EXPLANATORY MEMORANDUM TO

THE SEAFARERS (INSOLVENCY, COLLECTIVE REDUNDANCIES AND INFORMATION AND CONSULTATION MISCELLANEOUS AMENDMENTS) REGULATIONS 2018

2018 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.

2. Purpose of the instrument

2.1 This instrument is made under powers in section 209(1)(c) of the Employment Rights Act 1996, section 286(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 and section 42(8) of the Employment Relations Act 2004 and implement in Great Britain part of the requirements of Directive 2015/1794 which amends Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers ("the Seafarers Directive").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

3.3 On 23rd June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

4. Legislative Context

4.1 This instrument amends the Employment Rights Act 1996, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Information and Consultation of Employees Regulations 2004.

4.2 Part XII of the Employment Rights Act 1996 implements in Great Britain the provisions of Directive 2008/94/EC of the European Parliament and of the Council ("the 2008 Directive"). Article 1 of the Seafarers Directive amends the 2008 Directive by ensuring that seafarers employed as share fishermen are brought within the scope of the 2008 Directive.

4.3 In order to implement the amendment, regulation 2(2) amends section 199(2) of the Employment Rights Act 1996 by removing the exclusion relating to Part XII in relation to employed share fishermen. Regulation 2(3) amends section 199(4) of the Employment Rights Act 1996 in order to bring merchant seamen within the scope of Part XII, as provided for by the 2008 Directive.

4.4 Part XI of the Employment Rights Act 1996 provides protection for employees in the event of a redundancy which may arise in the context of the insolvency of an employer. Regulation 2(2) removes the exclusion relating to Part XI in relation to employed share fishermen. This amendment is not made for the purposes of implementing the amendment made by Article 1 of the Seafarers Directive to the 2008 Directive, but it is made pursuant to the power in section 209(1)(c) of the Employment Rights Act 1996.

4.5 Part IV, Chapter II of the Trade Union and Labour Relations (Consolidation) Act 1992 implements in Great Britain the provisions of Directive 1998/59/EC of the Council of the European Union ("the 1998 Directive"). Article 4 of the Seafarers Directive amends Article 1(2)(c) of the 1998 Directive by removing the derogation for the crews of seagoing vessels. Merchant seamen are within the scope of Part IV, Chapter II of the Trade Union and Labour Relations (Consolidation) Act 1992 but the amendment also brings employed share fishermen within the scope of Part IV, Chapter II.

4.6 In order to implement the amendment, regulation 3(2) amends section 284(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 by removing the exclusion relating to Part IV, Chapter II in relation to employed share fishermen.

4.7 The Information and Consultation of Employees Regulations 2004 ("the 2004 Regulations") implemented in Great Britain Directive 2002/14/EC ("the 2002 Directive"), establishing a general framework for informing and consulting employees in the European Union.

4.8 Article 3(3) of the 2002 Directive permitted member States to exclude from the scope of the application of the Directive the crews of vessels plying the high seas. Regulation 43 of the 2004 Regulations implemented the derogation and allowed an employer to exclude merchant navy crew engaged on voyages of 48 hours or more from being a negotiating representative or an information and consultation representative as defined by the 2004 Regulations. The Seafarers Directive amends the 2002 Directive by removing Article 3(3) from the scope of the 2002 Directive.

4.9 In order to implement the amendment, regulation 2 amends the 2004 Regulations by omitting regulation 43 (exception for merchant navy).

4.10 Regulation 43 had provided that, unless an employer permitted it, no long haul crew member could be a negotiating representative or an information and consultation representative. A long haul crew member was defined as a person in the merchant navy who was not a ferry worker or a person who normally works on voyages of less than 48 hours duration.

4.11 Unless permitted by the employer, a long haul crew member could not stand as a candidate for election as a negotiating representative or an information and consultation representative. Nor could they be appointed or elected to be a negotiating representative or an information and consultation representative.

4.12 The proposal that resulted in Directive 2015/1794 was the subject of Explanatory Memorandum (EM) 16472/13. The House of Commons European Scrutiny Committee considered the EM on 8th January 2014. The Committee recommended that the document was politically important and did not clear it, pending developments in negotiations (Report 29, Session 2013/2014, 35544).

4.13 The House of Lords European Union Committee referred the EM to its EU Internal Market Sub-Committee on 17th December 2013 following the 1528th sift. The proposal was cleared by a letter to the Minister dated 14th January 2014.

