EXPLANATORY MEMORANDUM TO

THE SHIP RECYCLING (FACILITIES AND REQUIREMENTS FOR HAZARDOUS MATERIALS ON SHIPS) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 277

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 The European Union (Withdrawal) Act 2018 ('the Withdrawal Act') will convert the text of directly applicable EU legislation into domestic instruments. This instrument ensures that both converted EU legislation on ship recycling and ship recycling facilities and existing secondary legislation will remain legally operable when the United Kingdom (UK) has withdrawn from the EU. The instrument corrects a number of deficiencies which will arise as a result of EU withdrawal.

Explanations

What did any relevant EU law do before exit day?

2.2 Ship recycling is the process by which a ship is dismantled and its constituent parts disposed of in a manner which is protective both of human health and of the environment. Regulation (EU) 1257/2013 on ship recycling ("the EU Regulation") provides the basis for improving environmental and safety standards for the recycling of EU flagged ships, and to give shipowners more choice of sustainable ship recycling facilities in which to recycle end-of-life ships. It does this by transposing key aspects of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships into EU law (the Convention was adopted in 2009 but has yet to enter into force). The provisions apply to ship recycling facilities in the EU and to EU flagged ships above 500 gross tonnes, excluding warships and other government non-commercial services.

2.3 The main provisions of the EU Regulation apply from 31 December 2018, and will:

a) Require EU flagged ships to be recycled at an approved ship recycling facility on "the European list". Facilities on the European list are authorised by the EU, with updated versions of list published periodically in the Official Journal of the EU. The facilities on the list can be located anywhere in the world, as long as they meet the standards to be authorised by the EU.

b) Restrict the installation of new hazardous materials on ships, (such as asbestos, ozone-depleting substance, and PCBs) as specified in Annex 1 of the EU Regulation;

c) Require ships that are 'flagged' (on the national ship register) to an EU Member State to carry a valid inventory of hazardous materials (IHM), and for

non-EU flagged ships calling at EU ports to carry a valid IHM by 31 December 2020,

d) Require all EU flagged ships to complete Part II (operational waste) and Part III (for stores) of the IHM, and along with the chosen recycling facility develop an individual ship recycling plan.

e) Require the Flag administration to authorise the IHM and 'Ready for Recycling' certificates, and ensure all the requirements have been met before the ship is allowed to go for recycling. In the UK, the Flag administration function is administered by the Maritime and Coastguard Agency.

2.4 The Ship Recycling Facilities Regulations 2015 (S.I. 2015/430) introduced permitting arrangements which have enabled UK ship recycling facilities to appear on the EU European List. The authorisation of UK facilities is performed jointly, by the Health and Safety Executive and the relevant agency responsible for environmental protection.

2.5 The Ship Recycling (Requirements in relation to Hazardous Materials on Ships) (Amendment etc.) Regulations 2018 (S.I. 2018/1122) put in place measures to enforce the EU Regulation. In particular, the Maritime and Coastguard Agency has the role of enforcing these requirements and imposing sanctions (detaining vessels, or fines and imprisonment through the Courts) on non-compliant ships calling at UK ports.

2.6 Commission Implementing Decisions (EU) 2015/2398, 2016/2321, 2016/2322, 2016/2324 and 2016/2325 provide detailed provisions on, respectively, the information and documentation related to an application for a facility located in a third country for inclusion in the European List, the format of the ready for recycling certificate, the format of the statement of completion of ship recycling, the format of the report of planned start of ship recycling, and the format of the certificate on the inventory of hazardous materials. The European List is published in Commission Implementing Decision 2016/2323, which has been amended since by Commission Implementing Decisions 2018/684 and 1478.

Why is it being changed?

2.7 The draft regulations will ensure that the legal framework relating to ship recycling – which applies from 31 December 2018 – remains legally operable when the UK withdraws from the EU on 29 March 2019.

2.8 If these changes are not made, the legislation will not be operable after EU withdrawal. There would be no effective system in place to apply the current regime to UK flagged ships after we exit the EU, as they would no longer appear on the ship register of an EU Member State. The draft regulations also address a number of inoperabilities arising from EU Exit which would hinder the operation of the UK ship recycling regime.

What will it now do?

