

## EXPLANATORY MEMORANDUM TO

### THE MERCHANT SHIPPING (TECHNICAL REQUIREMENTS FOR INLAND WATERWAY VESSELS) (AMENDMENT) (NO.2) REGULATIONS 2019

2019 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 Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the Merchant Shipping (Technical Requirements for Inland Waterway Vessels) Regulations 2010 (S.I. 2010/1075) (“the 2010 Regulations”) to reflect the European Standard laying down Technical Requirements for Inland Navigation vessels (ES-TRIN Edition 2019/1). This replaces ES-TRIN 2017/1 with effect from 1 January 2020. The ES-TRIN standard provides the technical standard for vessels referred to in Annex II to Directive (EU) 2016/1629 of 14<sup>th</sup> September 2016 of the European Parliament and of the Council laying down technical requirements for inland waterway vessels, amending Directive 2009/100/EC<sup>1</sup> and repealing Directive 2006/87/EC<sup>2</sup> (“the Directive”).
- 2.2 A corrigendum has also been issued to the Directive to clarify that documents falling within the scope of the Directive and issued by the competent authorities of the Member States under Directive 2006/87/EC before 6 October 2018 shall remain valid until they expire. Previously, the Directive erroneously referred to documents issued before 6 October 2016. This instrument amends the 2010 Regulations accordingly.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 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 England, Wales, Scotland and Northern Ireland.

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<sup>1</sup> Directive 2009/100/EC of the European Parliament and of the Council of 16<sup>th</sup> September 2009 on reciprocal recognition of navigability licences for inland navigation vessels (Text with EEA relevance).

<sup>2</sup> 2006/87/EC Directive of the European Parliament and of the Council of 12<sup>th</sup> December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EC.

## **5. European Convention on Human Rights**

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

## **6. Legislative Context**

- 6.1 This instrument amends the Directive which was implemented by the Merchant Shipping (Technical Requirements for Inland Waterway Vessels) (Amendment) Regulations 2019 (“the 2019 Regulations”) by amendment to the 2010 Regulations. The proposal for the Directive to replace 2006/87/EC was the subject of Explanatory Memorandum (EM) 13717/13. The House of Commons European Scrutiny Committee considered the EM on 30<sup>th</sup> October 2013. The Committee recommended that the document was politically important, but cleared it (Report 21, Session 2013-14, reference 35318). The House of Lords Select Committee on the European Union cleared the EM at the 1519<sup>th</sup> sif on 15<sup>th</sup> October 2013.
- 6.2 Annex II to the Directive refers to the technical requirements applicable to craft as set out in ES-TRIN 2017/1. Annex II itself does not contain the standard. The European Commission is empowered, by delegated act, only to update the reference to the ES-TRIN standard in Annex II and to set the date of application of subsequent versions. To this end, while the original version of the Directive referred to ES-TRIN 2015/1, this was replaced by ES-TRIN 2017/1 on the date of entry into force of the Directive - namely, 7<sup>th</sup> October 2018. The contents of ES-TRIN 2017/1 were published in full in Merchant Shipping Notice (MSN) 1880(M).
- 6.3 The 2010 Regulations as amended by the 2019 Regulations implement the Directive. The 2010 Regulations relied on the power in paragraph 1A of Schedule 2 to the European Communities Act 1972 to refer in those Regulations to the Annexes to Directive 2006/87/EC as amended from time to time (regulation 2(2)(b) of the 2010 Regulations). In the 2019 Regulations, paragraph 1A of Schedule 2 to the European Communities Act 1972 was used to remove that reference. Therefore, references to the Directive in the 2010 Regulations are references to the Directive as at the date on which the 2019 Regulations were made, future amendments to it are not caught. As footnote (c) to regulation 3(a)(i) of the 2019 Regulations makes clear, the version of the Directive being referred to is that last amended by Commission Delegated Directive (EU) 2018/970 of 18 April 2018. The purpose of this instrument therefore, is to implement Commission Delegated Directive 2019/xxx of dd/mm/yr (amending Annex II) to replace ES-TRIN 2017/1 with ES-TRIN 2019/1.
- 6.4 This instrument is made using powers contained in sections 85(1), (3) and (5) to (7) and 86(1) and (2) of the Merchant Shipping Act 1995. Section 2(2) of the European Communities Act 1972, which was used to extend the application of the 2010 Regulations to Government ships, will be repealed on Exit day. Therefore, this instrument does not rely on section 2(2) as an enabling power and, accordingly, the amendments made by this instrument will not apply to Government ships.

