# EXPLANATORY MEMORANDUM TO THE MERCHANT SHIPPING AND FISHING VESSELS (LIFTING OPERATIONS AND LIFTING EQUIPMENT) (AMENDMENT) REGULATIONS 2008

**2008 No. 2166**

**1.** This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

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

## 2. Description

2.1 The Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) (Amendment) Regulations 2008 (the "LOLER 2008 Regulations") amend the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006 (the "LOLER 2006 Regulations") (SI 2006/2184) to correct a defect in regulation 11(1) which has had the inadvertent consequence of requiring all "accessories for lifting" to be tested. This requirement exceeds the Directive requirements and could also have potential safety implications.

2.2 These Regulations correct this defect and bring the requirements of the LOLER 2006 Regulations in line with the Directive by making it clear that the testing requirement in regulation 11(2) of the 2006 Regulations only applies to "*lifting equipment other than an accessory for lifting*".

2.3 The amending regulations will be made available free of charge to all known recipients of the LOLER 2006 Regulations.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

## 4. Legislative Background

4.1 Council Directive 89/391/EEC (the "Framework Directive") introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962).

4.2 Council Directive 1989/655/EEC (the second individual Directive within the meaning of Article 16(1) of the Framework Directive), as amended by Directive 95/63/EC, introduced minimum safety and health requirements for the use of work equipment by workers at work, which built on the general safety and health provisions contained in the Framework Directive. The provisions of Directive 1989/655/EEC, as amended, were implemented for the maritime

sector by means of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 (the "PUWER 2006 Regulations") (SI 2006/2183) and the LOLER 2006 Regulations. Regulations introduced by the Heath and Safety Executive had previously implemented the Directives for land based workers.

## 5. Territorial Extent and Application

5.1 This instrument applies to all United Kingdom ships wherever they may be in the world and to non-UK ships when in UK waters in the normal course of business, other than when exercising their right of innocent passage.

## 6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

7.1 The LOLER 2006 Regulations together with the PUWER 2006 Regulations 2006, completed the implementation of Council Directive 89/655/EEC of 30 December 1989, as amended by Directive 95/63/EC of 30 December 1995, which introduced minimum safety and health requirements for the use of work equipment by workers at work. Corresponding Regulations had previously been introduced by the Heath and Safety Executive in respect of land based workers and it was therefore necessary to make these Merchant Shipping Regulations to avoid any disparity of regulation between land based workers and persons working on ships. This is especially the case at the water margin, i.e. in dock and port areas, where land based workers (e.g. stevedores and other dock workers) could be working on board a ship alongside members of the crew.

7.2 In addition to implementing Directive 89/655/EEC, as amended, the two sets of Regulations referred to in paragraph 7.1 gave effect, in part, to the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organization Convention 147)(Cmnd. 7163), ratified by the United Kingdom in 1980 which requires provisions to be made substantially equivalent to those of (amongst other Conventions) the Prevention of Accidents (Seafarers) Convention 1970 (ILO 134 Article 4). The PUWER 2006 and LOLER 2006 Regulations also gave effect in part to the Occupational Safety and Health (Dock Work) Convention 1979 (International Labour Organization Convention 152) and the Occupational Safety and Health (Dock Work) Recommendation 1979 (Recommendation No. 160) (Cmnd 8118.) The LOLER 2006 Regulations revoked and replaced ILO standards which were formerly contained in the Merchant Shipping (Hatches and Lifting Plant) Regulations 1988.

7.3 Following the coming into force of the LOLER 2006 Regulations, it was brought to the attention of the Maritime and Coastguard Agency that, changes made to the definition of "accessory for lifting" in the Health and Safety Executive's related Regulations which were subsequently adopted in the LOLER 2006 Regulations, namely

that the definition of an "accessory for lifting" contained in regulation 2(1), was altered to mean "lifting equipment for attaching loads to machinery for lifting", had the unintended effect of bringing all accessories for lifting within the scope of regulation 11(2) of the LOLER 2006 Regulations, thereby requiring all accessories for lifting to be tested at least once every five years."

7.4 However, such testing is not required for accessories for lifting under Council Directive 89/655/EEC, as amended, which was implemented in part by the LOLER 2006 Regulations and requiring it amounts to "gold plating" of the Directive requirements.

7.5 In addition it has been pointed out to the Maritime and Coastguard Agency that testing of "accessories for lifting" could severely damage them or render them unsafe to use. The LOLER 2008 Regulations correct this by bringing the requirements of the LOLER 2006 Regulations in line with the Directive by making it clear that the testing requirement in regulation 11(2) of the 2006 Regulations only applies to "*lifting equipment other than an accessory for lifting*", as was originally intended.

7.6 Separate, Government specific consultation was not undertaken. However those Government Departments and Agencies, including those in the devolved administrations, appearing to have a direct interest in the proposal were consulted as part of the general consultation process. 347 consultees were consulted on the proposal to introduce the amending regulations, of which 223 covered the merchant shipping sector including the Chamber of Shipping (the trade association for the majority of UK shipowners) as well as companies, associations and individuals representing both large and small vessel owners and operators. The remaining 124 consultees covered the fishing sector, from individuals to local associations and those at national level. Responses were only received from 5 consultees of whom 4 offered no comment and 1 was in support of the proposals.

## 8. Impact Assessment

8.1 An Impact Assessment has not been produced as the purpose of this instrument is to bring the impact of the LOLER 2006 Regulations into line with that anticipated on the making of those Regulations, for which a regulatory impact assessment was produced.

## 9. Contact

9.1 Michael Lines at the Maritime and Coastguard Agency, Tel: 02380 329 246, Fax: 02380 329 251 or e-mail: mike.lines@mcga.gov.uk, can answer any queries regarding this instrument.