EXPLANATORY MEMORANDUM

THE MERCHANT SHIPPING (ALCOHOL) (PRESCRIBED LIMITS AMENDMENT) REGULATIONS 2015

2015 No. XXXX

1. 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 These Regulations set new, lower limits of alcohol consumption for the purposes of Part 4 (Shipping: Alcohol and Drugs) of the Railways and Transport Safety Act 2003.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument is subject to the affirmative resolution procedure and will amend primary legislation.

4.2 Section 81 of the Railways and Transport Safety Act 2003 sets the prescribed limits of alcohol for the purposes of Part 4 (Shipping: Alcohol and Drugs). Those limits apply to professional mariners only, as the provisions relating to non-professional mariners in section 80 have not been commenced. The professional mariners to whom the limits apply are the master of a ship, the pilot of a ship, and any other person employed or engaged in any capacity on a ship who is on duty or, when not on duty, would be required by his terms of engagement to protect the safety of passengers in an emergency. Section 81 empowers the Secretary of State to amend the limits prescribed in that section, subject to the affirmative resolution procedure.

4.3 Regulation 2 will reduce the prescribed limits of alcohol in breath and blood to those prescribed by the International Maritime Organisation in Seafarers' Training, Certification and Watchkeeping Code (STCW) adopted by the 2010 Manila Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping. It also reduces the prescribed limit for alcohol in urine to a commensurate level.

4.4 Regulation 3 requires the Secretary of State to review the amendments made by these Regulations and to publish a report within five years after the Regulations come into force. Following the review it will fall to the Secretary of State to consider whether the amendments made by the Regulations should remain as they are, or be amended.

4.5 The proposal that resulted in Directive 2012/35/EU (referred to below) was the subject of Explanatory Memorandum (EM) 14256/11, submitted to Parliament by the Department for Transport on 13 October 2011. The House of Commons European Scrutiny Committee considered the EM on 26 October 2011. The Committee recommended that the document was politically important but did not clear it pending developments in negotiations (Report 44, Session 2010/2012, reference 33147). The House of Lords Select Committee referred the EM to Sub-Committee B at the 1443rd sift on 25 October 2011. The Chairman wrote to the Minister on 15 November 2011 holding the proposal under scrutiny.

4.6 Ministerial letters were sent to both Committees on 21 November 2011. The House of Commons Select Committee on European Legislation considered the letter on 7 December 2011. The Committee maintained its recommendation that the document was politically important, but cleared it (Report 48, Session 2010/2012). The Chairman of the House of Lords Select Committee on the European Union replied to the Minister on 7 December 2011 clearing the proposal from scrutiny.

5. Territorial Extent and Application

5.1 This instrument, like Part 4 of the Railways and Transport Safety Act 2003, has effect in relation to United Kingdom ships wherever they are, foreign ships in United Kingdom waters and un-registered ships in United Kingdom waters.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Robert Goodwill, has made the following statement:
In my view the provisions of the Regulations are compatible with the Convention Rights.

7. Policy background

7.1 The International Maritime Organization (IMO) is responsible for the international regulations governing seafarer training, certification and watch keeping (STCW). The purpose of STCW is to establish basic requirements for the training and certification of, and for watch keeping by, seafarers at an international level. The STCW regulations have been updated to reflect recent developments in the maritime sector by what are known as the Manila Amendments or STCW 2010.

7.2 This update has introduced into STCW for the first time mandatory limits on alcohol consumption, intended to reduce the risks to safe navigation presented by excessive alcohol consumption. Prior to this, member states were simply recommended to consider applying a limit of 80 milligrammes of alcohol in 100 millilitres of blood for those on watch-keeping duty. Reliance simply on recommendation is not now considered sufficient for safety. The new prescribed limits of 25 microgrammes of alcohol in 100 millilitres of breath and 50 milligrammes of alcohol in 100 millilitres of blood are aligned with the limits applied to drivers in many European countries including France, Germany,

Denmark and the Netherlands which, like the UK, have North Sea coastlines. That these limits are established in many countries influenced their choice by the parties to the 2010 Manila Conference.

7.3 The UK is a member of the IMO and a signatory to STCW. The Maritime and Coastguard Agency (MCA), an executive agency of the Department for Transport, kept stakeholders informed and negotiated with them throughout the development of the Manila Amendments. Stakeholders were present at the final conference through organisations such as the International Chamber of Shipping (ICS). The MCA has an ongoing dialogue with industry bodies including the National Workboat Association, the British Tugowners Association, the International Association of Maritime Institutes, the Association of Maritime Electronic Radio Colleges and the Merchant Navy Training Board (which includes ship owners, training colleges and trade unions), and continued discussions with them throughout the development of the Manila Amendments.

7.4 The STCW Convention was first incorporated into European law by Directive 94/58/EC on the minimum level of training for seafarers, which, after subsequent amendments to the STCW Convention, was recast as Directive 2008/106/EC .The new alcohol limits and other changes are reflected in Directive 2012/35/EU on the minimum level of training for seafarers which amends Directive 2008/106/EC. This Directive can be found online at:
ec.europa.eu/transport/modes/maritime/seafarers/doc/new_stcw_directive.pdf

7.5 These changes need to be implemented in UK law. This is being achieved through two statutory instruments. These Regulations will change the UK's existing alcohol limits for professional mariners in order to match those set by the STCW's watch keeping standards for fitness for duty (in Part A Chapter VIII of the STCW Code), by amending section 81 of the Railways and Transport Safety Act 2003 after approval in draft. The levels are being changed to 25 microgrammes of alcohol in 100 millilitres of breath and 50 milligrammes of alcohol in 100 millilitres of blood, as required by the STCW and Directive, and to the commensurate figure of 67 milligrammes of alcohol in 100 millilitres of urine for consistency. The other changes in the STCW and Directive were implemented by the Merchant Shipping Act (STCW) Regulations 2015 No. 782, which were not subject to the same approval procedure.

8. Consultation

8.1 A consultation exercise regarding the Manila Amendments was carried out between the 19 September and 31 October 2014. This was coordinated by the Seafarer Training and Certification Branch at the MCA. Comments were invited from a range of organisations, including: 40 government bodies; 48 trades unions and associations; 23 training providers; and 252 shipping companies.

8.2 The consultation period was for six weeks as this was considered to be adequate time to undertake a question and response process and gather information from all those consulted. Of the bodies that were consulted, all agreed with the Government's proposal

to amend the alcohol limits for professional mariners to match those set by the Manila Amendments.

8.3 Having considered the consultation responses the Minister decided to amend the alcohol limits for professional mariners as had been proposed, and seek Parliamentary approval for these Regulations. Information on the Consultation Response is at: www.gov.uk/government/consultations/updating-uk-seafarer-training-standards

9. Guidance

9.1 None.

10. Impact

10.1 An Impact Assessment has been prepared for implementation of the amendments to the STCW (Reference: DfT00256), of which the change to the limits on alcohol consumption is only one part. A copy is annexed to this memorandum.

10.2 There is no quantifiable financial impact for amending the alcohol limits on business, charities or voluntary bodies.

10.3 There is no quantifiable financial impact on the public sector.

11. Regulating small business

11.1 The limits on alcohol consumption applies to individual professional mariners regardless of the size of the business for whom they work.

12. Monitoring & review

12.1 These regulations will be subject to review after a period of five years.

13. Contact

Paul Whiteside at the Department for Transport can answer any queries regarding the instrument. Tel: 0207 944 6079 or email: paul.whiteside@dft.gsi.gov.uk