EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (RECOGNISED ORGANISATIONS) (AMENDMENT) (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.

2. Purpose of the instrument

2.1 This instrument ensures that provisions for the recognition, authorisation and monitoring of ship inspection and survey organisations contained within retained direct EU law are legally operable following the United Kingdom's withdrawal from the European Union, enabling the United Kingdom to continue to comply with its international obligations under the International Maritime Organization's (IMO) Recognized Organizations Code ("the RO Code").

Explanations

What did any relevant EU law do before exit day?

2.2 **Regulation (EC) 391/2009 on common rules and standards for ship inspection and survey organisations (as amended by Commission Implementing Regulation (EU) 1355/2014):** Under EU legislation on common rules and standards for ship inspection and survey organisations, Member States may delegate the inspection and survey of ships to EU authorised ship inspection and survey organisations, known as Recognised Organisations. This Regulation establishes the criteria and obligations which ROs must meet in order to obtain and maintain EU recognition, provides for the periodic assessment of ROs by Member States and the Commission, and sets down a system of fines and periodic penalties in case of non-compliance. Regulation (EC) 391/2009 and Directive 2009/15/EC implemented the requirements of the RO Code into United Kingdom domestic law. Commission Implementing Regulation (EU) 1355/2014 amended the definition of "international conventions" in Article 2, point (b) of Regulation (EC) 391/2009 in order to except from that definition certain paragraphs of the International Maritime Organization (IMO) Instruments Implementation Code and the RO Code.

Commission Regulation (EU) 788/2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Articles 6 and 7 of Regulation (EC) 391/2009. This Commission Regulation is made under powers in Regulation (EC) 391/2009 and contains criteria supplementing the rules and procedures in Articles 6 and 7 of Regulation (EC) 391/2009. In particular, it sets out the criteria for establishing the level of fines and periodic penalty payments, the decision-making procedure to impose a fine and a periodic penalty payment, or to withdraw the recognition of a Recognised Organisation on the Commission's own initiative or at the request of a Member State.

Commission Decision 2009/491/EC, made under powers in Regulation (EC) 391/2009, sets out the criteria to be followed in order to decide when the performance of a Recognised Organisation acting on behalf of a flag State can be considered to be an unacceptable threat to safety and the environment.

Why is it being changed?

2.3 The retained direct EU law contains a number of legal inoperabilities and other deficiencies which have been corrected to ensure that the existing regulatory framework for the recognition, authorisation and monitoring of Recognised Organisations remains operable in United Kingdom law following the United Kingdom's withdrawal from the European Union.

What will it now do?

2.4 The instrument retains the existing criteria for the recognition, authorisation and monitoring of Recognised Organisations. It makes only those changes necessary or appropriate to preserve the legal status quo and to ensure that the United Kingdom continues to comply with its international obligations under the RO Code.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 the United Kingdom and the instrument applies to any organisation authorised as a United Kingdom Recognised Organisation or seeking authorisation to act on behalf of the United Kingdom as a Recognised Organisation to conduct inspection and survey activities on United Kingdom ships.

5. European Convention on Human Rights

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

"In my view the provisions of the Merchant Shipping (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The instrument corrects a number of legal inoperabilities and deficiencies in retained direct EU law relating to the delegation of statutory inspection and survey functions to classification societies acting as Recognised Organisations.

6.2 The instrument relies on section 8 of the European Union (Withdrawal) Act 2018 to correct those inoperabilities and deficiencies. It only makes those changes appropriate to preserve the legal status quo. The instrument also relies on paragraph 21 of Schedule 7 to the Act to make transitional provision, and only makes those changes necessary to preserve the legal status quo.

6.3 The impact of the changes is that the retained direct EU law relates to the activities of Recognised Organisations only in relation to United Kingdom ships.

7. Policy background

What is being done and why?

7.1 A Recognised Organisation is an inspection and survey organisation authorised by the flag Administration (such as the United Kingdom) to undertake duties to ensure that vessels are built to, and maintained to, the international standards that are transposed into United Kingdom legislation. These duties are referred to as "statutory tasks". A Recognised Organisation is usually a classification society, which is a non-governmental inspection and survey organisation.

7.2 This instrument ensures that the existing regulatory framework for the recognition, authorisation and monitoring of Recognised Organisations remains operable in United Kingdom law following the United Kingdom's withdrawal from the European Union. The instrument does this by amendment to retained direct EU law. The instrument retains the existing criteria for the recognition, authorisation and monitoring of Recognised Organisations.

