EXPLANATORY MEMORANDUM TO

THE MARITIME TRANSPORT ACCESS TO TRADE AND CABOTAGE (REVOCATION) (EU EXIT) 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 Act.

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

2. Purpose of the instrument

2.1 The European Union (EU) has regulated in many areas of maritime policy and, where necessary, the United Kingdom has introduced legislation to give effect to such EU measures. The European Union (Withdrawal) Act 2018 ("the Withdrawal Act") will retain such legislation in UK law. However, some changes are needed for the legislation to continue to work as intended. There are also some provisions in the legislation which the UK's departure from the EU makes redundant.

2.2 This instrument deals with legislation related to market access and regulation for maritime transport services. It revokes legislation which will be redundant after the UK leaves the EU or which creates rights for the remaining member States which may not be reciprocated. The legislation that is being revoked would be retained as UK law by virtue of the Withdrawal Act if no further action was taken.

Explanations

What did any relevant EU law do before exit day?

2.3 The relevant EU law is described in section 6 of this explanatory memorandum. In brief, the EU law either deals with market access (e.g. Council Regulation (EEC) 3577/92) or with action against anti-competitive practices (e.g. Council Regulation (EEC) 4058/86).

Why is it being changed?

2.4 The EU law relates to the rights and responsibilities of member States. The UK will no longer benefit from these rights nor be subject to – for example – the requirements to coordinate action with EU member States. Further details are given in section 7 of this explanatory memorandum.

What will it now do?

2.5 The legislation in question is being revoked in its entirety so will no longer have any effect. Further details are given in section 7 of this explanatory memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid in draft for sifting before the House of Common European Statutory Instruments Committee (the ESIC) and the House of Lords Secondary Legislation Scrutiny Committee (the SLSC) (together, the Committees) under the Withdrawal Act on 29th October 2018. The Committees reported on 15th November and recommended that the instrument be upgraded to the affirmative procedure. The Department has accepted the recommendation.

3.2 The SLSC (sub-committee B) stated that:

"The impact of these Regulations is not clearly explained in the EM. Given the uncertainty about the potential consequences for UK shipping, the House may expect the opportunity to debate this instrument."

3.3 The ESIC said that:

"The Committee believes that issues around the continued relevance of rights, the UK operators' ability to provide shipping services in the EU after exit, and uncertainty about service provision in the UK by EU providers, raise questions of particular commercial and economic importance that Members will want to debate, and we therefore recommend that this proposed negative instrument be upgraded to affirmative on the ground that it is of political and legal importance."

3.4 The Government has accepted the Committees' recommendation to upgrade the instrument to affirmative but notes that some of the issues raised by the Committees – such as UK operators' ability to provide shipping services in the EU after exit – are not and could not be dealt with in this instrument. These issues can only be determined when future partnership between the EU and UK is decided. The Government believes that this instrument will not have any practical effect on shipping operators. Although the instrument does remove certain rights, for example cabotage rights under Council Regulation (EEC) 3577/92, this will only put EU operators on the same basis as those from other countries.

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)

3.5 None.

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 the United Kingdom and applies to all UK vessels whether in the UK or anywhere else in the world. The instrument also applies to non-UK vessels when they are in UK waters.

5. European Convention on Human Rights

5.1 Nusrat Ghani, 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 Maritime Transport Access to Trade and Cabotage (Revocation) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 On 23rd June 2016, a referendum on the United Kingdom's membership of the EU took place which concluded in a vote to leave the EU. The Government's intention is that the UK will cease to be a member State of the EU on 29th March 2019.

6.2 To ensure that the UK has a working statute book on the day that it leaves the EU, the Withdrawal Act incorporates EU law, as it stands, in domestic law. It also creates temporary powers to make secondary legislation to correct laws that would otherwise no longer work appropriately once the UK has left the EU, including powers to revoke legislation. This statutory instrument relies on Section 8 (2) (a) and Section 8 (2) (c) of the Withdrawal Act which empowers Ministers to deal with EU retained law that "contains anything which has no practical application in relation to the United Kingdom or any part of it or is otherwise redundant or substantially redundant."

6.3 Council Regulation (EEC) 2919/85 lays down the conditions for vessels from member States to comply with the requirements of the Rhine Convention and therefore operate on the Rhine. The UK became a member of the Rhine Convention following the Treaty of Versailles. The UK's membership was generally unnecessary by the 1990s and the UK accordingly renounced its membership of the Convention in 1993. It is, therefore, only through the UK's status as a member State that the Convention is applicable to the UK. When the UK leaves the EU, the Convention will no longer apply to the UK.

