**EXPLANATORY MEMORANDUM TO**

**THE MERCHANT SHIPPING (INLAND WATERWAYS) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019**

**2019 No. 808**

## 1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command.

1.2 The memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 The European Union has regulated many areas of maritime policy, and, where necessary, the United Kingdom has introduced legislation to give effect to such EU measures. The European Union (Withdrawal) Act 2018 ("the Withdrawal Act") will retain such legislation in UK law. This instrument makes a number of amendments designed to ensure that the relevant UK secondary legislation continues to operate effectively and does not contain provisions which are no longer required once the UK leaves the EU.

2.2 This instrument amends secondary legislation relating to boatmasters' licensing and technical requirements for inland waterway vessels.

***Explanations***

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

2.3 In respect of boatmasters' licensing, Directive 91/672/EEC provided for mutual recognition of boatmasters' certificates issued by Member States for use on all EEA waterways, except for the river Rhine (for which a Rhine navigation licence issued by the Central Commission for Navigation on the Rhine (CCNR) was required which had its own set of competency standards applicable to boatmasters) and Directive 1996/50/EC set out competency standards that must be demonstrated for the issue of a boatmaster's certificate.

2.4 Directive (EU) 2016/1629 sets out construction standards and certification arrangements for inland waterway vessels. These technical requirements are based on standards applied by the CCNR to vessels operating on the river Rhine. The Directive provides a legal mechanism so that a body administered by the CCNR (known as CESNI) can revise these technical standards as technology advances. CESNI is open to attendance by Contracting States of the CCNR, plus EU Member States. The intention is that the output from CESNI is incorporated into the legal mechanisms of the CCNR and EU, thus achieving a level playing field for technical standards.

*Why is it being changed?*

2.5 The EU law for boatmasters provides for the mutual recognition of boatmasters' certificates. UK-issued boatmasters' certificates will no longer be recognised by EEA States and so this instrument removes the ability for the Secretary of State to issue such

certificates for use on inland waterways of those States. It also removes provision for the recognition of EEA-issued certificates and Rhine navigation licences by the UK. Other amendments are required in order to ensure that the domestic implementing regulations continue to operate effectively post-exit. In respect of the EU law on technical requirements for inland waterway vessels, changes are required to ensure that the domestic legislation implementing Directive (EU) 2016/1629 in the UK continues to operate effectively once the UK leaves the EU.

*What will it now do?*

2.6 This instrument will ensure the existing regulatory frameworks for boatmasters' licensing and technical requirements for inland waterway vessels remain operable after the UK withdraws from the EU. It also removes the ability to issue UK boatmasters' certificates for use on inland waterways of EEA States and the recognition of EEA-issued boatmasters' certificates and Rhine navigation licences by the UK.

## 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 12th March 2019. It was considered by the European Statutory Instruments Committee on 19th March 2019 and by the Secondary Legislation Scrutiny Committee on 25th March 2019. The Sifting Committees both agreed that the instrument should proceed by way of the negative resolution procedure. The Minister has considered the decisions of the Sifting Committees and has approved and signed the instrument.

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

## 5. European Convention on Human Rights

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

## 6. Legislative Context

6.1 On 23 June 2016, a referendum on the United Kingdom's membership of the European Union took place which concluded in a vote to leave the EU.

6.2 To ensure that the UK has a working statute book on the day the UK leaves the EU, the Withdrawal Act incorporates EU law as it stands, into domestic law. It also creates temporary powers to make secondary legislation to correct laws that would otherwise no longer work appropriately once the UK has left the EU, including powers to revoke legislation.

6.3 This instrument is made in exercise of the powers conferred by section 8(1) of the Withdrawal Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (c), (d) and (g) of section 8(2)) arising from the withdrawal of the UK from the European Union. Section 8 (2) allows Ministers to deal with deficiencies in retained EU law where the Minister considers that retained EU law contains anything which has no practical application in relation to the United Kingdom or any part of it or is otherwise redundant or substantially redundant (sub-paragraph (a)), where that retained EU law makes provision for, or in connection with, reciprocal arrangements between (i) the United Kingdom or any part of it or a public authority in the United Kingdom, and (ii) the EU, an EU entity, a Member State or a public authority in a Member State which no longer exist or are no longer appropriate (sub-paragraph (c)); makes provision for, or in connection with, other arrangements which (i) involve the EU, an EU entity, a Member State or a public authority in a Member State, or (ii) are otherwise dependent upon the United Kingdom's membership of the EU and which no longer exist or are no longer appropriate (sub-paragraph (d)); or contains EU references which are no longer appropriate (sub-paragraph (g)). It also relies on the consequential power in paragraph 21 of Schedule 7 to the Withdrawal Act.

## 7. Policy background

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

7.1 This instrument makes a number of changes designed to ensure that relevant UK secondary legislation continues to operate effectively and does not contain provisions which are no longer required once the UK leaves the EU.

7.2 Specifically, in relation to boatmasters' licensing, it amends the Merchant Shipping (Boatmasters' Qualifications, Crew and Hours of Work) Regulations 2015 to remove references to boatmaster's certificates and Rhine navigation licences in order to cease recognition by the UK of EEA-issued boatmaster's certificates and Rhine navigation licences. It also removes provisions enabling the Secretary of State to issue 'UK certificates' for use on inland waterways in EEA States.