7.3 Using provisions in section 8 of the European Union (Withdrawal) Act 2018, amendments have been made to the following retained direct EU law:

(a) **Regulation (EC) 391/2009** of the European Parliament and of the Council of 23rd April 2009 on common rules and standards for ship inspection and survey organisations (this Regulation was amended by Commission Implementing Regulation (EU) 1355/2014 in relation to the definition of "international conventions");

(b) **Commission Regulation (EU) 788/2014** of 18th July 2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations

pursuant to Articles 6 and 7 of Regulation (EC) 391/2009 of the European Parliament and of the Council;

(c) **Commission Decision 2009/491/EC** of 16th June 2009 on criteria to be followed in order to decide when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and the environment;

(d) **Commission Implementing Regulation (EU) 1355/2014** of 17th December 2014 amending Regulation (EC) 391/2009 with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols.

7.4 The instrument makes amendments to the retained direct EU law set out in paragraph 7.3 which are necessary or appropriate to ensure that the existing regulatory framework for recognition, authorisation and monitoring of Recognised Organisations is retained, and operates effectively, following the United Kingdom's withdrawal from the European Union. The key amendments are as follows:

(a) "Member State" and "the Commission" are replaced with the Secretary of State or the United Kingdom, where appropriate, to ensure that the same legislative requirements continue to apply within the United Kingdom when the United Kingdom ceases to be a Member State;

(b) the definitions have been amended to ensure compatibility or consistency with the United Kingdom's position outside the European Union;

(c) wording has been omitted or amended as appropriate to reflect that the United Kingdom will no longer be in the European Union;

(d) redundant requirements on the United Kingdom to make certain reports to the Commission have been removed;

(e) powers lying with the Commission in relation to standards for ship inspection and survey organisations have been transferred to the Secretary of State;

(f) the powers of the Commission to make tertiary legislation in Article 13 of Regulation (EC) 391/2009, have been transferred to the Secretary of State by the creation of powers for the Secretary of State to make subordinate legislation in order to ensure that the minimum criteria in Annex 1 of Regulation (EC) 391/2009 can be updated, particularly in light of IMO decisions;

(g) the powers of the Commission to make tertiary legislation in Article 14 of Regulation (EC) 391/2009, have been transferred to the Secretary of State by the creation of powers for the Secretary of State to make subordinate legislation for the following purposes:

(i) in order to establish criteria to measure the effectiveness of the rules and procedures and performance of Recognised Organisations in relation to the safety of, and the prevention of pollution from, ships, and to establish criteria

to determine where a Recognised Organisation's performance is an unacceptable threat to safety and the environment,

(ii) to lay down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Articles 6 and 7 of the Regulation, and

(iii) to lay down rules for the interpretation of the minimum criteria in Annex I;

(h) transitional provision has been included to ensure that Recognised Organisations that were recognised by the European Union and authorised by the United Kingdom continue to be recognised and authorised by the United Kingdom when the United Kingdom ceases to be a Member State;

(i) transitional provision has been included to ensure that Recognised Organisations continue to maintain an independent quality assessment and certification entity set up under Article 11 of Regulation (EC) 391/2009;

(j) the power of the Commission in Article 4, point 2 of Commission Decision 2009/491/EC to make amendments to Annex I of that Decision (port State control) has been transferred to the Secretary of State by the creation of a power for the Secretary of State to make subordinate legislation (port State control is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with those rules);

(k) the first sentence of Article 8(1) of Regulation (EC) 391/2009 has been substituted in full in order to avoid ambiguity arising from a Commission proposal to amend this provision and which would apply following the United Kingdom's withdrawal from the European Union;

(l) the power of the Court of Justice of the European Union (CJEU) to review decisions in relation to the imposition of a fine or periodic penalty payment and to review the amount of the fine or periodic penalty payment, has been transferred to the United Kingdom Courts by way of a statutory appeals procedure;

(m) the provisions relating to the derogation from certain provisions of international law in Article 13(2) of Regulation (EC) 391/2009 and Commission Implementing Regulation (EU) 1355/2014 where they are incompatible with EU law, have been removed, and, in the case of Commission Implementing Regulation (EU) 1355/2014, this has been revoked.