6.4 Council Regulation (EEC) 4055/86 enshrines rights for shipowners registered in a member State to provide shipping services (i) between member States and (ii) between member States and third countries.

6.5 Council Regulation (EEC) 4057/86 establishes a procedure for investigating alleged unfair pricing practices by third country shipping companies on freight routes to, from or within the EU; the European Commission can impose financial penalties on companies to tackle unfair pricing.

6.6 Council Regulation (EEC) 4058/86 concerning coordinated action to safeguard free access to cargoes in ocean trades enables member States to ask the Commission to co-ordinate retaliatory action if a third party has acted to restrict the member State's shipping. If the Commission fails to act, the member State can take national action such as requiring permits, quotas or duties.

6.7 Council Regulation (EEC) 3921/91 lays down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a member State. This Regulation specifies the conditions that a non-resident carrier must comply with to provide services to a member State national or business.

6.8 Council Regulation (EEC) 3577/92 enshrines certain rights for shipowners registered with one member State to provide shipping services within another member State (maritime cabotage). The services covered are between ports on the mainland, supply of offshore installations and island services.

6.9 Council Regulation (EC) 1356/96 sets out common rules applicable to the transport of goods or passengers by inland waterway between member States with a view to establishing freedom to provide such transport services. This provides protection against discrimination to operators providing inland waterway transport services between member States. The protections apply to operators established in member

States using vessels registered in a member State or otherwise part of a member State fleet.

6.10 Council Regulation (EC) 789/2004 requires that member States do not prevent the transfer of cargo and passenger ships – who meet the relevant safety and anti-pollution standards - to the register of another member State.

6.11 Council Decision 83/573/EEC concerning counter-measures in the field of international merchant shipping requires member States to consult other member States and the Commission about its counter-measures against anti-competitive action. Council Decision 167/2006/EC required member States to take measures to allow them to collect information on activities of fleets from third countries whose practices are harmful to shipping interests of member States.

6.12 Financial assistance for shipping services to, from or within Wales and financial assistance for shipping services within Scotland are devolved matters for Wales and Scotland under Section E3 of Schedule 7A to the Government of Wales Act 2006, as amended by the Wales Act 2017 and Section E3 to Schedule 5 of the Scotland Act 1998. This interacts with Council Regulation (EEC) 3577/92, which provides a framework for Member States to conclude public service contracts or impose public service obligations for cabotage services. The UK Government has agreed with its Scottish and Welsh counterparts to draft these amendments on their behalf, insofar as they relate to devolved matters.

7. Policy background

What is being done and why?

7.1 The following instruments are being revoked in their entirety:-

(i) Council Regulation (EEC) 2919/85 laying down the conditions for access to the arrangements under the Revised Convention for the navigation of the Rhine relating to vessels belonging to the Rhine Navigation

(ii) Council Regulation (EEC) 4055/86 applying the principle of freedom to provide services to maritime transport between member States and between member States and third countries

(iii) Council Regulation (EEC) 4057/86 on unfair pricing practices in maritime transport

(iv) Council Regulation (EEC) 4058/86 concerning coordinated action to safeguard free access to cargoes in ocean trades

(v) Council Regulation (EEC) 3921/91 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a member State

(vi) Council Regulation (EEC) 3577/92 applying the principle of freedom to provide services to maritime transport within member States (maritime cabotage)

(vii) Council Regulation (EC) 1356/96 on common rules applicable to the transport of goods or passengers by inland waterway between member States with a view to establishing freedom to provide such transport services

(viii) Council Regulation (EC) 789/2004 on the transfer of cargo and passenger ships between registers within the Community

(ix) Council Decision 83/573/EEC concerning counter-measures in the field of international merchant shipping

(x) Council Decision 167/2006/EC concerning the activities of certain third countries in the field of cargo shipping

7.2 Rights to transport people and goods on the Rhine were originally set out under the Convention for Rhine Navigation, to which the UK was a member in its own right, but has not been since the 1990s. Council Regulation (EEC) 2919/85 extended the application of the Rhine navigation Convention to EU member States. This will be redundant when the UK is no longer a member State.

