EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (SAFETY STANDARDS FOR PASSENGER SHIPS ON DOMESTIC VOYAGES) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 These Regulations implement the findings of a review into standards for older passenger ships which operate domestically and, so far as practicable, bring the safety standards of these older vessels up to the standards of new vessels. The standards cover the carriage of liferafts, lifejackets, lifejacket lights, the fitting of fire detection and extinguishing equipment, bilge pumping arrangements, bilge alarms for alerting of water ingress, and vessel stability following damage, and are tailored according to the type of vessel and area of operation. The instrument applies to domestic passenger ships which operate in a wide range of areas, from the most sheltered inland waterways to those operating at sea but not trading internationally.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument amends subordinate legislation made under section 2(2) of the European Communities Act 1972. It therefore engages the procedural and publication requirements of paragraphs 13 to 15 of Schedule 8 to the European Union (Withdrawal) Act 2018, which have been complied with.

3.2 The Department's proposals for updating older passenger vessel standards stem from a range of recommendations made by Lord Justice Clarke's Thames Safety Inquiry in 1989 (into the MARCHIONESS tragedy); the Formal Safety Assessment Study into Domestic Passenger Ship Safety of 2005; and related Marine Accident Investigation Branch (MAIB) recommendations.

3.3 These recommendations have informed the evolving regulation of passenger vessels. Updated standards for newer vessels were discussed with industry and came into force during 2010. The challenges of applying revised standards to much older vessels are more complex, given the diversity of vessels within the fleet. The Department has therefore engaged closely with industry over an extended period of time, to ensure that these Regulations address the issues in a proportionate manner.

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 England and Wales, Scotland and Northern Ireland and ships registered in the United Kingdom, wherever they may be, and, in relation to the requirements for fire safety and the carriage of life-saving appliances only, non-United Kingdom passenger ships operating in United Kingdom waters and on non-international voyages.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding Human Rights:

5.2 "In my view the provisions of the Merchant Shipping (Safety Standards for Passenger Ship on Domestic Voyages) (Miscellaneous Amendments) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The Merchant Shipping (Fire Protection: Small Ships) Regulations 1998 (S.I. 1998/1011), the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998 (S.I. 1998/2515) and the Merchant Shipping (Life-Saving Appliances for Passenger Ships of Classes III to VI(A)) Regulations 1999 (S.I. 1999/2723) form the foundation of safety legislation for domestic passenger vessels.

6.2 These Regulations amend these instruments to implement revisions to the standards for older vessels to bring them as close as possible to those applied to modern vessels. The Merchant Shipping (Fire Protection: Small Ships) Regulations 1998 are supplemented by Merchant Shipping Notice (MSN) 1670 (Amendment 1), which contains further technical detail and lists the provisions which ships built before 26th May 1965 must comply with. This MSN is made mandatory by way of the reference to it in these Regulations. The Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998 are supplemented by Merchant Shipping Notice (MSN) 1699 (Amendment 3) containing further technical detail, and which is made mandatory by way of the reference to it in those Regulations.

6.3 Provision for the postponement of compliance with the updated requirements in each instrument and in MSN 1699 (Amendment 3) is included in each instrument. Compliance with the amended requirements must be achieved by the date of the first survey after the second anniversary of the date on which these Regulations come into force, unless the Secretary of State grants an exemption from the requirements. In practice, this will require the Secretary of State to be satisfied that there is an appropriate implementation plan (agreed between the owner and a surveyor acting on behalf of the Secretary of State) in place to ensure later compliance with the updated requirements.

6.4 The updated requirements are set out in a guidance note, MGN 627(M). This guidance provides detailed explanation as to how the requirements work in practice and what factors the Secretary of State will take into account in granting an exemption beyond the date for compliance in each instrument. MGN 627(M) is available from the Maritime and Coastguard Agency or can be found on www.gov.uk.

7. Policy background

What is being done and why?

7.1 Following the Thames Safety Inquiry into the loss of the domestic passenger vessel MARCHIONESS, new standards were applied to newly built passenger ships. However, the new standards were not initially applied to existing vessels given the practical difficulties which many of those vessels would have had with the implementation of modern standards. It was recognised that the government would need to review properly the feasibility and proportionality of such application to older vessels.

7.2 The government has carried out a review, the basis of which was a gap analysis between the pre-1992 standards and those brought in for vessels after 1992 following the collision of the MARCHIONESS and the dredger BOWBELLE. The aim of the review was to inform government action to raise safety levels for older ships and, so far as possible, to bring them in line with the standards applicable to modern ships. The government also worked with domestic passenger vessel industry safety groups to develop the proposals, which became the basis for the standards introduced by these Regulations.

7.3 The standards cover the carriage of liferafts, lifejackets, lifejacket lights, the fitting of fire detection and extinguishing equipment, bilge pumping arrangements, bilge alarms for alerting of water ingress, and vessel stability following damage.

