EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (PASSENGERS' RIGHTS) (AMENDMENT ETC.) (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 This instrument ensures that current provisions relating to the rights and entitlements of passengers when travelling by sea and inland waterway, including those in relation to passenger counting and registration, are legally operable when the United Kingdom withdraws from the European Union. In addition it will revoke three redundant Council Decisions, one of which relates to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 ("the Bunkers Convention").

Explanations

What did any relevant EU law do before exit day?

2.2 Passengers travelling by sea or inland waterway to, from or within the UK benefit from a well-established passenger rights regime. These rules flow primarily from EU legislation and their enforcement is supported by UK domestic legislation. This instrument will amend the following passenger rights-related direct EU legislation:

- Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents[1] ("the 2009 Regulation");
- Regulation (EU) 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004[2] ("the 2010 Regulation").

2.3 This instrument will revoke the following Council Decisions:

- Council Decision of 19th September 2002 authorising the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001[3] ("Council Decision 2002/762/EC");
- Council Decision of 12th December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof[4] ("Council Decision 2012/22/EU");

[1] OJ No. L 131, 28.5.2009, p. 24.
[2] OJ No. L 334, 17.12.2010, p. 1
[3] OJ No. L 256, 25.09.2002, p. 7.
[4] OJ No. L 8, 12.1.2012, p. 1.

- Council Decision of 12th December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof[5] ("Council Decision 2012/23/EU").

2.5 In addition to direct EU legislation, EU-derived domestic legislation also falls under 'existing EU law' under the EU (Withdrawal) Act[6] and will be similarly affected by inoperabilities upon the UK's exit from the EU. The following EU-derived domestic legislation will be amended:

- The Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999[7] ("the 1999 Regulations");
- The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012[8] ("the 2012 Regulations");
- The Merchant Shipping (Passengers' Rights) Regulations 2013[9] ("the 2013 Regulations").

2.6 The 2009 Regulation incorporates the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 ("the 2002 Protocol") into EU law and establishes certain insurance requirements for passenger vessel operators. It also sets out the requirement for operators to make advance payments in case of the death of, or serious injury to, a passenger as well as their obligation to pay compensation in respect of damage to mobility equipment.

2.7 The 2010 Regulation lays down the current EU regime for passengers travelling by sea or inland waterway. It includes the right to improved access for disabled persons and persons with reduced mobility, assistance in the case of cancelled or delayed departures and, in certain circumstances, compensation in the case of cancellation or delay in arrival.

2.8 Council Decision 2002/762/EC requires that all Member States, with the exception of Denmark, make efforts to sign the Bunkers Convention before 30 September 2002 and ratify or accede to it before 30 June 2006. It also requires the UK to make a declaration affirming that judgments given in other Member States would be recognised and enforced in the UK according to relevant EU rules.

2.9 Council Decision 2012/22/EU approves the accession of the EU to the 2002 Protocol in its capacity as a Regional Economic Integration Organisation. It excludes the adoption of Articles 10 and 11 of the 2002 Protocol.

2.10 Council Decision 2012/23/EU sets out the declaration to be made in respect of Articles 10 and 11 when the EU deposited the instrument of accession to the 2002 Protocol. It provides the text to replace Articles 10 and 11 of the Protocol. The effect of this is that judgments made in an EU Member State in respect of the Athens Convention should be recognised and enforced in other Member States according to relevant EU rules.

[5] OJ No. L 8, 12.1.2012, p. 13.
[6] 2018 c.16.
[7] S.I. 1999/1869, amended by S.I. 2010/1075 and S.I. 2010/680.
[8] S.I. 2012/3152.
[9] S.I. 2013/425.

2.11 The 1999 Regulations require that, for seagoing ships, passenger numbers and additionally, for voyages over 20 miles, passenger details are recorded and retained by a person appointed to hold this information (known as the Company Registrar) for the duration of the voyage, so that the data is ready to be transmitted to HM Coastguard in the event of an emergency. The 1999 Regulations implemented Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community.

2.12 The 2012 Regulations provide for the enforcement of the 2009 Regulation and defer its application to Class A and Class B ships on domestic journeys until 30 December 2016 and 30 December 2018 respectively. They also lay down rules about the issue of state certificates[10] in order to comply with the 2009 Regulation and provide the legal basis to detain ships or issue penalties where a breach of the 2009 Regulation is found.

2.13 The 2013 Regulations designate the Maritime and Coastguard Agency ("MCA") as the National Enforcement Body for the purpose of enforcing the 2010 Regulation. The 2013 Regulations also provide the legal basis for the MCA to issue penalties to port and vessel operators who fail to comply with their obligations under the 2010 Regulation.

Why is it being changed?