7.3 The UK's open approach to the provision of maritime transport services means that the express guarantee provided for in Council Regulation (EEC) 4055/86 is not required in UK legislation.

7.4 Council Regulations (EEC) 4057/86 and 4058/86 are designed to provide remedies to member States in the event that other countries take anti-competitive measures. When the UK ceases to be a member State, the remedies specified in these Regulations will no longer be available to the UK. The Regulations will, therefore, be redundant. Instead, UK competition law will apply, so far as relevant.

7.5 When the UK leaves the EU, the Withdrawal Act would retain Council Regulation (EEC) 3577/1992 as part of UK law. The retained Regulation would mean that rights for shipowners in the 27 remaining member States to provide maritime cabotage services would continue to be guaranteed in UK legislation. However, because the UK would no longer be a member State, shipowners on the UK register would no longer necessarily benefit from equivalent rights in relation to cabotage services in the remaining 27 member States.

7.6 The UK has no intention currently of restricting cabotage since the UK believes that an open approach promotes competition leading to better and more efficient services. However, the UK does not intend that cabotage rights for member States should continue to be expressly guaranteed in UK legislation when these will not necessarily be reciprocated for UK shipping.

7.7 Council Regulation (EC) 789/2004 on the transfer of cargo and passenger ships between registers within the Community sets out a reciprocal regime to ensure ships may be easily transferred between registers of member States provided they comply with certain safety and environmental standards. This regime will not include the UK when it leaves the EU, so the Regulation is revoked.

7.8 Council Regulation (EEC) 3921/91 and Council Regulation (EC) 1356/96 relate to the rules that apply to the provision of inland waterway transport services in and between member States. These rules will not be relevant to the UK when we are no longer a member State.

7.9 References to the maritime Regulations listed above are included in Annex XIII to the European Economic Area (EEA) agreement, which specifies transport legislation that applies to the EEA member States and sets out any necessary modifications to that legislation. The Withdrawal Act treats this modified direct EEA legislation in the same way as direct EU legislation. This instrument therefore omits the equivalent references from the EEA agreement brought into UK law.

7.10 There is no EU or UK legislation that supplements the Regulations referred to in paragraph 7.1 - nor any administrative guidance – that might need amendment or revocation as a result of the UK's exit from the EU.

7.11 The two Decisions relate to anti-competitive action taken by and for the benefit of member States. Since the UK will no longer be a member State, these will no longer apply to the UK. The UK will no longer be bound by the requirement to consult member States as required by Decision 83/573/EEC or to collect information as required by Decision 167/2006/EC. The Decisions will, therefore, be redundant and are being revoked.

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 Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. 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 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 The Department consulted stakeholders informally on EU exit maritime issues including those related to market access. This confirmed the view that market access generally was not a significant concern for stakeholders because the industry is regulated internationally and it is not generally in states' interests to restrict shipping access to their ports.

11. Guidance

11.1 The Department does not intend to issue guidance on these Regulations because they do not make a material change to the status quo.

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 legislation will not have an impact on businesses.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses but is not expected to have a significant effect on such businesses.

14. Monitoring & review

14.1 As this instrument is made under the Withdrawal Act, no review clause is required.

15. Contact

15.1 Philip Grindrod at the Department for Transport, on 020 7944 4412 or philip.grindrod@dft.gov.uk can answer queries on these Regulations.

15.2 Haroona Chughtai, Deputy Director, Maritime International and Trade at the Department for Transport can confirm that this explanatory memorandum meets the required standard.

15.3 Nusrat Ghani, Parliamentary Under-Secretary for Transport 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. Appropriateness statement

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

"In my view The Maritime Transport Access to Trade and Cabotage (Revocation) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the instrument does no more than is appropriate to revoke regulations which are redundant or would result in EU member States having rights which would not be reciprocated when the UK leaves the EU.

2. Good reasons

2.1 Nusrat Ghani, Parliamentary Under Secretary at the Department for Transport 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".

2.2 These are to remove from the UK Statue Book Regulations that are redundant or which would leave in place rights for member States which are not being extended to the UK when the UK leaves the EU. The instrument does no more than is needed to achieve these ends.

3. Equalities

3.1 Nusrat Ghani, Parliamentary Under Secretary at the Department for Transport has made the following statement:

"The 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".

3.2 The Parliamentary Under Secretary of State at the Department 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 draft instrument, I, Nusrat Ghani MP, 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".

4. Explanations

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