EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 0000

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 amends the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (S.I. 2015/782) ("the STCW Regulations") to deal with deficiencies which would otherwise exist once the United Kingdom leaves the European Union. The effect is to enable the continued recognition of certificates issued by certain parties under the International Maritime Organization ("IMO") Convention on Standards of Training and Watchkeeping for Seafarers ("the STCW Convention"), and to establish a mechanism for the Secretary of State to recognise other parties in the future.

Explanations

What did any relevant EU law do before exit day?

2.2 Two European Directives – Directive 2008/106/EC (amended by Directive 2012/35/EU) and Directive 2005/45/EC – harmonised the way in which member States implemented the requirements of the STCW Convention. The Directives provided for the automatic mutual recognition of seafarer certificates issued by EEA States and established a process for EU wide recognition of certificates from third countries. The Directives are given effect in UK law by the STCW Regulations. These Regulations require the Secretary of State to recognise certificates issued by EU and EEA countries and enable the Secretary of State to recognise certificates issued by other parties to the STCW Convention that have been recognised by the European Union.

Why is it being changed?

2.3 The STCW Regulations are written from the perspective of the United Kingdom being an EU member State. Some of the procedures in the STCW Regulations would not be consistent with the United Kingdom no longer being a member State and would not work as intended.

What will it now do?

2.4 The effect of the amendments made by this instrument will be broadly to maintain the existing policy position. The United Kingdom will continue to recognise seafarer certificates issued by parties to the STCW Convention which are currently recognised, and a new mechanism is established enabling the Secretary of State to recognise

certificates from other parties to the Convention in the future. This new mechanism follows closely that required under Directive 2008/106/EC (see paragraph 2.2). Certain functions currently carried out by the European Commission (such as the recognition of parties to the STCW Convention, and the withdrawal of recognition where the required standards are not met) will be carried out by the Secretary of State after the United Kingdom leaves the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid for sifting on 18 December 2018. The Commons Sifting Committee (the European Statutory Instrument Committee) agreed with the government that this instrument should follow the negative procedure. However, the Lords Sifting Committee (the Secondary Legislation Scrutiny Committee ("the SLSC")) recommended at its meeting on 15 January 2019 that the instrument be upgraded to the affirmative procedure.

3.2 The SLSC was concerned that, whilst the instrument will enable the United Kingdom to continue to recognise those seafarers certificates that it currently recognises, EU recognition of United Kingdom certificates will be at the discretion of Member States. The SLSC considered that, given the potential impact on UK seafarers, the House may wish to have the opportunity to debate the instrument. The Minister accepted this recommendation.

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)

3.3 The powers under which this instrument is made cover the entire United Kingdom 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 the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

"In my view the provisions of the Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.".

6. Legislative Context

6.1 The STCW Regulations were made, in part, under section 2(2) of the European Communities Act 1972 ("ECA") in compliance with the United Kingdom's European treaty obligations to give effect to EU Directives.

6.2 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"). The Withdrawal Act makes provision for repealing the ECA 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 United Kingdom'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 United Kingdom's legal system continues to function properly outside the EU. The Withdrawal Act does not preserve EU directives. Changes made under section 8 of the Withdrawal Act are therefore made to the relevant legislation which implements an EU directive in the United Kingdom.

6.3 The STCW Regulations are EU-derived domestic legislation and will be saved. However, some of the processes prescribed in the STCW Regulations will no longer be appropriate once the United Kingdom leaves the EU, and the Regulations contain language which will no longer be appropriate.

6.4 These Regulations address deficiencies arising from the United Kingdom's exit from the European Union, in particular those described in paragraphs (c) and (d) of section 8(2) of the Withdrawal Act. These arise because the STCW Regulations (i) confer functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the United Kingdom or any part of it, (ii) make provision for arrangements dependant on the United Kingdom's membership of the EU, and (iii) contain EU references which are no longer appropriate.

6.5 Directive 2008/106/EC (amended by Directive 2012/35/EU) set out the minimum standards for maritime education, training and certification of seafarers. Article 3 required member States to ensure that masters, officers and watch personnel on seagoing merchant ships operating under their flag are trained in accordance with the requirements of the international STCW Convention. Any country whose ships trade internationally or whose seafarers work outside of its own waters must adopt and enforce the STCW Convention.

6.6 Article 3 of Directive 2005/45/EC required member States to recognise certificates (known as Certificates of Competency (CoCs)) issued by other member States in accordance with the STCW Convention. Each seafarer must have their CoC endorsed by the flag State or States on whose vessels they wish to work. Such endorsements are known in the UK as certificates of equivalent competency.