2.14 The 2009 Regulation and the 2010 Regulation are direct EU legislation and without making the appropriate changes they will no longer operate effectively, or will contain deficiencies, once the UK leaves the EU.

2.15 In addition, the EU-derived domestic legislation identified above contains a number of references (for example, to "the European Union" or "Member States") which will be inoperable when the UK is no longer a Member State.

2.16 The 2012 Regulations provide that insurance certificates issued by a Member State which is not a State Party to the Athens Convention will be accepted as evidence that the insurance requirements have been satisfied. At the time the 2012 Regulations were made, the relevant provisions of the Athens Convention had not yet come into force so it was appropriate to recognise these certificates. As the provisions of the Convention are now in force and all Member States have been instructed to ratify the Convention it is no longer necessary to include this provision.

2.17 The three Council Decisions establish the EU's accession to an international convention in its role as a Regional Economic Integration Organisation or set out requirements for Member States. As the UK will leave the EU and no longer be a Member State these Council Decisions will be redundant and are being revoked for reasons of legal certainty.

What will it now do?

2.18 The effect of all amendments made by this instrument is to maintain the current position once the UK withdraws from the EU. The amendments ensure that existing obligations continue to apply, that necessary functions of EU institutions can now be

[10] Ships must have insurance as evidenced by a certificate. In the UK these certificates can be issued by the Secretary of State for Transport. Certificates must be carried on board the ship and produced on demand. Failure to comply with the insurance obligations or to produce the certificate are offences.

undertaken by the Secretary of State or UK institutions and that redundant requirements are extinguished.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 At its meeting on 6 February 2013 the Joint Committee on Statutory Instruments ("the Committee") scrutinised the 2012 Regulations and reported regulation 6(2) for defective drafting.[11] Regulation 6 sets out the required form of an insurance certificate for the purposes of the regulations.

3.2 The Committee highlighted an "apparent conflict between sub-paragraphs (c) and (d) in the case of a ship which is registered in a Member State which is not a State Party". This was on the basis that sub-paragraph (c) requires the certificate to have been issued either by the Secretary of State or under the authority of any State Party, but sub-paragraph (d) requires the certificate to have been issued by or under the authority of the Member State.

3.3 The Committee opined that, taken on its natural meaning, the drafting of sub-paragraphs (c) and (d) means that two certificates are required and this was clearly not the intended consequence.

3.4 As a result of the amendments made to the 2012 Regulations by this instrument, regulation 6(2)(d) will be omitted and the conflict highlighted by the Committee will no longer exist.

4. Extent and Territorial Application

4.1 The extent and territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 Nusrat Ghani, Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights:

"In my view the provisions of the Merchant Shipping (Passengers' Rights) (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument corrects a number of legal inoperabilities in legislation relating to the rights and entitlements of passengers when travelling by sea and inland waterway, including in relation to passenger counting and registration. Those inoperabilities are found both in EU-derived domestic legislation and in direct EU legislation which will become retained EU law upon the UK's exit from the EU.

6.2 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018. The European Union (Withdrawal) Act 2018 makes provision for repealing the European Communities Act 1972 and will preserve relevant 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

[11] https://publications.parliament.uk/pa/jt201213/jtselect/jtstatin/113/11303.htm#a3

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 European Union (Withdrawal) Act 2018 also contains temporary power 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 European Union (Withdrawal) Act 2018 does not preserve EU directives. Changes made under section 8 of the European Union (Withdrawal) Act 2018 are therefore made to the relevant legislation which implements EU directives in the UK.

7. Policy background

What is being done and why?

7.1 This instrument makes a number of amendments and revocations to ensure the continued effective operation of the existing regulatory framework of passenger rights and entitlements after exit day. It does not alter any policy objective but maintains the current position, ensuring that passengers and vessel operators can proceed with certainty about their respective rights and obligations following exit day.

7.2 The amendments and revocations effected by this instrument replace references to "Member States" or "European Union" with "the Secretary of State" or "the United Kingdom" and insert, omit or amend definitions to restate retained EU law in a clearer and more accessible way. The instrument will omit or amend wording in retained law to reflect that the UK will no longer be in the EU or the European Economic Area and remove what will become redundant requirements on the UK to make reports to the EU Commission. It will revoke Council Decisions which will become redundant once the UK leaves the EU and replace references to euros with references to pounds sterling at the appropriate amount.

7.3 Under the 2012 Regulations the UK accepted as proof of insurance state certificates issued by EU Member States who are not State Parties to the Athens Convention. Under the amendments being made to the 2012 Regulations these certificates will no longer be accepted. However, this instrument contains a transitional provision which means that the UK will continue to accept those state certificates issued before exit day. State certificates are typically valid for one year from the date of issue.