7.4 Up to now many vessels have not been required to carry liferafts and lifejackets sufficient to support all persons onboard. These Regulations strengthen the carriage requirements such that all vessels on Category C and D waters and which proceed to sea are required to carry liferaft capacity sufficient for all persons onboard (to enable a 100% dry-shod evacuation) and require vessels operating on Category B waters, which have not previously been required to carry lifejackets at all, to carry lifejackets for all persons onboard. Additionally, they will require older vessels operating in Category C and D waters outside of daylight hours to have lights fitted to the lifejackets they carry, which new vessels from 2018 operating in those areas are already required to do.

7.5 These Regulations introduce a requirement for existing vessels to fit fire detection devices in unmanned machinery spaces and passenger sleeping areas, and to have fixed firefighting systems in main machinery spaces, to bring them in line with more modern vessels. Further, these Regulations make changes that require ships to carry mechanically powered bilge pumps rather than hand operated ones (which are much less efficient and would potentially require the assistance of passengers to operate). It will also become a requirement to fit bilge alarms in spaces containing propulsion machinery and in other spaces where water can accumulate unseen to alert crew to water ingress.

7.6 Some older vessels are not currently subject to requirements relating to post-damage survivability. These Regulations, through MSN 1699 (Amendment 3), require certain vessels operating on Category C waters to have a measure of post-damage survivability, either through compliance with the one-compartment damage survivability standard (essentially the ability to stay afloat despite the flooding of any single compartment) or compliance with the buoyancy test standard through additional buoyancy added to the ship.

7.7 It was highlighted during the first consultation on the proposals that the damage stability requirements can be impossible, or prohibitively expensive, for many older, or "historic", vessels to meet. Since the initial proposals were put forward during the first consultation, the scope of application of damage stability requirements has been reviewed, with the result that Class V passenger vessels (which may only operate on Category A to C waters) operating on non-tidal waters, and Class VI passenger vessels (which may operate at sea or on Categorised Waters with a number of restrictions), were removed from the scope of the proposed damage stability amendments; it was determined that mitigating factors for these vessels would provide an acceptable level of public safety. This removed around 120 vessels from the scope of the damage stability requirements. However, a number of Class V vessels operating on tidal waters remain in scope as it was determined that removing the requirements in relation to these vessels would not meet the public safety standards to which these Regulations aspire, and which passengers on modern vessels enjoy.

7.8 Categorised Waters are inland waters and certain areas of coastal water which do not count as being "at sea" under Merchant Shipping legislation. They are graded A to D with A being the least hazardous and D being the most hazardous.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 No consolidation is necessary.

10. Consultation outcome

10.1 An initial consultation exercise on the proposals was conducted between 6th November 2018 and 29th January 2019, and an Outcome Report summarising the responses was published. Both are available at:

https://www.gov.uk/government/consultations/consultation-on-the-results-of-the-review-of-standards-for-older-uk-passenger-ships

10.2 Seventy-five responses were received, many supportive of the proposals, at least in part, but many expressing concerns about practicability, expense and cost-effectiveness in relation to some of the proposals. A large number of responses reported concerns, particularly in the area of post-damage stability, citing resultant vessel obsolescence and staff redundancies, together with a negative impact on businesses associated with vessel support and other businesses dependent on the service received from the vessel operators.

10.3 The original proposals were reviewed, resulting in the removal of fire containment and fire pumping proposals which consultees reported as challenging, and the government considered could be removed given the enhancement of other fire safety measures. An exemption provision has been included in relation to the lifejacket requirement for particular vessels on Category B waters which can evidence that in an emergency a dry-shod evacuation can be achieved due to the vessel's proximity to the bank of the canal or river.

10.4 As set out in paragraph 7.7, some classes of passenger vessel were also removed from scope of the damage stability requirements (Class V vessels operating on non-tidal

Category C waters, and Class VI vessels) on the basis that there were mitigating factors which made the stability enhancements less crucial for those vessels. The vessels left in scope are those for which continued operation in their existing condition was considered to provide an insufficient level of public safety in the modern era.

10.5 Concerns were expressed during the consultation about the proposed two-year phase-in period being too short. As explained in paragraph 6.3, the Secretary of State may extend this period by way of an exemption from the updated requirements, but only if the vessel owner agrees an implementation plan with a surveyor acting on behalf of the Secretary of State.

10.6 A second consultation on the revised proposals was carried out between 29th May and 10th July 2019 and an Outcome Report summarising the responses was published. Both are available at:

https://www.gov.uk/government/consultations/second-consultation-on-the-review-of-standards-for-older-passenger-ships

10.7 Fifty-two responses were received and were generally supportive. The damage stability proposals and the phase-in arrangements encountered most negative comment, but even these were supported by a ratio of around 2:1. A few respondents still asserted the above concerns, although fewer consultees expressed this view than in the first consultation given that the original proposals had been revised to remove a significant numbers of vessels from scope on the basis that their operation was already restricted by their Class such that the risks to which they were subjected were lower.

10.8 A Westminster Debate was held on this matter on 17th March 2021. During the debate, the need for the updated standards was challenged, on the basis that they could be detrimental to businesses and jobs. The Minister defended the proposals, citing the risks which exist due to frequency of accidents, and the possible severity of certain types of accident for older vessels, giving an example of an accident which could have had far more serious consequences if an older vessel had been involved.

10.9 These Regulations have been notified to the European Commission under the Technical Standards Directive 2015/1535/EU.

