EXPLANATORY MEMORANDUM TO

THE PILOTAGE AND PORT SERVICES (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 671

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.

1.2 This memorandum contains information for the Joint Committee on Statutory instruments.

2. Purpose of the instrument

2.1 This instrument is being made to address the deficiencies in Regulation (EU) 2017/352 ("the EU Port Services Regulation") and related domestic legislation arising from the United Kingdom's exit from the European Union. This instrument is being made in accordance with powers in section 8 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 ("the Withdrawal Act").

Explanations

What did any relevant EU law do before exit day?

2.2 The EU Port Services Regulation establishes a framework for the provision of port services and common rules on financial transparency concerning port service and port infrastructure charges in EU Member States. The services covered by the EU Port Services Regulation are bunkering (provision of fuel), cargo-handling, mooring, passenger services, collection of ship-generated waste and cargo residues, pilotage, and towage. Dredging is only covered to the extent that the EU Port Services Regulation requires ports to keep separate accounts of public funding received for dredging.

Why is it being changed?

2.3 The amendments in this instrument are intended to ensure that the EU Port Services Regulation will continue to function effectively after the end of the implementation period for the withdrawal of the UK from the EU. In the absence of these amendments some of the legislation, which was drafted in the context of the UK's membership of the EU, would either lack clarity or fail to operate effectively after the implementation period completion day.

What will it now do?

2.4 The amendments in this instrument address deficiencies in the EU Port Services Regulation which arise as a result of the United Kingdom's withdrawal from the EU. For example, the obligations of Member States are being amended so that these obligations transfer to the relevant authority in the UK and the notification requirements to the European Commission are being removed as they will not apply after the implementation period completion day. The Pilotage Act 1987 amendments are needed to reflect the UK's status as no longer being an EEA State. These

amendments will ensure that UK law remains consistent and effective and they will help clarify how UK law will operate after the implementation period completion day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid in draft for sifting by the Sifting Committees on 7 May. It was considered by the House of Lords Secondary Legislation Scrutiny Committee on 19 May and the House of Commons European Statutory Instrument Committee on 2 June. The Sifting Committees both agreed that 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 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 England and Wales, Scotland and Northern Ireland in relation to Parts 1 and 2. The territorial extent of this instrument is England and Wales and Scotland in relation to Parts 3 and 4.

4.2 The territorial application of this instrument is the same as the territorial extent of this instrument.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Pilotage and Port Services (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The EU Port Services Regulation establishes a common framework for EU Member States for the provision of port services and common rules on the financial transparency of ports. The Regulation does not impose a standardised model across Member States for the management of maritime port services or particular types of charging systems for users of those services. The EU Port Services Regulation has direct effect in domestic law and is supplemented in domestic legislation by practical and procedural provisions in Port Services Regulations 2019 (SI 2019/575).

6.2 The services covered by the EU Port Services Regulation are bunkering (provision of fuel), cargo-handling, mooring, passenger services, the collection of ship-generated waste and cargo residues, pilotage, and towage. Dredging is only covered to the extent that the EU Port Services Regulation requires ports to keep separate accounts of public funding received for dredging.

6.3 Chapter II of the EU Port Services Regulation provides that access to the market for the provision of port services in maritime ports may be subject to: minimum

requirements for the provision of port services; limitations on the number of providers; public service obligations and restrictions related to internal operators. It provides safeguards for employees' rights and an exemption from the requirements for cargo-handling, passenger services and pilotage.

6.4 Chapter III sets out how port infrastructure charges are to be levied and requirements for port users and their representatives or associations to be made informed of the nature and level of these charges. Chapter IV sets out general requirements for the training of staff; consultation with port users and other stakeholders; and the handling of complaints, appeals and penalties.

6.5 The EU Port Services Regulation applies to all maritime ports of the trans-European transport network as listed in Annex II to Regulation (EU) No. 1315/2013.

6.6 The Pilotage Act 1987 governs the operation of maritime pilotage in the United Kingdom. A maritime pilot is a seafarer not part of the ship's crew who has detailed knowledge of a port approach or dangerous navigational area, expertise in ship manoeuvring and uses that knowledge to ensure the safe passage of a vessel within a specified area.

6.7 The Act established each United Kingdom port as a Competent Harbour Authority ("CHA") and granted CHAs full control over pilotage services for ships navigating in, or in the approaches of their harbours. The Act requires CHAs to keep under consideration what pilotage services are needed to secure the safety of ships in or in the approaches to its harbour and gives them powers to: make pilotage compulsory within their area and levy reasonable charges for the use of a pilot; authorise persons to act as pilots within their area; and grant pilotage exemption certificates to any master or first mate who has the skill, experience or local knowledge to pilot their own ship in a compulsory pilotage area. It also requires the Secretary of State to maintain a list of CHAs.