2.9 The EU Regulation will be modified so that:-

a) UK flagged ships must use an approved ship recycling facility on a 'UK list' of recycling facilities, rather than on the EU's 'European list';

b) It establishes a new procedure allowing ship recycling facilities worldwide to apply for inclusion on the new UK list.

c) It replaces all references which relate to the UK as an EU Member State, in order to ensure that existing regulatory requirements continue to apply within the UK when it is no longer an EU Member State;

d) Omitting or amending inappropriate language, including references to 'the Commission', to reflect that the United Kingdom will no longer be in the European Union;

2.10 The amendments would ensure that existing obligations continue to apply, and that necessary functions of the European Commission can now be undertaken by the Secretary of State, and remove what will become redundant requirements on the UK. The Health and Safety Executive and the UK's agencies responsible for environmental protection will continue to operate the same regime for permitting UK ship recycling facilities as they currently do in their respective territories. The MCA will continue to certify UK flagged ships and inspect ships which call at UK ports for breaches in our retained EU legislation – in the same way as they would have, had the UK not left the EU.

2.11 However, the limits to powers in the Withdrawal Act mean it has not been possible to replicate an EU requirement for existing ships to carry a valid IHM during their operational lifetime, as the IHM requirement appliesies at the end of 2020 after the UK has left the EU. Nonetheless, UK ships would still need an IHM before going for recycling.

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union

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 The territorial application of this instrument varies between provisions.

3.3 The powers under which this instrument is made cover the entire UK (see section 24 of the Withdrawal Act). Regulations 2 and 4 apply in Northern Ireland only. Regulation 3 applies in England, Wales and Scotland only. The remaining regulations apply in England and Wales, Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of regulations 5 to 9 is the United Kingdom and United Kingdom ships wherever they may be. The territorial application of regulations 2 and 4 is Northern Ireland only. The territorial application of regulation 3 is England, Wales and Scotland.

5. European Convention on Human Rights

5.1 Nusrat Ghani, Parliamentary Under Secretary of State at the Department for Transport, has made the following statement regarding Human Rights:

"In my view the provisions of the Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of powers in section 8 of the Withdrawal Act and section 2(2) of the European Communities Act 1972 (the ECA). The Withdrawal Act makes provision for repealing the ECA and will preserve EU law, as it stands at the moment of exit, in UK law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK's obligations as a member of the EU. The Withdrawal Act also contains temporary power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the UK's legal system continues to function properly outside the EU.

6.2 Using the powers in section 8 of the Withdrawal Act 2018, this SI makes amendments to existing legislation:

- The Waste Management Licensing Regulations (Northern Ireland) (S.R 2003/492);
- The Ship Recycling Facilities Regulations 2015 (S.I. 2015/430);
- The Ship Recycling Facilities Regulations (Northern Ireland) 2015 (S.R. 2015/229);
- The Ship Recycling (Requirements in relation to Hazardous Materials on Ships) (Amendment etc.) Regulations 2018 (S.I. 2018/1122);
- Regulation (EU) No. 1257/2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC;
- Commission Implementing Decision (EU) 2018/2398 on information and documentation related to an application for a facility located in a non-EU country for inclusion in the European list of ship recycling facilities;
- Commission Implementing Decision (EU) 2016/2321 on the format of the ready for recycling certificate issued in accordance with Regulation (EU) No 1257/2013;
- Commission Implementing Decision (EU) 2016/2324 on the format of the report of planned start of ship recycling required under Regulation (EU) No 1257/ 2013.

6.3 The limits to powers in the Withdrawal Act mean it has not been possible to replicate an EU requirement for existing ships to carry a valid IHM, as this would apply at the end of 2020. As this will be after the UK exits from the EU, the provisions are not 'operative immediately before exit day', and so are not caught by the provision in s.3(1) of the Withdrawal Act, which otherwise catches the Regulation and makes it retained EU law. The provisions of the EU Regulation which will not therefore become retained EU law on exit day are the first and third subparagraphs of Article 5(2), and Article 12(1) and (8). The possibility of enacting primary legislation to fill this gap is being explored.

6.4 Nevertheless, while the draft regulation does not apply the requirement for existing ships to carry an IHM after 2020 during their operational lifetime, a UK flagged ship

would still need to obtain a valid IHM before going for recycling at an approved ship recycling facility. Without a valid IHM, the ship would not be able to obtain a 'ready for recycling' certificate, which is needed before the ship can be recycled.

7. Policy background

What is being done and why?

7.1 This instrument is designed to ensure the EU framework for maintaining safety and the environmental protection with regard to the operation and end of life of ships, continues to apply to UK ships and in UK waters.

7.2 The existing regulatory framework for permitting and authorising ship recycling facilities in the UK, for certifying UK registered ships and for inspecting ships calling at UK ports would continue to apply. This instrument will do this by amendment to existing statutory instruments and retained EU Regulations and Decisions.