6.7 Article 19 of Directive 2008/106/EC contains a common EU mechanism for recognising the maritime training, education and certification of seafaring officers from non-EU countries. The process involves an EU member State requesting in writing that the Commission recognises CoCs from a third (non-EU) country. As soon as a member State has written to the Commission, the ship owners/operators who have registered their vessels with the member State can start employing the third country's seafaring officers on these vessels. The European Maritime Safety Agency and the European Commission assess the third country's compliance with STCW. Once the Commission has approved a third country, other member States can – but are not obliged to – accept seafaring officers from the third country on their ships.

6.8 The European Commission has published a legislative proposal to simplify the EU's legislation on recognising seafarer certificates by amending Directive 2008/106/EC and repealing Directive 2005/45/EC. The Department supplied an explanatory memorandum on the proposal on 4 July 2018 (reference 9123/18).

7. Policy background

What is being done and why?

7.1 The STCW Regulations need to be amended to reflect the fact that the systems for EU recognition will no longer apply to the United Kingdom after exit. The amendments will enable the Secretary of State to continue to recognise seafarer certificates issued by parties that comply with the STCW Convention, both those recognised before exit day and other parties which seek recognition in the future.

7.2 The government has decided to continue recognising seafarer certificates from the EU and EEA countries that it currently recognises. The United Kingdom will also continue to recognise the certificates from those non-EU/EEA countries that are approved by the EU and recognised by the United Kingdom immediately before exit day. These Regulations amend the STCW Regulations so as to enable the Secretary of State to maintain the recognition of such countries.

7.3 These Regulations will also introduce a mechanism whereby the Secretary of State may recognise additional parties to the STCW Convention and the certificates that they issue provided he is satisfied that, following an assessment of the relevant information, they comply fully with the requirements of the STCW Convention. These Regulations will also enable the Secretary of State to remove recognition from any country if he is satisfied that the country no longer complies with the STCW Convention.

7.4 These Regulations remove the requirement to report to the European Commission on the seafarer certificates and endorsements issued by the United Kingdom and replace a requirement to report to the European Commission on compliance with STCW with a requirement to report to the Secretary-General of the IMO on such compliance.

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 United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of Annex A 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 undertaken on the details of this instrument because the changes seek broadly to maintain current policy and do not require businesses or seafarers to do anything differently.

10.2 The Department and the Maritime and Coastguard Agency have engaged with stakeholders on the proposed approach in these Regulations, in particular the intention to continue to recognise the certificates issued by EU and EEA countries. The government also issued in September a technical notice to inform stakeholders on this subject:-

https://www.gov.uk/government/publications/recognition-of-seafarer-certificates-of-competency-if-theres-no-brexit-deal

10.3 There was support amongst stakeholders for these proposals. The European Transport Workers' Federation and the European Community Shipowners' Association have welcomed the approach that is taken in this instrument and urged the European Commission and Member States to take a similar approach to avoid disruption to the employment of seafarers.

11. Guidance

11.1 The Department for Transport is not producing any specific guidance on the amendments provided for in these Regulations.

12. Impact

12.1 The impact on business, charities or voluntary bodies in respect of the changes to the retained Regulations is 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 it maintains the existing policy of recognition in relation to the STCW regulations and therefore has no, or no significant, impact.

13. Regulating small business

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

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 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 is limited to minor familiarisation costs.

14. Monitoring & review

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

14.2 This instrument amends the STCW Regulations which contain provision for five yearly reviews of their operation (regulation 57).

15. Contact

15.1 Harry Deans at the Maritime and Coastguard Agency (telephone: 020 3817 2204 or email: harry.deans@mcga.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Doug Barrow at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nusrat Ghani MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex A

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. Appropriateness statement

1.1 The Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, Nusrat Ghani MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the instrument does no more than is appropriate to ensure that references to the United Kingdom and to EEA States in maritime secondary legislation work effectively after exit. Further details, including examples of amendments made, are set out in section 7 of the main body of this explanatory memorandum.

2. Good reasons

2.1 The Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, Nusrat Ghani MP, 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 (i) broadly to maintain the current policy position by ensuring that references to the United Kingdom and to EEA States in maritime secondary legislation work effectively after exit; and (ii) to ensure that process for the recognition of certificates issued by parties to the STCW Convention can continue to operate effectively after exit. Further details, including examples of amendments made, are set out in section 7 of the main body of this explanatory memorandum.

3. Equalities

3.1 The Parliamentary Under Secretary of State at the Department for Transport, Nusrat Ghani MP, has made the following statement "The draft 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.".

4. Explanations

4.1 The explanations statement has been made in paragraphs 2.2 to 2.4 of the main body of this explanatory memorandum.