Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2018 No. 0000

EXITING THE EUROPEAN UNION

MERCHANT SHIPPING

MARITIME SECURITY

The Ship and Port Security (Amendment etc.) (EU Exit) Regulations 2018

Made - - - - 2018

Coming into force in accordance with regulation 1

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The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018 a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Part 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Ship and Port Security (Amendment etc.) (EU Exit) Regulations 2018.

(2) These Regulations come into force on exit day.

(3) In these Regulations "the principal Regulation" means Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security.

Part 2

Amendments of Regulation (EC) No 725/2004

Amendments of Article 1

2. In Article 1 of the principal Regulation (objectives)—

(a) in paragraph 1, for "introduce and implement Community measures aimed at enhancing" substitute "enhance", and

(b) in paragraph 2—

(i) omit "harmonised", and

(ii) omit "and Community monitoring".

(**a**) 2018 c. 16.

Amendments of Article 2

3.—(1) Article 2 of the principal Regulation (definitions) is amended as follows.

(2) For paragraph 1 substitute—

"1. 'the special maritime security measures' means Chapter XI-2 of the Annex to the SOLAS Convention, as amended from time to time (but this is subject to the provision made by Article 10 about the application of those measures by virtue of Article 3).".

(3) Omit paragraph 2.

(4) For paragraph 3 substitute—

"3. 'Part A of the ISPS Code' means the Preamble and the mandatory requirements forming Part A of the International Code for the Security of Ships and of Port Facilities, as amended from time to time (but this is subject to the provision made by Article 10 about the application of Part A of the Code by virtue of Article 3).".

(5) For paragraph 4 substitute—

"4. 'Part B of the ISPS Code' means the guidelines forming Part B of the International Code for the Security of Ships and of Port Facilities, as amended from time to time.".

(6) Omit paragraph 6.

(7) Omit paragraph 7.

(8) In paragraph 8, for "of a Member State to a port facility outside that Member State," substitute "in the United Kingdom to a port facility outside the United Kingdom,".

(9) In paragraph 9—

(a) for "of a Member State" substitute "in the United Kingdom", and

(b) for "within that Member State," substitute "in the United Kingdom,".

Amendments of Article 3

4.—(1) Article 3 of the principal Regulation (joint measures and scope) is amended as follows.

(2) For the heading substitute "Scope".

(3) For paragraph 1 substitute—

"1. In respect of international shipping, the special maritime security measures and Part A of the ISPS Code are to have the force of law in the United Kingdom.".

(4) For paragraph 2 substitute—

"2.—(1) In respect of domestic shipping, the special maritime security measures and Part A of the ISPS Code are to have effect in relation to—

(a) Class A passenger ships,

(b) their companies, and

(c) the port facilities serving them,

as they have effect (in accordance with paragraph 1 and Article 10(1) and (5)) in relation to the corresponding international shipping matters.

(2) In subparagraph (1) 'the corresponding international shipping matters' means—

(a) the ships mentioned in paragraph 1.1 of regulation 2 of the special maritime security measures,

(b) their companies, and

(c) the port facilities mentioned in paragraph 1.2 of that regulation.".

(5) For paragraph 3 substitute—

"3.—(1) In respect of domestic shipping, the special maritime security measures and Part A of the ISPS Code are to have effect in relation to—

(a) Class B passenger ships which are certified to carry more than 250 passengers,

(b) tankers operating domestic services, and

(c) the companies of ships within point (a) or (b),

as they have effect (in accordance with paragraph 1 and Article 10(1) and (5)) in relation to the ships mentioned in paragraph 1.1 of regulation 2 of the special maritime security measures and their companies.

(2) But in the application of the special maritime security measures and Part A of the ISPS Code by virtue of subparagraph (1)—

(a) regulation 6 of the special maritime security measures (ship security alert system) does not have effect in relation to the ships and companies mentioned in subparagraph (1)(a) to (c);

(b) nothing in those measures and that Part requires a declaration of security to be completed or signed on behalf of the ships mentioned in subparagraph (1)(a) and (b),

and the special maritime security measures and Parts A and B of the ISPS Code are to be read with any modifications that are appropriate in accordance with points (a) and (b) of this subparagraph.

(3) In this paragraph 'tanker' means a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of a flammable nature.".

(6) After paragraph 3 insert—

"3A.—(1) In this Article 'Class A passenger ship' and 'Class B passenger ship' mean, respectively, a Class A passenger ship and a Class B passenger ship within the meaning of Article 4 of Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (as that Directive had effect as last amended by Commission Directive 2010/36/EU(**a**)).