7.3 Since the implementation of Directives 91/672/EEC and 1996/50/EC, the Secretary of State has not received any applications for boatmaster's certificates from UK boatmasters wishing to operate on inland waterways in EEA States; had any EEA State boatmasters seeking recognition of EEA-issued certificates to operate on UK inland waterways or had any applications from those with EEA certificates seeking additional certification to operate on UK waterways with local knowledge requirements.

7.4 The Secretary of State has not received any applications from holders of Rhine navigation licences for supplementary licences to operate in the UK in waters where a relevant local knowledge endorsement would be required.

7.5 In addition, it removes provisions contained in the Merchant Shipping (Fees) Regulations 2018 which provided for the charging of fees for the issuing, revalidation, upgrading and replacement of boatmaster's certificates and for assessments for supplementary licences for holders of Rhine navigation licences. These provisions are redundant because references to those qualifications in the Merchant Shipping (Boatmasters' Qualifications, Crew and Hours of Work) Regulations 2015 are being removed by this instrument.

7.6 In relation to technical requirements for inland waterway vessels, this instrument amends the Merchant Shipping (Technical Requirements for Inland Waterway Vessels) Regulations 2010 in order to ensure that those provisions operate effectively post-exit.

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

8.1 This instrument is being made using the powers in section 8 of, and paragraph 21 of Schedule 7 to, 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 the Annex to this Explanatory Memorandum.

## 9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

## 10. Consultation outcome

10.1 The Department has not carried out a formal consultation on this instrument because the amendments being made are primarily to ensure that the relevant UK secondary legislation continues to operate effectively once the UK leaves the EU. While the amendments being made to the Merchant Shipping (Boatmasters' Qualifications, Crew and Hours of Work) Regulations 2015 will have the effect of changing the policy regarding the mutual recognition of boatmasters' certificates, because, in practice, only a few enquiries were received and no individuals applied to the Secretary of State for a 'UK certificate' to operate in EEA States and no individuals with EEA or Rhine-issued certificates/licences have sought recognition of those certificates to operate in the UK or applied for additional certification/licences to operate on UK waterways with local knowledge requirements, it is considered that the impact of the changes on operators will be very small.

## 11. Guidance

11.1 The Maritime and Coastguard Agency ("MCA") has revised Merchant Shipping Notice MSN 1853 which supports the Merchant Shipping (Boatmasters' Qualifications, Crew and Hours of Work) Regulations 2015 to remove references to terms being removed by this instrument.

11.2 Merchant Shipping Notices are published by the Maritime and Coastguard Agency. Copies may be downloaded from the MCA's website https://www.gov.uk/government/organisations/maritime-and-coastguard-agency or by e-subscription from mnotices@ecgroup.co.uk with 'Subscribe' in the subject heading, or from M-Notices Subscriptions, P.O. Box 362, Europa Park, Grays Essex RM17 9AY, tel 01375 484548, fax 01375 484556. Hard copies of the Merchant Shipping Notices referred to in this instrument are available for inspection free of charge but by appointment at the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

## 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 An Impact Assessment has not been prepared for this instrument because there is no impact on business, 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 businesses.

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

## 14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the effect will be monitored by the Department on a continuing basis in light of the future progress of the UK's withdrawal from the EU.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

## 15. Contact

15.1 Jane Owens at the Maritime and Coastguard Agency, telephone: 0203 8172209 or email: jane.owens@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ajit Jacob, Assistant Director, Seafarer Services and acting Chief Examiner, at the Maritime & Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nusrat Ghani, 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

## 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.<br><br>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<br>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 | Set out the 'good reasons' for creating a criminal offence, and the penalty attached. |

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|---|---|---|---|
| | | 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | |
| 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:<br>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,<br>b) containing information about the relevant authority's response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and<br>(ii) any other representations made to the relevant authority about the published draft instrument, and,<br>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. Sifting statement(s)**

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 (Inland Waterways) (Amendment etc.) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)."

1.2 This is the case because: this legislation does not fall within the categories for which use of the affirmative procedure is required under the Withdrawal Act, i.e. establish a new public authority, transfer an EU function to a newly created public authority, transfer an EU legislative function to a UK body, relate to fees, create or widen the scope of a criminal offence, create or amend a power to legislate. The aim is simply to make the existing legislation operable after the UK withdraws from the EU. The changes are technical and, for the reasons set out in paragraphs 7 and 12, the impact of them is expected to be minimal.

**2. Appropriateness statement**

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:

2.2 "In my view the Merchant Shipping (Inland Waterways) (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate."

2.3 This is the case because the instrument ensures that the existing regulations relating to boatmasters' certificates and technical requirements for inland waterway vessels remain operable when the United Kingdom exits from the European Union.

**3. Good reasons**

3.1 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:

3.2 "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action."

3.3 These are: the instrument ensures that maritime secondary legislation relating to boatmasters' certificates and technical requirements for inland waterway vessels will work effectively after exit and that provisions relating to the mutual recognition of boatmasters' certificates/ Rhine navigation licences between EEA States are removed once the UK leaves the EU and is no longer a Member State.

## 4. Equalities

4.1 The Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, Nusrat Ghani MP, has made the following statement:

"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."

4.2 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 relation to the draft instrument, I, Nusrat Ghani MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

## 5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.