4.14 Ministerial letters on progress in negotiations were sent to both Committees on 27th November 2014. The House of Commons European Scrutiny Committee considered the letter on 9th December 2014 and cleared the proposal from scrutiny (Report 25, Session 2014-15).

4.15 This instrument does **not** implement the other provisions of the Seafarers Directive in relation to amendments to Directives 2009/38/EC of the European Parliament and of the Council or Council Directives 2001/23/EC and 98/59/EC. These requirements will be provided for under separate legislation and guidance.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

6. European Convention on Human Rights

6.1 The Rt Hon Chris Grayling MP, Secretary of State for Transport, has made the following statement regarding Human Rights:

"In my view the provisions of the Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 In its 2009 Communication ("Strategic goals and recommendations for the EU's maritime transport policy until 2018"), the European Commission stressed the need to promote maritime employment and address current shortages of European seafarers. It established a Task Force to look at measures to strike the balance between the employment conditions of EU seafarers and the competitiveness of vessels registered within the European Union.

7.2 The Task Force submitted its findings in early July 2011. The Task Force identified a number of EU labour law directives where the current exemption for seafarers should be repealed. It called for an EU network to improve maritime training and stressed a role for the Commission in collating information and data to support future policy developments.

7.3 It subsequently identified five employment directives that contained derogations for seafarers and therefore allowed land based workers greater employment rights than those at sea if member States chose to apply those derogations. The purpose of the Seafarers Directive is to remove the derogations and address an anomaly where land

based workers may enjoy greater employment rights than those at sea. The five Directives amended by the Seafarers Directive are:

a) Directive 2008/94/EC relating to the protection of employees in the event of the insolvency of their employer (the Insolvency Directive);

b) Directive 2009/38/EC on the establishment of a European Works Council (the EWC Directive);

c) Directive 2002/14/EC establishing a general framework for informing and consulting employees (the Information and Consultation Directive);

d) Directive 98/59/EC on the approximation of the laws of the member States relating to collective redundancies (the Collective Redundancies Directive); and

e) Directive 2001/23/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings (the Transfer of Undertakings Directive).

7.4 The UK Social Partners, Nautilus International (the officers union), RMT (the ratings union) and the UK Chamber of Shipping, have been fully supportive of the Seafarers Directive. The Government has been fully engaged with Social Partners on this proposal; UK Social Partners were at the forefront of the discussions with the European Social Partners and were instrumental in steering those discussions. The collaboration between industry, unions and Government allowed the UK to present a unified position in dialogue at the European level.

7.5 Because member States have been able to apply derogations on an ad-hoc basis, the result of this has been that undertakings in one member State have been able to apply less favourable social protection for seafarers than those in another member State.

7.6 The UK had made use of the derogation in relation to share fishermen as it considers them to be self-employed. However it is recognised that in certain limited circumstances a share fisherman may be 'employed' and in such circumstances should have the same rights as required by the Seafarers Directive. The instrument therefore amends the Employment Rights Act 1996 and the Trade Union and Labour Relations (Consolidation) Act 1992 to include share fishermen (where employed) in matters relating to insolvency and collective redundancies.

7.7 The Government recognised the importance of the harmonisation of employment legislation in regard to seafarers, and the levelling of the regulatory playing field in Europe has meant that other member States will be required to match our standards and will greatly improve the competiveness of UK companies.

8. Consultation outcome

8.1 A formal consultation was not undertaken. The UK Social Partners have been fully engaged with the Government since the Commission first considered that action needed to be taken.

9. Guidance

9.1 No guidance has been produced to accompany this instrument.

10. Impact

10.1 Extension to share fishermen 'where employed' will have limited impact; the employment status of share fishermen is not being changed and the majority of share fishermen will have working practices that will define them as self-employed.

10.2 There is otherwise no impact on business and there is no impact on charities or voluntary bodies.

10.3 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The instrument contains a review clause pursuant to the provisions contained in sections 28 – 32 of the Small Business, Enterprise and Employment Act 2015. The Secretary of State must carry out a review of the implementation of the amendment to the 2002 Directive (the Information and Consultation Directive) by the Seafarers Directive and which is implemented in the instrument, within five years of the date of coming into force of the instrument and at intervals not exceeding five years thereafter, taking into account in particular how the amendment is implemented in other member States.

13. Contact

13.1 John Cousley at the Department for Transport (Telephone: 020 7944 2011or email: john.cousley@dft.gsi.gov.uk) can answer any queries regarding the instrument.