6.8 This instrument is made in exercise of the powers conferred by section 8(1) and paragraph 21 of Schedule 7 to the Withdrawal Act in order to mitigate the failures of the retained EU Port Services Regulation. In particular the amendments remove or amend: provisions which have no value; confer functions on or refer to EU entities; deal with reciprocal arrangements which are no longer appropriate and, in the case of the Pilotage Act, reflect the fact that the UK is no longer part of the EEA.

7. Policy background

What is being done and why?

7.1 The amendments in this instrument are intended to ensure that the EU Port Services Regulation and domestic legislation will continue to function effectively after the implementation period completion day. Although the general policy is maintained, it is necessary to adjust or modify inappropriate references in the legislation in recognition of the fact that the UK is no longer a Member State and will not have any obligations towards EU entities after the implementation period completion day.

7.2 In particular the amendments: -

- Restrict the scope of the retained version of the EU Port Services Regulation to ports in the UK rather than all of the EU;

- Remove provisions which allowed Member States to extend the scope of the Regulation to other ports or to pilotage;
- Remove provisions for certain reports to the European Commission designed to enable the Commission to monitor the application of the EU Port Services Regulation across Member States;
- Replace a reference to Directive 2000/59/EC (which will not be retained by the Withdrawal Act) with a reference to the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 (S.I. 2003/1809);
- Substitute any references to "Member State" with "relevant authority" and define relevant authority as the Secretary of State and Scottish and Welsh Ministers so that in the future any obligations of Member State may be carried out by appropriate Minister.
- Omit Articles 6(7), 11(8) and amend 13(1) on the basis that these provisions have already been transposed by the UK into domestic legislation by way of the Port Services Regulations 2019 (S.I. 2019/575).
- Change references to EU procurement and employment law, which would no longer be appropriate when the UK is not a member of the EU, to the relevant UK regulations (including, where appropriate, the applicable legislation in the Devolved Administrations).

7.3 Withdrawal Act powers are used to make exit-related amendments to references to 'EEA State' in the Pilotage Act to omit the words 'other than the United Kingdom' because the United Kingdom will no longer be an EEA State.

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

8.1 This instrument is being made using the power in section 8 of the Withdrawal Act 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. This instrument is also being made under paragraph 21 of Schedule 7 to the Withdrawal Act to modify retained EU law, make different provision in different areas and to make consequential provisions. 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 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 the implementation period completion day.

10.2 However, because the legislation being amended falls within the devolved competence of each of the Devolved Administrations, those administrations have been consulted on and have engaged with the amendments that are being made. The instrument incorporates changes and comments that the Devolved Administrations

have proposed. Northern Ireland Ministers have confirmed that the instrument should not make the changes to the EU Port Services Regulation for Northern Ireland. Any such changes will be taken forward through the Northern Ireland Assembly. Pilotage is a reserved matter and the instrument therefore will apply in all parts of the United Kingdom.

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 An Impact Assessment has not been prepared for this instrument because it maintains the policy status quo and has no 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 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 will be through communication with key stakeholder groups.

14.2 As this instrument is made under the Withdrawal Act, 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 Haroona Chughtai, 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.

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. 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 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
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: 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, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, 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 for Transport with responsibility for maritime policy at the Department for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Pilotage and Port Services (Amendment etc.) (EU Exit) Regulations 2020 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. It does not 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, or create or amend a power to legislate. The aim is simply to make the existing legislation function correctly after the implementation period completion day. This is covered in detail in sections 2, 6 and 7 and sub-section 12.3 of this Explanatory Memorandum.

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Pilotage and Port Services (Amendment etc.) (EU Exit) Regulations 2020 does no more than is appropriate."

2.2 This is the case because they make technical changes which do no more than is necessary to ensure that the EU Port Services Regulation and Pilotage Act 1987 function correctly after the implementation period completion day. This is covered in detail in sections 2, 6 and 7 and sub-section 12.3 of this Explanatory Memorandum.

3. Good reasons

3.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

3.2 The instrument ensures that the EU Port Services Regulation and the Pilotage Act 1987 will function correctly after the implementation period completion day. This is covered in detail in sections 6 and 7 of the Explanatory Memorandum.

4. Equalities

4.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean 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 for Transport, Rachel Maclean 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, Rachel Maclean 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.