7.4 Following EU exit this instrument will transfer powers to the Secretary of State which currently enable the Commission to design measures to amend non-essential elements of the 2009 Regulation and incorporate changes to the liability limits set out in the Athens Convention. A provision contained within the Athens Convention allows the liability limits to be changed where the amendment is proposed by no less than half of States Parties to the Athens Convention and adopted by a two thirds majority.

7.5 These powers will be exercised by regulation and Parliament will have scrutiny of these changes through the negative procedure which is considered appropriate given the limited nature of the discretion conferred on the Secretary of State. The powers allow the Secretary of State only to design measures to amend non-essential elements of the 2009 Regulation and relating to the incorporation of amendments to limits set out in the Athens Convention. This instrument clarifies how these new powers are to be exercised through amendment to Article 10 of the 2009 Regulation.

7.6 Within the retained direct EU legislation being amended there are three references to amounts in euros. The amounts have been changed from euros to sterling using the

average exchange rate for year ending 31 December 2017[12] and the figures rounded. These are summarised in the table below. In each case the rounding effect is to the benefit of passengers.

Provision	Euro Amount	Sterling Amount Exchanged per DExEU guidance	Rounded Sterling Amount
Article 6(1), the 2009 Regulation	21,000 EUR	£18,322.21	£18,500
Article 17(2),the 2010 Regulation	80 EUR	£69.80	£70
Article 19(6), the 2010 Regulation	6 EUR	£5.23	£5

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 European Union (Withdrawal) Act 2018 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. The instrument is also made under paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018, as a number of incidental, consequential and transitional changes are also being made.

8.2 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 No formal consultation has been carried out as this instrument maintains the current regulatory position and ensures that those to whom the amended instruments apply are able to continue to carry on activities within the same regime once the UK withdraws from the EU.

10.2 However, the Department has discussed the proposed changes to the existing legislation with key stakeholders within the UK passenger shipping sector. These discussions did not raise any concerns.

[12] Average currency exchange rates for the year to 31 December 2017, (£1 = €1.14615) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/671647/average-year-to-december-2017.csv/preview?_sm_byp=iVVJn7sT0twSrHDq

10.3 Although this instrument concerns a reserved matter, the Department has written to the Devolved Administrations and the Scottish, Welsh and Northern Ireland offices, to provide information about the proposed amendments. No comments were received.

11. Guidance

11.1 Guidance will not be issued to supplement this instrument as there are no new requirements for industry which require explanation.

12. Impact

12.1 The impact on business, charities or voluntary bodies in respect of the amendments to the retained regulations are limited to minor familiarisation costs.

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 be below £5m net in any one year as the instrument relates to the maintenance of existing regulatory standards.

13. Regulating small business

13.1 This legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. The basis for the final decision on what action to take to assist small businesses is that the impact on business, charities or voluntary bodies in respect of the changes to the retained regulations is limited to minor familiarisation costs as the amendments being made seek only to maintain the current position.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

14.2 Both the 2012 Regulations and the 2013 Regulations include a requirement to review the implementation of those same Regulations. This instrument does not amend those requirements, but the provisions of paragraph 9 of Schedule 8 to the European Union (Withdrawal) Act 2018 mean that the UK will no longer have regard to how regulations are being implemented by EU Member States.

15. Contact

15.1 Craig Loney at the Department for Transport (telephone: 07977 437058 or email: craig.loney@dft.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Rod Paterson, Deputy Director for Maritime Infrastructure, People, Services and Safety at the Department for Transport can confirm that this explanatory memorandum meets the required standard.

15.3 Nusrat Ghani MP, 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. Sifting statement(s)

1.1 No sifting statement is required as this instrument is subject to approval by each House of Parliament, by virtue of paragraph 1 of Schedule 7 to the European Union (Withdrawal) Act 2018.

2. Appropriateness statement

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

"In my view the Merchant Shipping (Passengers' Rights) (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate."

2.2 This is the case because it makes technical changes which are appropriate to ensure that maritime passenger-related legislation is able to operate effectively following the UK's withdrawal from the EU.

3. Good reasons

3.1 The Parliamentary Under Secretary of State 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."

3.2 These are that the provisions do no more than is appropriate to correct legal inoperabilities. Without these corrections, substantial parts of maritime passenger-related legislation will fail to operate effectively, or contain deficiencies, following the UK's withdrawal from the EU."

4. Equalities

4.1 The Parliamentary Under Secretary of State for Transport 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."

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 This instrument does not create any criminal offences.

7. Legislative sub-delegation

7.1 This instrument does not create any sub-delegated powers.

8. Urgency

8.1 This instrument is not being made urgently.