## **7. Policy background**

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

- 7.1 The Directive introduced provisions to establish an international body known as CESNI (*Comité européen pour les standards dans le domaine de la navigation intérieure*) with the remit of drawing up uniform technical standards for inland waterway vessels that

can be applied by both the EU (for all EU inland waterways), and the Central Commission for Navigation on the Rhine (“CCNR”) for vessels operating on the Rhine in accordance with the Revised Convention for Rhine Navigation<sup>3</sup>. This was because different standards were being applied by two different regulatory regimes, thus leading to uncertainty regarding applicable standards. The purpose of CESNI was therefore to harmonise those standards for all EU waterways including the Rhine. The CCNR provides the administrative function with the intention that the output from CESNI is incorporated into the two separate legal mechanisms operated by the EU and CCNR. The output from CESNI (ES-TRIN), is published as a new updated standard every two years, taking into account new technological changes in inland navigation vessels, with a view to incorporation into both regulatory regimes. The standard applicable at the date of entry into force of the Directive (7<sup>th</sup> October 2018) was ES-TRIN 2017/1. The new standard (ES-TRIN 2019/1) has now been agreed, with an entry into force date of 1 January 2020.

- 7.2 The purpose of this legislation is, therefore, to replace the current standard (ES-TRIN 2017/1) which is given legal effect through the 2010 Regulations as amended by the 2019 Regulations and published in Merchant Shipping Notice (MSN)1880 (M), with ES-TRIN-2019/1. This is being achieved by amending the 2010 Regulations to make reference to the new standard and updating Merchant Shipping Notice (MSN) 1880(M) to Merchant Shipping Notice (MSN) 1880(M) Amendment 1 to include the text of new standard.

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

- 8.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the 2010 Regulations at the present time.

## **10. Consultation outcome**

- 10.1 [To be completed in due course.]

## **11. Guidance**

- 11.1 The Maritime and Coastguard Agency (MCA) has revised Merchant Shipping Notice (MSN) 1879(M) and re-published it as Merchant Shipping Notice (MSN) 1879(M) Amendment 1 to revise references in that document to refer to ES-TRIN 2019/1. In addition, Merchant Shipping Notice (MSN) 1880(M) has also been re-published as Merchant Shipping Notice (MSN) 1880(M) Amendment 1 in order to publish the text of ES-TRIN 2019/1.

- 11.2 Merchant Shipping Notices are published by the Maritime and Coastguard Agency. Copies may be downloaded from the MCA’s website <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency> or by e-subscription from [mnotices@ecgroup.co.uk](mailto:mnotices@ecgroup.co.uk) with “Subscribe” in the subject heading, or from M-Notices Subscriptions, P.O. Box 362, Europa Park, Grays, Essex, RM17

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<sup>3</sup> The Revised Convention for Rhine Navigation signed at Mannheim on 17<sup>th</sup> October 1868, as set out in the text of 20<sup>th</sup> November 1963.

9AY, tel 01375 484548, fax 01375 484556. Hard copies of the Merchant Shipping Notices referred to in this instrument are available for inspection free of charge but by appointment at the MCA, Spring Place, 105 Commercial Rd, Southampton, SO15 1EG.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies that operate United Kingdom vessels within the United Kingdom is zero. The impact on business, charities or voluntary bodies that operate other vessels within the United Kingdom is as a result of maintaining the existing safety regime.
- 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 costs and benefits to business are expected to fall below £5 million net in any one year.
- 12.4 Owing to the derogation implemented by the 2019 Regulations in accordance with Article 24.1 of the Directive, in the context of UK vessels, the ES-TRIN standard only applies to such vessels when operating on the inland waterway network of mainland Europe. To date, 106 such vessels have been issued with a European Vessel Identification Number (“ENI”) in accordance with Article 18 of the Directive. 105 of these vessels are recreational craft that come within the scope of the Directive owing to having a length of 20m or more or a volume of 100m<sup>3</sup> or more. The majority of amendments being brought in by ES-TRIN 2019/1 do not apply to recreational craft, thus further reducing the impact of this instrument. The remaining vessel that has been issued with an ENI is currently operating in a mode that does not bring it within the scope of the Directive.

## **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 in the implementation of the Directive’s requirements was to make use of the derogation available in accordance with Article 24.1 of the Directive to the extent that small businesses that operate vessels only within the United Kingdom are exempt from the requirements in the Directive.

## **14. Monitoring & review**

- 14.1 Nusrat Ghani MP, Parliamentary Under Secretary of State at the Department of Transport, has made the following statement:
- 14.2 “Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Guidance under s.31 of that Act, I have decided that it is not appropriate to make provision for review of this instrument because it would be disproportionate to do so taking into account the economic impact of the regulations. The impact on businesses is expected to be minimal and would not reach the threshold impact of greater or less than +/- £5 million (net annualised). There are no additional factors which would make it desirable to include such a clause.”

## **15. Contact**

- 15.1 David Unsworth at the Department for Transport telephone: 020381 72404 or email: david.unsworth@mca.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Katy Ware, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
16. Nusrat Ghani MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.