7.3 In particular:

- After exit, it would not be appropriate for the EU to determine which recycling facilities that UK flagged ships are permitted to use. The draft Instrument rectifies this issue by establishing an equivalent United Kingdom list of approved facilities, which must be used by UK flagged ships. UK flagged ships must use an approved ship recycling facility on the new United Kingdom list, rather than on the EU's approved European list. The power to accept or remove facilities on the UK list is conferred on the Secretary of State. Initially, the UK list will be similar – and include all recycling facilities (UK, EU and non-EU facilities) that are on the European list when we leave the EU. We would expect all these facilities would remain on the UK list as long as they continue to hold the relevant permits. To allow UK flagged ships the widest choice and to minimise administrative burdens on ship recycling facilities, our policy is to align the UK list with the European list as far as practicable. Nevertheless, the two lists may diverge over time, as the Secretary of State retains the right to reject applications and remove facilities from the UK list, where there are grounds for doing so.
- It establishes a new procedure allowing ship recycling facilities worldwide to apply for inclusion onto the new UK approved list. This is to ensure UK flagged ships have a wide choice of approved ship recycling facilities to choose from.
- The Secretary of State can update legislation in line with international requirements. These are likely to be through the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships when it comes into force. Until and unless the Secretary of State does so, to the extent that they are not amended by these Regulations, the Commission Implementing Decisions referred to in paragraph 2.6 above will continue to have effect after exit day as retained EU law.
- As far as ships are concerned, the UK will recognise a valid IHM and a "ready for recycling" certificate (needed by EU ships before going to be recycled) produced by an EU Member State as equivalent to our own.

7.4 The amendments also:

- replace references to an EU Member State with references to the United Kingdom to ensure that legislative requirements continue to apply within the UK when it is no longer a Member State;
- insert, omit or amend definitions to ensure compatibility or consistency with other legislation;
- omit or amend wording to reflect that the United Kingdom will no longer be in the European Union or the European Economic Area;
- ensure that the UK continues to apply monitoring, reporting and verification methods equivalent to those used by EU Member States;
- remove what will become redundant requirements on the UK to make certain reports to the Commission; and
- transfer to the Secretary of State the powers currently exercisable by the European Commission powers to make tertiary legislation. This will enable us to amend the documents needed by a non-UK ship recycling facility to apply for inclusion on the UK List, as well as other documentation – such as the templates used for the inventory certificates and ships' notification reports to the Maritime and Coastguard Agency.

7.5 This instrument applies to waste management which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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 made under the power in section 23 of the Withdrawal Act in order to make provision which is consequential to the amendments made under section 8. In accordance with the requirements of the Withdrawal 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 any of the legislation amended by this instrument.

10. Consultation outcome

10.1 Department for Transport Ministers and officials have regular engagement with the shipping industry and Department for Environment, Fisheries and Rural Affairs Ministers as well as officials in the Northern Ireland Executive have regular engagement with the waste management and recycling industry. A number of issues related to the UK's withdrawal from the EU have been addressed though such engagement. This includes plans for making secondary legislation to ensure that the statute book continues to function irrespective of the outcome of negotiations.

11. Guidance

11.1 The Maritime and Coastguard Agency will issue guidance to industry on the revised regime which will apply to ships, after the UK withdraws from the European Union.

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 are no, or no significant, impacts.

13. Regulating small business

13.1 The legislation is unlikely to apply to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. The EU Regulation only applies to medium to large merchant ships of 500 gross tonnes or more. The MCA considers that the high value and operating costs of those vessels suggest that firms owning and operating such vessels are unlikely to be classified as small.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business. This instrument amends legislation listed in section 6.2. As this instrument is made under the Withdrawal Act, no review clause is required.

15. Contact

15.1 Ian Timpson at the Department for Transport (telephone: 020 7944 4446 or email: Ian.Timpson@dft.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Jonathan Simpson at the Maritime and Coastguard Agency (telephone: 02380 329409 or email: jonathan.simpson@mcga.gov.uk) can also be contacted with any queries regarding the instrument.

15.3 Tom Newman-Taylor at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.4 Minister Nusrat Ghani, 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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: 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) 2018 Act

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State at the Department for Transport, Nusrat Ghani has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the draft Ship Recycling (Facilities and Requirements in Relation to Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the amendments being made do no more that ensure the continuing effectiveness of the existing regulatory regime.

2. Good reasons

2.1 The Parliamentary Under Secretary of State at the Department for Transport, Nusrat Ghani 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".

2.2 These are that the United Kingdom wishes to preserve as far as possible the current scope of the EU regime for maintaining safety and environmental protection with regard to the operation and end of life of ships.

3. Equalities

3.1 The Parliamentary Under Secretary of State at the Department for Transport, Nusrat Ghani 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."

3.2 The Parliamentary Under Secretary of State at the Department for Transport, Nusrat Ghani 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, 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. This Act does not extend to Northern Ireland, and as parts of the draft instrument extend to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination harassment and victimisation in relation to Northern Ireland."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.