies, and ships) in a Marine Information Note (MIN) before the Regulations enter force. This MIN will be available for download from <https://www.gov.uk/topic/ships-cargoes/m-notices>.

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 An Impact Assessment has not been prepared for this instrument because the impacts are below the threshold required to carry out a full impact assessment. This instrument itself will not create any direct costs to business. Effectively, this instrument enables the UK to maintain the status quo for essential safety requirements for marine equipment to be placed on board a UK ship. Therefore, the impact on businesses and the public sector is limited to minor familiarisation costs.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. No specific action is proposed to minimise regulatory burdens on small businesses because the impact is assessed as nominal and limited to minor familiarisation costs.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is contained in Regulation 30 of the 2016 Regulations, which includes a statutory review clause. Regulation 30 of the 2016 Regulations is retained by this instrument but has been amended to remove consideration of the objectives of the Directive from the scope of the statutory review.
- 14.2 As this instrument is made under the Act, no additional statutory review clause for these Regulations is required.

15. Contact

- 15.1 Andy Wibroe/ Fabio Fantozzi at the Department for Transport Telephone: 02038172000 or email: marine.technology@mcga.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Katy Ware, Director of Maritime Safety and Standards at the Maritime and Coastguard Agency, and the Permanent Representative of the UK to the International Maritime Organization, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nusrat Ghani, 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

Part 1

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), 9 and 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), 9 and 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), 9 and 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), 9 and 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), 9 and 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 exit 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), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and 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 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit 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 exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 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.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: (a) This instrument does not contain provisions falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 requiring it to be made under the affirmative procedure; (b) The Merchant Shipping (Marine Equipment) Regulations 2016, which are amended by this instrument, were made under the negative procedure; and (c) the effect of this instrument is to maintain domestically the existing marine equipment safety regime, originally introduced by the Merchant Shipping (Marine Equipment) Regulations 2016, with the amendments limited to only those that are necessary to address failures of the regime to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2018 do no more than is appropriate”.

- 2.2 This is the case because: these Regulations are made in order that the UK can continue to operate, after it leaves the EU, an effective safety regime for marine equipment placed on board UK ships which complies with international safety requirements as regards design, construction, performance, and testing standards. The effect of these Regulations is to make only essential changes to the existing regulatory regime to reflect the fact that after the UK leaves the EU, the regulatory regime for marine equipment no longer arises as a consequence of obligations on the UK as an EU member state, but rather as a result of the international maritime safety conventions.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are given in the legislative context (paragraph 6) and policy background (paragraph 7) sections of this Explanatory Memorandum.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 4.2 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Nusrat Ghani have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

6. Criminal offences

- 6.1 These are no criminal offences created by this instrument.

7. Legislative sub-delegation

- 7.1 These Regulations do not sub-delegate any powers to make legislation.

8. Urgency

- 8.1 Not applicable.