(2) For the purposes of subparagraph (1), Article 4 of that Directive is to be interpreted as requiring the Secretary of State to—

(a) establish, and update when necessary, a list of sea areas under United Kingdom jurisdiction delimiting the zones for all year round operation and, where appropriate, restricted periodical operation of the classes of ships, using the criteria set out in paragraph 1 of that Article, and

(b) publish that list in its updated version in a Merchant Shipping Notice and in a public database available on the internet site of the Maritime and Coastguard Agency.

(3) If, immediately before exit day, Merchant Shipping Notice 1747(M) (which contains a list of sea areas established by the Secretary of State for the purposes of Article 4(2) of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships(**b**)) is in force, that list is to have effect on and after exit day as if it had been established under subparagraph (2) (and may be updated accordingly).".

(7) For paragraph 4 substitute—

"4. In exercising any functions under, or in connection with the implementation of, the special maritime security measures or Part A of the ISPS Code (as they have effect in accordance with paragraphs 1 to 3) the Secretary of State must take fully into account the guidelines contained in Part B of the ISPS Code.".

(8) In paragraph 5, for the words from the beginning to "Code" substitute "The following paragraphs of Part B of the ISPS Code must be complied with".

(9) In paragraph 8, for "Member States" substitute "the Secretary of State".

(**a**) OJ L 163, 25.6.2009, p. 1, amended by Commission Directive 2010/36/EU of 1st June 2010, OJ L 162, 29.6.2010, p.1.
(**b**) OJ L 144, 15.5.1998, p.1.

(10) After paragraph 8 insert—

"9. In this Article 'company' means a Company as defined in Regulation IX-1 of the SOLAS Convention.".

Omission of Article 4

5. Omit Article 4 of the principal Regulation (communication of information).

Omission of Article 5

6. Omit Article 5 of the principal Regulation (alternative security agreements or equivalent security arrangements).

Amendments of Article 6

7.—(1) Article 6 of the principal Regulation (provision of security information prior to entry into a port of a Member State) is amended as follows.

(2) In the heading, omit "of a Member State".

(3) In paragraph 1—

(a) for the first sentence substitute "When a ship which is subject to the requirements of the special maritime security measures (by virtue of Article 3 of this Regulation or otherwise) announces its intention to enter a port in the United Kingdom, the Secretary of State must require that the information referred to in paragraph 2.1 of regulation 9 (ships intending to enter a port of another Contracting Government) of the special maritime security measures is provided.", and

(b) in the second sentence—

(i) for "said authority" substitute "Secretary of State", and

(ii) for "that SOLAS regulation" substitute "regulation 9 of those special measures".

(4) In paragraph 3, for "special measures to enhance maritime security of the SOLAS Convention" substitute "special maritime security measures".

Amendments of Article 7

8.—(1) Article 7 of the principal Regulation (exemptions from the provision of security information prior to entry into a port) is amended as follows.

(2) In paragraph 1—

(a) for "Member States" substitute "The Secretary of State" and for "on their territory" substitute "in the United Kingdom",

(b) in point (a), for "competent authority for maritime security for the port concerned" substitute "Secretary of State", and

(c) in point (b)—

(i) for "special measures to enhance maritime security of the SOLAS Convention" substitute "special maritime security measures", and

(ii) for "competent authority for maritime security", in each place, substitute "Secretary of State".

(3) For paragraph 2 substitute—

"2. When an international scheduled service is operated between the United Kingdom and one or more EEA States the Secretary of State may, on the request of the company operating the service, grant an exemption to the service in accordance with the conditions laid down in paragraph 1.".

(4) In paragraph 3, for "Member States shall periodically" substitute "The Secretary of State must periodically", and for "Member States shall immediately" substitute "the Secretary of State must immediately".

(5) Omit paragraph 4.

(6) In paragraph 5—

(a) for "a Member State" substitute "the Secretary of State", and

(b) for "special measures to enhance maritime security of the SOLAS Convention" substitute "special maritime security measures".

Amendments of Article 8

9.—(1) Article 8 of the principal Regulation (security checks in Member State ports) is amended as follows.

(2) In the heading, for "Member State" substitute "United Kingdom".

(3) In paragraph 1—

(a) for "special measures to enhance maritime security of the SOLAS Convention" substitute "special maritime security measures", and

(b) for the words from "either" to the end substitute "by the Secretary of State".

(4) Omit paragraph 2.