7.5 Directive 2009/15/EC of the European Parliament and the Council of the European Union on Common Rules and Standards for Ship Inspection and Survey Organisations and for the relevant activities of Maritime Administrations is part of the regulatory framework for Recognised Organisations and governs the relationship

between Member States and the Recognised Organisations authorised to carry out statutory tasks on their behalf. Directive 2009/15/EC was amended by Commission Implementing Directive 2014/111/EU of 17 December 2014 which amended the definition of "international conventions" in Article 2, point (d), in order to except from that definition certain paragraphs of the International Maritime Organization (IMO) Instruments Implementation Code and the RO Code.

7.6 Directive 2009/15/EC, as amended, was implemented administratively in the United Kingdom by agreements between the Maritime and Coastguard Agency (on behalf of the Secretary of State) and each Recognised Organisation authorised by it, and which set out the duties and functions of the Recognised Organisation, as required by the Directive. Accordingly, there is no implementing legislation requiring amendment and the Directive and Commission Implementing Directive 2014/111/EU are not saved under section 3 of the European Union (Withdrawal) Act 2018. The agreement with each Recognised Organisation has been revised in order to reflect the extended role undertaken by the Secretary of State as a consequence of the amendments to the direct EU law made by the instrument.

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

8.1 This instrument is being made using the powers in section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies, in particular those described in section 8(2)(a), (b) and (d) and section 8(3)(a) of the Act, arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made using the powers in paragraph 21 of Schedule 7 to the Act in relation to transitional and saving provision. In accordance with the requirements of the 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 was carried out as the instrument maintains the regulatory status quo. However, the Maritime and Coastguard Agency (an executive agency of the Department for Transport) maintains regular contact with the Recognised Organisations that operate in the UK, and the Recognised Organisations were informed of the need to make changes to the European legislation to ensure that the current regime can continue to operate following the United Kingdom's withdrawal from the European Union.

11. Guidance

11.1 The following guidance has been revised and reissued to supplement this instrument:

(a) **Merchant Shipping Notice (MSN) 1672 Amendment 4 Ship Inspection and Survey Organisations and European Directive 2009/15/EC**. This MSN outlines requirements on the United Kingdom, United Kingdom registered vessels, and United Kingdom authorised Recognised Organisations under the regulatory framework in Regulation (EC) 391/2009 and the legislation made under it, within the context of delegation of inspection and survey functions, and establishes which

organisations are authorised to act on behalf of the United Kingdom. Merchant Shipping Notice 1672 (M+F) is available from the Maritime and Coastguard Agency of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk.

(b) **MCA Procedure 313 United Kingdom Criteria for Authorising Organisations to Perform Statutory Functions and Certification Services on UK Registered Ships**. This procedure outlines the criteria and process for considering the granting of authorisation to Recognised Organisations to perform statutory functions and certification services on United Kingdom registered ships. MCA Procedure 313 is available on request from the Maritime and Coastguard Agency of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is considered minimal as the United Kingdom will continue the existing recognised organisations monitoring programme under the United Kingdom's international obligations as an IMO Member State.

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The legislation applies to activities that may be undertaken by small businesses but in practice it is only larger entities that will be authorised to act on behalf of the Secretary of State.

14. Monitoring & review

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

15. Contact

15.1 Regi John at the Maritime & Coastguard Agency Telephone: 020381 72333 or email: regi.john@mcga,gov.uk can answer any queries regarding the instrument.

15.2 Richard Pellew, Assistant Director at the Maritime and Coastguard Agency (an executive agency of the Department for Transport) can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nusrat Ghani MP, Parliamentary Under Secretary of State 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) Act 2018

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 Nusrat Ghani MP, 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 (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate."

2.2 This is the case because: the instrument retains the existing criteria for the recognition, authorisation and monitoring of Recognised Organisations and makes only those changes necessary or appropriate to preserve the legal status quo and to ensure that the United Kingdom continues to comply with its international obligations under the RO Code (paragraphs 2.2 to 2.4).

3. Good reasons

3.1 Nusrat Ghani MP, 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: legal inoperabilities and deficiencies in the retained direct EU law have been corrected to ensure that the existing regulatory framework for the recognition, authorisation and monitoring of Recognised Organisations remains operable in United Kingdom law following the United Kingdom's withdrawal from the European Union.

4. Equalities

4.1 Nusrat Ghani MP, Parliamentary Under Secretary of State for Transport, has made the following statement:

"The Merchant Shipping (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019 do 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."

4.2 Nusrat Ghani MP, 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 relation to the Merchant Shipping (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019, 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."

5. Explanations

5.1 The explanations statement has been made in paragraph 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 There is no particular urgency attached to the making of this instrument.