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EXPLANATORY MEMORANDUM TO THE

THE MERCHANT SHIPPING (MEDICAL EXAMINATION) (AMENDMENT) REGULATIONS 2005

2005 No. 1919

1. This explanatory memorandum has been prepared by the Department for Transport 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 These Regulations amend the Merchant Shipping (Medical Examination) Regulations 2002 ("the 2002 Regulations"); they:

2.1.1 substitute the reference to Merchant Shipping Notice No. MSN 1765(M) in regulation 6 of the 2002 Regulations with a reference to Merchant Shipping Notice No. MSN 1788(M). MSN 1788(M) contains the up-to-date list of non-UK countries whose national certificates of medical fitness for seafarers are recognised as equivalent to those issued in the UK;

2.1.2 enable seafarers on non-UK ships to which the 2002 Regulations apply, to hold as an alternative to a UK medical fitness certificate or a certificate deemed to be equivalent, any other certificate of medical fitness which complies with certain provisions of the Medical Examination (Seafarers) Convention 1946 (International Labour Organisation Convention 73 of 1946). These provisions relate to sight, hearing and general health of the seafarer; and

2.1.3 correct a drafting error in regulation 2(1) of the 2002 Regulations.

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

3.1 These Regulations correct the defective drafting in S.I. 2002/2055 reported by the Joint Committee on Statutory Instruments in their First Report of 2002/3 (HL 6, HC 96-i, paragraph 20-22). The Department's memorandum to the Committee acknowledging and apologising for its error is annexed to the aforementioned report (see Appendix 5).

3.2 The 2002 Regulations do not apply to pleasure vessels and, in this context, the expression "pleasure vessel" is defined in regulation 2(1) of those Regulations. The definition of "pleasure vessel" refers to a person's "immediate family", which in turn is defined as meaning:

"in relation to an individual, the husband or wife of the individual, and a relative of the individual or the individual's husband or wife, and a brother, sister, ancestor or lineal descendant of that individual or that individual's husband or wife".

3.3 As a result of an enquiry from the JCSI the Department became aware that the words "*and a relative of the individual or the individual's husband or wife*" had been erroneously included. These words are unnecessary as their intended meaning is accurately conveyed by the remainder of the definition.

3.4 The Regulations will be made available free of charge to all known recipients of the 2002 Regulations.

4. Legislative Background

4.1 These Regulations are made under powers conferred upon the Secretary of State by sections 85 and 86(1) of the Merchant Shipping Act 1995.

4.2 The 2002 Regulations, which these Regulations amend, give effect in part to Convention 147 of the International Labour Organisation (entitled the Merchant Shipping (Minimum Standards) Convention 1976) as supplemented by Protocol 147 to that Convention. The UK has ratified both Convention 147 and its Protocol.

4.3 Convention 147 requires legislative provisions to be made substantially equivalent to those of (amongst other Conventions) ILO Convention 73 (entitled the Medical Examinations (Seafarer) Convention 1946), which is in force but has not been ratified by the UK. Under Convention 73 no person may be employed on a vessel to which the Convention applies unless he can produce a certificate, signed by a medical practitioner, attesting to his fitness for the work for which he is to be employed at sea.

4.4 The 2002 Regulations also implemented Clause 13 of the Agreement on the organisation of working time of seafarers concluded by the European Community Ship Owners' Association and the Federation of Transport Workers' Unions in the European Union which is annexed to Council Directive 1999/63/EC. Clause 13 requires, amongst other matters, that all seafarers to have a valid medical fitness certificate and regular health checks.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 In accordance with the ILO Conventions and European legislation outlined above, the 2002 Regulations require anyone employed or engaged in any capacity aboard a commercially operated UK seagoing ship to hold a valid certificate attesting to their medical fitness for the work for which they are employed. The 2002 Regulations allow medical practitioners approved by the Secretary of State (in practice the Maritime and Coastguard Agency ("the MCA") acting on his behalf), to medically examine seafarers, by reference to the medical standards currently published in MSN 1765(M), and to certify their fitness for work at sea.

7.2 In addition, the 2002 Regulations provide that certificates of medical fitness issued to seafarers by the competent authorities of certain non-UK countries, as may be specified in a Merchant Shipping Notice, are to be treated as equivalent to a certificate issued by an MCA approved medical practitioner.

7.3 The non-UK countries whose national certificates of medical fitness are to be deemed as equivalent to those issued in the UK have previously been listed within MSN 1765(M). However, as the list is constantly reviewed and added to, it has now been published by the MCA in a separate 'stand alone' Merchant Shipping Notice which can be updated more easily (i.e. MSN 1788(M)). Accordingly, these Regulations substitute the reference in the 2002 Regulations to MSN 1765(M) with a reference to MSN 1788(M).

7.4 These Regulations also amend regulation 14 of the 2002 Regulations. Regulation 14 concerns the certificates of medical fitness which are acceptable for seafarers employed on non-UK ships to which the 2002 Regulations apply. This amendment makes a certificate of medical fitness which attests to certain requirements set out in the Medical Examination (Seafarers) Convention 1946 (ILO Convention 73) an acceptable alternative to a UK medical fitness certificate or a certificate from a non-UK country deemed to be equivalent. The amendment aligns the 2002 Regulations with established policy and practice.

7.5 In addition to making the two changes outlined, these Regulations also present an opportunity to correct the inappropriate drafting brought to light by the JCSI's enquiry (see paragraph 3 above).

7.6 The amendments made by these Regulations are technical in nature and simply bring the 2002 Regulations in line with current policy and practice. In consultation, the Chamber of Shipping and the trade

unions (NUMAST, RMT and TGWU) have raised no objections to these proposals.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as no impact on business, charities or voluntary bodies is foreseen.

8.2 There is no impact on the public sector.

9. Contact

Jackie Winsor at the Maritime and Coastguard Agency Tel: 02380 329390 or e-mail: Jackie.winsor@mcga.gov.uk can answer any queries regarding the instrument.