Omission of Article 9

10. Omit Article 9 of the principal Regulation (implementation and conformity checking).

Amendments of Article 10

11.—(1) Article 10 of the principal Regulation (integration of amendments to international instruments) is amended as follows.

(2) In the heading, for "Integration of" substitute "Power to exclude".

(3) For paragraph 1 substitute—

"1.—(1) Subparagraph (2) applies if the Secretary of State determines by regulations under paragraph 5 that an amendment made to the special maritime security measures or to Part A of the ISPS Code is to be excluded in relation to international shipping.

(2) For the purposes of the application of the special maritime security measures and Part A of the ISPS Code by virtue of Article 3(1) of this Regulation (application in respect of international shipping), the amendment is to be treated as not having been made.".

(4) For paragraph 2 substitute—

"2.—(1) Subparagraph (2) applies if the Secretary of State determines by regulations made under this subparagraph that an amendment made to the special maritime security measures or to Part A of the ISPS Code (which would not otherwise be excluded, by virtue of being excluded in relation to international shipping: see paragraphs 2(1) and 3(1) of Article 3) is to be excluded in relation to domestic services.

(2) For the purposes of the application of the special maritime security measures and Part A of the ISPS code by virtue of Article 3(2) and (3) of this Regulation (application in respect of domestic services), the amendment is to be treated as not having been made.".

(5) Omit paragraphs 3 and 4.

(6) For paragraph 5 substitute—

"5. If it appears to the Secretary of State that there is a manifest risk that an amendment to the special maritime security measures or to Part A of the ISPS Code will lower the

standard of maritime security, the Secretary of State may by regulations determine that the amendment is to be excluded in relation to international shipping.".

(7) After paragraph 5 insert—

"5A.—(1) Regulations under this Article are to be made by statutory instrument.

(2) An instrument containing regulations under this Article is subject to annulment in pursuance of a resolution of either House of Parliament.".

(8) Omit paragraph 6.

(9) Omit paragraph 7.

(10) Omit paragraph 8.

Omission of Article 11

12. Omit Article 11 of the principal Regulation (Committee procedure).

Omission of Article 12

13. Omit Article 12 of the principal Regulation (confidentiality).

Omission of Article 13

14. Omit Article 13 of the principal Regulation (dissemination of information).

Omission of Article 14

15. Omit Article 14 of the principal Regulation (sanctions).

Omission of Article 15 and statement of binding effect

16. In the principal Regulation—

(a) omit Article 15 (entry into force), and

(b) omit "This Regulation shall be binding in its entirety and directly applicable in all Member States.".

Omission of Annexes 1 to 3

17.—(1) Omit Annex 1 to the principal Regulation (Chapter XI-2 of the Annex to the International Convention for the Safety of Life at Sea 1974; Special Measures to Enhance Maritime Security).

(2) Omit Annex 2 to the principal Regulation (preamble and mandatory requirements forming Part A of the International Ship and Port Facility Security Code, including Appendices).

(3) Omit Annex 3 to the principal Regulation (guidelines forming Part B of the International Ship and Port Facility Security Code, including Appendices).

Part 3

Amendments of Subordinate Legislation

Amendments of the Ship and Port Facility (Security) Regulations 2004

18.—(1) The Ship and Port Facility (Security) Regulations 2004(**a**) are amended as follows.

(**a**) S.I. 2004/1495 as amended by S.I. 2005/1434 and S.I. 2006/2190.

(2) In regulation 2(1)—

(a) in the definition of "the EC Regulation", after "security" insert ", as amended by the Ship and Port Security (Amendment etc.) (EU Exit) Regulations 2018";

(b) for the definition of "the SOLAS Convention" substitute—

> ""the SOLAS Convention" means the International Convention for the Safety of Life at Sea 1974 as amended from time to time (disregarding for this purpose any amendment so far as it is excluded by Article 10(1) or (2) of the EC Regulation);";

(c) for the definition of "ISPS Code" substitute—

> ""ISPS Code" means the International Ship and Port Facility Security Code as amended from time to time (disregarding for this purpose any amendment so far as it is excluded by Article 10(1) or (2) of the EC Regulation);";

(d) for the definition of "Class A passenger ships" substitute—

> ""Class A passenger ship" and "Class B passenger ship" have the same meaning as in Article 3 of the EC Regulation;";

(e) at the appropriate place insert—

> ""tanker" has the same meaning as in Article 3(3) of the EC Regulation;".

