EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (MARINE EQUIPMENT) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 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 Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations, which are made under powers in section 8(1) of the European Union (Withdrawal) Act 2018[1] ("the Act"), amend the Merchant Shipping (Marine Equipment) Regulations 2016[2] ("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 Body[3] and provide for the acceptance of marine equipment which has been approved in the EU by an EU Notified Body[4]. These Regulations also make a minor consequential amendment to the Merchant Shipping (Fire Protection) Regulations 2003[5] ("2003 Regulations") and revoke Commission Implementing Regulation (EU) 2018/733[6] ("EU Implementing Regulation").

Explanations

What did any relevant EU law do before exit day?

2.2 EU Directive 2014/90/EU[7] ("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 Joint Committee on Statutory Instruments

3.1 This instrument was laid in draft for sifting before the European Statutory Instruments Committee ("ESIC") and the Secondary Legislation Scrutiny Committee ("SLSC") under the Act on 10 December 2018.

3.2 In the Twelfth Report of Session 2017-2019 published on 20 December 2018, the ESIC recommended that the instrument be subject to the negative procedure.

3.3 In the Tenth Report of Session 2017-2019 published on 19 December 2018, the SLSC (Sub-Committee A) recommended that the instrument be upgraded to the affirmative procedure and said that:

"At present, EU organisations, known as "EU Notified Bodies", assess and approve the conformity of marine equipment. There are currently 10 EU Notified Bodies based in the UK, which will become "UK Approved Bodies" on exit day. If any of the UK Approved Bodies wish to retain their notified body status in the EU, they would need to seek notification from an EU Member State. The Department for Transport (DfT) has explained that "to do this, they would need to re-locate to the EU" and DfT is "aware of some of the larger notified bodies having started this process already where they are relocating to one of their EU based offices." On exit day, the UK will facilitate continued acceptance of EU approved products but DfT has explained that it is Government policy eventually to time limit this provision. As a result, some manufacturers of marine equipment are concerned that they will need to pay twice for conformity assessments in the future. Given the impact this may have on industry, the House may expect an opportunity to debate this instrument. We therefore recommend that this instrument should be subject to the affirmative resolution procedure."

3.4 The Department has accepted the SLSC's recommendation but notes that the instrument will not require manufacturers supplying UK and EU ships to pay twice for conformity assessment. UK ships will be able to use marine equipment that has been

approved under the new UK conformity assessment system that this instrument establishes or under the EU conformity assessment system. The concerns which industry has expressed about possibly needing to pay twice for conformity assessment relate to potential future impacts should the Government decide to time limit the continued acceptance of EU approved marine equipment. However, phasing out continued acceptance of EU approved equipment would require further secondary legislation to be brought forward to amend the 2016 Regulations, which would be subject to parliamentary scrutiny. These Regulations impose no time limit on the continued acceptance of EU approved marine equipment. The potential impacts of such a time limiting measure on UK manufacturers and on the shipping industry would be fully assessed by the Department before any decision to proceed with such secondary legislation is made.

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 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 2019 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) 1874[8] 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 though 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.

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 operators[9] wishing to obtain UK conformity assessment approval.

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

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

7.3 Conformity assessment involves a set of processes to demonstrate that a product, service or system meets the requirements of a standard. In most cases, a conformity assessment body will test one or more prototypes of a product against the relevant international testing standards. If the product passes, it is granted type approval and a type testing certificate is issued by the conformity assessment body. The design and performance standards to which the approved prototype(s) was constructed form the 'benchmark' against which all subsequent production of the equipment is measured. When the manufacturer's processes have been approved as meeting the applicable quality standards, the product receives conformity assessment approval enabling the conformity assessment mark to be affixed to it and the approved equipment may be placed on the market and on board ships.

7.4 The UK conformity assessment procedures are set out in the Schedule to the instrument. To avoid disruption to industry and to minimise familiarisation costs, these UK conformity assessment procedures mirror the EU conformity assessment procedures set out in Annex II of the Directive on marine equipment.

7.5 Under the Directive, bodies that carry out conformity assessment activities are known as "Notified Bodies". There are currently 10 EU Notified Bodies under the Marine Equipment Directive that are based in the UK. The full contact details for the 10 UK based conformity assessment bodies are set out at paragraph 5.2 of MSN 1874. Under these Regulations, bodies that carry out conformity assessment will be known as UK Approved Bodies. The 10 UK – based Notified Bodies will automatically become UK Approved Bodies under these Regulations. The Regulations also provide for the Secretary of State to designate further Approved Bodies.

7.6 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.

7.7 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.

7.8 UK based conformity assessment bodies wishing to retain their EU Notified Body status after exit day would need to be established within an EU member State and apply for designation as an EU Notified Body to the notifying authority of the EU Member State in which they are established.

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

10.2 The general feedback from industry engagement on the instrument has been positive. The 10 UK based EU Notified Bodies were also supportive of the Department's proposals. The Department has agreements with each Notified Body which will require minor and technical amendments. UK based Notified Bodies are aware of and recognise the need to revise and update these agreements. The only stakeholder concern expressed was from manufacturers about the prospect of having to pay for both EU and UK conformity assessment approvals if they wished to retain the same level of market access they had before exit day. This prospect would only arise if the Department brings forward further legislation to time limit the continued acceptance of EU approved equipment on board UK ships. Under the current Regulations which are not time limited, manufacturers would not need to pay twice providing they maintain EU conformity approval.

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 of 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 to 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. The cost of conformity assessment varies significantly depending on the type and scale of the marine equipment concerned and its purchase costs. However, this instrument itself will not create any direct costs to business. 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. It enables EU approved equipment to continue to be used on UK ships and provides the additional option of a new UK system. 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: marinetechnology@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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
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 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 2019 do no more than is appropriate".

1.2 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.

2. Good reasons

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

3. Equalities

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

"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 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".

4. Explanations

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

5. Criminal offences

5.1 These are no criminal offences created by this instrument.

6. Legislative sub-delegation

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

7. Urgency

7.1 Not applicable.