**EXPLANATORY MEMORANDUM TO**

**THE MERCHANT SHIPPING (CONSEQUENTIAL AMENDMENTS) (EU EXIT) REGULATIONS 2020**

**2020 No. 1000**

## 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 The UK left the European Union at 11pm on 31 January 2020 with a ratified Withdrawal Agreement triggering the transition period (sometimes termed implementation period). This instrument therefore substitutes references to "exit day" with references to "IP completion day" (11pm on 31 December 2020) in the body text of eight maritime EU Exit instruments made in 2018 and 2019 the draft text of which when made had to allow the for the possibility that the UK would leave the EU without a deal.

***Explanations***

*What did any relevant EU law do before exit day?*

2.2 The eight EU Exit statutory instruments to be amended are as follows:

- The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1202)
- The Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1388)
- The Merchant Shipping (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/270)
- The Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/277)
- The Ship and Port Security (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/308)
- The Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/470)
- The Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/630)
- The Merchant Shipping (Passengers' Rights) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/649)

2.3 The above instruments amend relevant EU and EU derived law in the various maritime policy areas using powers in section 8 of the EUWA 2018 to make them function correctly as retained EU law. These amendments are explained in the

Explanatory Memoranda[1] for the eight instruments and summarised in paragraph 7.2 below.

*Why is it being changed?*

2.4 As the United Kingdom exited the European Union with a deal, legislation which was due to come into force on exit day has been deferred until the transition period expires on 31 December 2020 and until then the UK is obliged to follow the EU regulatory regimes in place. This means that other provisions that were to apply on "exit day" also now need to apply on "IP completion day" for EU retained law to apply correctly.

*What will it now do?*

2.5 The instrument will substitute references to "exit day" by references to "IP completion day" in the eight instruments.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None.

***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)***

3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos.83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 Territorial application:

- Regulations 1, 6, 8 and 9 apply to the United Kingdom.
- Regulation 2 applies to all United Kingdom ships wherever they may be, and to all seafarers on such vessels irrespective of nationality, ethnic origin, religion, gender etc. It also applies to non-United Kingdom ships when they are in United Kingdom waters.
- Regulation 3 applies to the United Kingdom and all United Kingdom ships wherever they may be.

[1] http://www.legislation.gov.uk/uksi/2018/1202/pdfs/uksiem_20181202_en.pdf
http://www.legislation.gov.uk/uksi/2018/1388/pdfs/uksiem_20181388_en.pdf
http://www.legislation.gov.uk/uksi/2019/270/pdfs/uksiem_20190270_en.pdf
http://www.legislation.gov.uk/uksi/2019/277/pdfs/uksiem_20190277_en.pdf
http://www.legislation.gov.uk/uksi/2019/308/pdfs/uksiem_20190308_en.pdf
http://www.legislation.gov.uk/uksi/2019/470/pdfs/uksiem_20190470_en.pdf
http://www.legislation.gov.uk/uksi/2019/630/pdfs/uksiem_20190630_en.pdf
http://www.legislation.gov.uk/uksi/2019/649/pdfs/uksiem_20190649_en.pdf

- Regulation 4 applies to the United Kingdom and to any organisation authorised as a United Kingdom Recognised Organisation or seeking authorisation to act on behalf of the United Kingdom as a Recognised Organisation to conduct inspection and survey activities on United Kingdom ships.
- Regulation 5 applies to England, Wales and Scotland only.
- Regulation 7 applies to United Kingdom ships wherever they may be.

## 5. European Convention on Human Rights

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

## 6. Legislative Context

6.1 The legislative context of the eight EU Exit statutory instruments to be amended is set out in their explanatory memoranda (see paragraph 2.3 above and links in footnote 3). These instruments were made at a time when it was not clear if the UK would exit the EU with a deal or without a deal, hence the references to "exit day". The EUWAA 2020 ratified the Withdrawal Agreement triggering the IP which expires at 11:00 on 31 December 2020. While that Act amended coming into force dates in EU Exit instruments from exit day to IP completion day, it did not amend references to "exit day" in the body text of those instruments.

6.2 This instrument is made in exercise of the powers conferred by section 41 of the EUWAA 2020 to replace references to "exit day" with references to "IP completion day" in the body text of the eight instruments in provisions other than the commencement provision. This is to reflect the fact that the UK exited the EU at 11pm on 31st January with a deal having ratified the Withdrawal Agreement with the EU and entered the transition period which ends on IP completion day.