(3) In regulation 4 (application), in paragraph (1), after sub-paragraph (b) insert—

"(ba) Class B passenger ships operating domestic services within United Kingdom waters which are certified to carry more than 250 passengers, and their companies;

(bb) tankers operating domestic services within United Kingdom waters and their companies;".

(4) In regulation 5 (designations), omit paragraphs (a) and (b).

(5) Omit regulation 7 (inspection of companies and port facilities by the European Commission).

(6) In regulation 13 (enforcement notices), in paragraph (1), omit sub-paragraph (d).

Amendments of the Port Security Regulations 2009

19.—(1) The Port Security Regulations 2009(**a**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the definition of "designated", after "1972 Act" insert "or in regulations made under this definition";

(b) in the definition of "EC Regulation", after "security" insert ", as amended by the Ship and Port Security (Amendment etc.) (EU Exit) Regulations 2018";

(c) in the definition of "ISPS Code", for the words from "in so" to the end substitute "(disregarding for this purpose any amendment so far as it is excluded by Article 10(1) or (2) of the EC Regulation);"

(d) in the definition of "port", after "1972 Act" insert "or in regulations made under this definition".

(3) After regulation 2 insert—

"**2A.**—(1) Regulations under regulation 2 are to be made by statutory instrument.

(2) An instrument containing regulations under regulation 2 is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Regulations under regulation 2 may—

(a) make different provision for different purposes;

(**a**) S.I. 2009/2048 as amended by the Crime and Courts Act 2013 and S.I. 2013/2815.

(b) make transitional provision.

(4) Regulations under regulation 2 may amend or revoke an Order under section 2(2) of the 1972 Act so far as the Order makes provision which could have been made by regulations under regulation 2.".

(4) In regulation 3A (port security assessment)—

(a) in paragraph (4), for "an Order made under section 2(2) of the 1972 Act" substitute "regulations made under regulation 2";

(b) omit paragraph (5).

(5) Omit regulation 38 (designation of focal point for port security).

(6) In Schedule 3 (port security assessment), in paragraph 2(a), for "an Order made under section 2(2) of the 1972 Act" substitute "regulations made under regulation 2".

Part 4

Revocation of Commission Regulation (EC) No 324/2008

Revocation of Commission Regulation (EC) No 324/2008

20. Commission Regulation (EC) No 324/2008 of 9 April 2008 laying down procedures for conducting Commission inspections in the field of maritime security(**a**) is revoked.

Consequential amendment

21. In Annex 13 to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, omit point 56r.

Signed by authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State
Date Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (b), (c), (d) and (g) of section 8(2) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

Regulation (EC) No 725/2004 ("the principal Regulation") (OJ L 129, 29.4.2004, p. 6) provides for the interpretation, implementation and monitoring of the ship and port facility security provisions of the 1974 Convention of the Safety of Life at Sea (SOLAS), including the supplementary International Ship and Port Facility Security Code (ISPS Code). The UK is a signatory to the SOLAS Convention.

These Regulations make amendments to the principal Regulation and associated domestic legislation in the field of ship and port security.

(**a**) OJ L 98, 10.4.2008, p. 5.

Part 2 amends the principal Regulation to omit unnecessary definitions including 'focal point for maritime security' which is defined by reference to 'Member State'. It restates provisions to preserve the current application of the principal Regulation, makes certain provisions more accessible and removes those which oblige the UK to provide information to the Commission. It replaces references which relate to the UK as an EU Member State, to ensure that existing regulatory requirements continue to apply when the UK is no longer an EU Member State. It also amends the principal Regulation to transfer from the Commission to the Secretary of State a limited power to exclude amendments to SOLAS and/or the ISPS Code in respect of international shipping, and more generally in respect of domestic shipping.

Part 3 makes amendments to subordinate legislation which are consequential on the amendments made to the principal Regulation. It omits regulations 5 and 7 of the Ship and Port Facility (Security) Regulations 2004 (S.I. 2004/1495) which, respectively, designate the Secretary of State for the purposes of the principal Regulation and provide for the inspection of companies and port facilities by the European Commission. This Part also makes amendments to the Port Security Regulations 2009 (S.I. 2009/2048) to remove provisions which relate to the United Kingdom's membership of the European Union and to enable the Secretary of State to continue to maintain the port security regime.

Part 4 revokes Commission Regulation (EC) No 324/2008 (OJ L 98, 10.4.2008, p.5) which relates to procedures for conducting Commission inspections in the field of maritime security.

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An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. An Explanatory Memorandum is available alongside the instrument on the UK legislation website, www.legislation.gov.uk.

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