11. Guidance

11.1 Marine Guidance Note (MGN 627(M)) provides detailed explanation as to how the requirements created by amendments made by these Regulations work in practice and what factors the Secretary of State will take into account in granting an exemption beyond the date for compliance in each instrument.

11.2 The updated (mandatory) Merchant Shipping Notice (MSN 1699(M)) referred to in the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998 contains some of the technical detail to supplement those Regulations.

11.3 Merchant Shipping Notices and Marine Guidance Notes (Marine Notices) are published by the Maritime and Coastguard Agency. Copies may be downloaded from GOV.UK: https://www.gov.uk/government/organisations/maritime-and-coastguard-agency or Marine Notice notifications may be received by e-subscription from https://www.gov.uk/topic/ships-cargoes/m-notices. Hard copies of the Merchant Shipping Notices referred to in this instrument are available for inspection free of

charge but by appointment at the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that some older vessels may no longer be able to operate commercially, and that some redundancies may result. Other vessels may incur significant costs in implementing the enhanced safety measures. However, the impact on public safety is an enhancement of passenger safety on older vessels which is more in line with the levels of passenger safety on more modern vessels.

12.2 The impact on the public sector is that there may be a possible increased resource burden on the maritime safety authorities during the transitional period of implementation of the updated requirements.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to limit the scope of the more onerous obligations being introduced (such as the damage stability obligations in the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998) to vessels in relation to which these measures are considered absolutely necessary for the safety of the travelling public. However, this limitation is dependent on the Class and operation of vessel rather than the size of the operating business.

13.3 The basis for the final decision on what action to take to assist small businesses was discussed with industry groups and consulted upon.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is in line with policy on new legislation.

14.2 A statutory review clause is included in these Regulations requiring the Secretary of State to review the regulatory provision that is made by these Regulations five years after these Regulations come into force, at which point the approach and effectiveness of the regulatory provision will be reviewed, and every five years thereafter.

15. Contact

15.1 Matt Giacomini at the Maritime & Coastguard Agency Telephone: 020 381 72379 or email: dpv@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Katy Ware, Director for Maritime Safety and Standards, at the Maritime & Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts, 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 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) Act 2018 or the European Union (Future Relationship) Act 2020

1. Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

1.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement in accordance with paragraph 14(4) of Schedule 8 to the European Union (Withdrawal) Act 2018 regarding this instrument:

"I have taken the following steps to make the draft instrument published in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018 available to each House of Parliament: a draft of the Merchant Shipping (Safety Standards for Passenger Ships on Domestic Voyages) (Miscellaneous Amendments) Regulations 2022 was published on the GOV.UK website on 21 March 2022 and a Written Ministerial Statement entitled "Ship Safety - Merchant Shipping (Safety Standards for Passenger Ships on Domestic Voyages) (Miscellaneous Amendments) Regulations 2022 ("Grandfather Rights")" was tabled in the House of Commons on 21 March 2022. The clerks to the Transport Select Committee, the House of Commons Joint Committee on Statutory Instruments and the House of Lords Secondary Legislation Scrutiny Committee were also notified of the publication of the draft of the Regulations. No recommendations were made by any committee of either House of Parliament and no other representations were made about the published draft Statutory Instrument.".

2. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

2.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statements in accordance with paragraph 15(3) of Schedule 8 to the European Union (Withdrawal) Act 2018:

"Paragraph 15(3)(a): law which is relevant to the amendment:

The Merchant Shipping (Safety Standards for Passenger Ships on Domestic Voyages) (Miscellaneous Amendments) Regulations 2022 ("the new Regulations") amend the definition of "approved" that was substituted in regulation 1 of the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998 ("the 1998 Regulations") by the Merchant Shipping (Marine Equipment) Regulations 2016 ("the 2016 Regulations").

The substitution was made under section 2(2) of the European Communities Act 1972 for the purpose of implementing Directive 2014/90/EU of the European Parliament and of the Council of 23rd July 2014 on marine equipment and repealing Council Directive 96/98/EC (and under provisions of the Merchant Shipping Act 1995 for other purposes).

Paragraph 15(3)(b): effect of the amendment or revocation on retained EU law:

The definition substituted in the 1998 Regulations by the 2016 Regulations provides that, in relation to any equipment or arrangement, "approved" means approved under the 2016 Regulations.

Regulations 2(3) and 2(5) of the new Regulations insert new regulations 5A and 8A in the 1998 Regulations. Regulations 5A(4) and 8A(3) provide that the fire detection systems and fire extinguishing arrangements referred to in those regulations require the approval of the Secretary of State, whereas approvals required by the 1998 Regulations for other purposes must be obtained from the bodies specified in the 2016 Regulations. Accordingly, regulation 2(2)(a) of the new Regulations amends the definition of "approved" substituted by the 2016 Regulations such that it will exclude equipment and arrangements to which the new regulations 5A and 8A will apply.".

3. Good reasons

3.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement in accordance with paragraph 15(2) of Schedule 8 to the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument. These are to raise safety levels for older ships and, so far as possible, to bring them in line with the standards applicable to modern ships.".