## 7. Policy background

***What is being done and why?***

7.1 The policy background to the eight EU Exit instruments to be amended is set out in their Explanatory Memoranda (see paragraph 2.3 above).

7.2 This instrument makes amendments to the eight instruments to substitute "IP completion day" for references to "exit day" in order that application of the amended provisions now coincides with the end of the transition period. This is needed to ensure that the relevant provisions apply on IP completion day. The specific provisions in question are:-

- The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1202) include provisions which deal with provisions in various pieces of EU health and safety legislation which are updated from time to time. These include definitions. This instrument specifies that the definitions etc that exist on exit day will apply for the purposes of EU retained law.
- The Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1388) provide that certificates of compliance issued in accordance with

EU Regulation 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport will continue to be recognised in the UK after exit day.

- The Merchant Shipping (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/270) ensure that the existing regulatory framework for Recognised Organisations (ROs) remains operable in United Kingdom law following the United Kingdom's withdrawal from the European Union. It provides that any organisation which was recognised under Regulation (EC) 391/2009 on common rules and standards for ship inspection and survey organisations and authorised to act on behalf of the Secretary of State immediately before exit day will continue to be recognised under EU retained law. It also provides that the Secretary of State can take into account matters which occurred before exit day in considering whether ROs to fulfil the minimum required criteria or in considering whether to impose fines and penalties or withdrawal of recognition and in considering the seriousness of an infringement of RO requirements and the effects of such infringements.
- The Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/277) specify that after exit day a ship recycling facility in Great Britain can only accept a UK ship for recycling if the facility is on a list of UK approved recycling facilities
- The Ship and Port Security (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/308), amongst other matters, deals with requirements derived from EU legislation that the Secretary of State defines a list of sea areas where particular classes of passenger ships may operate. This instrument specifies that a list existing on exit day would continue to apply in retained EU law.
- The Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/470) provide that approvals for marine equipment granted before exit day by EU Notified Bodies will be treated as if granted under the new UK approvals system and that applications for approval under the EU system that have yet to be decided will be treated as applications under the new system.
- The Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/630) amend the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (S.I. 2015/782) which gave effect to requirements of the International Maritime Organization's Convention on Standards of Training, Certification and Watchkeeping for Seafarers. The effect of the amendments is to enable continued recognition of certificates issued both by EEA States and other states that are a party to the STCW Convention where those states were so recognised before exit day.
- The Merchant Shipping (Passengers' Rights) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/649). UK legislation - The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 (S.I. 2012/3152) - provided that the UK would accept insurance certificates issued by Member States even if the Member States were not parties to the international convention. This instrument provides that such an insurance certificate issued before exit day will be accepted under retained EU law.

## 8. European Union (Withdrawal) Act/Withdrawal of the UK from the European Union

8.1 This instrument is not being made under the EUWA 2018 but relates to the United Kingdom's withdrawal from the European Union because it is made under powers under section 41 of the European Union (Withdrawal Agreement) Act 2020.

## 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, as the instrument maintains the regulatory status quo and ensures that those to whom the amended instrument applies are able to operate within the existing legislative regime after IP completion day.

10.2 Northern Ireland Ministers have confirmed that the instrument should not make the proposed correction to the reference "exit day" in the amendments made to S.I. 2015/229 the Ship Recycling Regulations (Northern Ireland) 2015 by S.I. 2019/277 the Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019. This amendment will be taken forward through the Northern Ireland Assembly.

## 11. Guidance

11.1 No guidance will be issued in relation to this instrument because it does not make changes that affect businesses or others and it will not require anyone to take any different action in order to comply with the regulations in question.

## 12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it maintains the policy status quo and has no, or no significant impact on businesses, charities, voluntary bodies or the public sector.

## 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 business.

13.3 The basis for the final decision on what action to take to assist small businesses is that regulatory burdens on small business will not change as a result of this instrument.

## 14. Monitoring & review

14.1 The approach to monitoring of this legislation will be through communication with key stakeholder groups.

14.2 This instrument amends provisions made under the EUWA 2018 for which no review clause is required.

## 15. Contact

15.1 Caroline Wall (Maritime International and Trade) at the Department for Transport Tel: 020 7944 6251 or email Caroline.Wall@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Claire Spink, Deputy Director for Maritime International and Trade, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.