

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MONITORING, REPORTING AND VERIFICATION
OF CARBON DIOXIDE EMISSIONS) (AMENDMENT) (EU EXIT) REGULATIONS
2018

2018 No. [XXXX]

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 Committees on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 This instrument amends Regulation (EU) No. 2015/757 of the European Parliament and of the Council on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport and amending Directive 2009/16/EC (O.J. L123, 19.5.2015, p. 55.) (“the EU Regulation”) and Commission Implementing Regulation (EU) 2016/1927 of 4 November 2016 on templates for monitoring plans, emissions reports and documents of compliance pursuant to Regulation (EU) 2015/757 (“the Implementing regulation”). The instrument also amends the Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) and Port State Control (Amendment) Regulations 2017 (“the 2017 Regulations”) which provide an enforcement mechanism for the EU Regulation in the United Kingdom.
- 2.2 Explanations

What did any relevant EU law do before exit day?

- 2.3 The EU Regulation and the Implementing Regulation create a mechanism for monitoring and reporting carbon dioxide emissions from ships and for reporting other information at national and European Union level. Ships of more than 5,000 tons which visit ports under the jurisdiction of an EU Member State after 30 June 2019 are required to carry a certificate of compliance which demonstrates that they have complied with the EU Regulation with regard to voyages between ports within an EU Member State, to or from ports in another EU Member State or to or from ports outside the European Union.

Why is it being changed?

Since the EU Regulation only applies to ships visiting ports under the jurisdiction of an EU Member State, it would therefore cease to have effect when the United Kingdom leaves the European Union.

What will it now do?

The EU Regulation will be modified so that it applies to ships visiting ports within the United Kingdom in respect of voyages between ports in the United Kingdom and to and from ports outside the United Kingdom.

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 This instrument is an affirmative SI because it meets the criteria in paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 in that it provides for functions which are currently exercisable by the European Commission, to be exercised by the Secretary of State for Transport.

3.2 The functions are–

- the power to adopt delegated acts in article 5.2 of the EU Regulation to amend the methods set out in Annex I and the rules set out in Annex II for monitoring carbon dioxide emissions;

-the power to adopt implementing acts to determine the technical rules establishing data exchange formats including electronic templates in article 12 of the EU Regulation;

-the power to adopt implementing acts to determine the technical rules establishing data exchange formats including electronic templates in article 17 of the EU Regulation,

in each case, the amended EU Regulation confers a power on the Secretary of State to make regulations by negative instrument. This would give the Secretary of State the ability to make technical changes, to ensure shipowners have a consistent methodology for collecting and reporting data.

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)

3.3 The territorial application of this instrument includes Scotland and Northern Ireland.

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 and United Kingdom ships wherever they may be

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 Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) (EU Exit) (Amendment) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument corrects a number of legal deficiencies in maritime legislation relating to monitoring, reporting and verification of CO₂ emissions from ships. Those deficiencies are found both in EU-derived domestic legislation and in retained EU law.

6.2 Using the powers in section 8 of the European Union (Withdrawal) Act 2018, amendments have been made to existing legislation:

-Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport;

-Commission Implementing Decision (EU) 2016/1927 on templates for monitoring plans, emissions reports and documents of compliance pursuant to Regulation (EU) 2015/757;

-The Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) and the Port State Control (Amendment) Regulations (S.I.2017/825) 2017 Regulations”).

7. Policy background

What is being done and why?

- 7.1 This instrument is designed to ensure that the existing regulatory framework for monitoring, reporting and verification of CO₂ emissions from ships continues to have effect in UK law when the United Kingdom withdraws from the European Union. This instrument does this by amendment to the retained EU Regulation, the Implementing Regulation and the 2017 Regulations.
- 7.2 The EU Regulation established rules for monitoring, reporting and verifying CO₂ emissions from ships above 5,000 tonnes which make voyages that start or finish in a port in an EU Member State. The EU Regulation has direct effect in UK law and shipping companies have already prepared monitoring plans and have been collecting data since 1 January 2018. Ships within scope are required to carry a valid Document of Compliance from 30 June 2019.
- 7.3 Although the EU Regulation has direct effect, the 2017 Regulations were needed to establish a compliance regime. These supplement the EU Regulation, and in particular establish a penalties regime for failing to comply with the requirements of the EU Regulation.
- 7.4 This instrument makes amendments that are necessary to ensure that the existing regulatory framework for monitoring, reporting and verification of CO₂ emissions is retained, and operates effectively, following the UK’s exit from the European Union. In addition to ensuring that the same regulatory requirements continue to apply to UK-registered ships, the amendments also ensure that UK regulators are able to enforce these standards against foreign vessels in UK waters, including EU vessels.

The amendments:

- replace references to an EU Member State with references 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;

- remove what will become redundant references to EU databases which the UK will no longer have access to, whilst ensuring that their role is replicated domestically; and
- transfer to the Secretary of State the powers currently exercisable by the European Commission powers to make tertiary legislation.

- 7.5 While the amended legislation is intended to preserve the exiting regulatory framework it will not do so in its entirety. Ships visiting ports in the United Kingdom will be required to carry a Document of Compliance which will in future be issued under the United Kingdom regulatory framework. However, the legislation will not require ships to monitor and report on voyages which do not start or end at a port in the United Kingdom. Information on these voyages will in future be captured under a broadly similar regime, being introduced under by the IMO through an amendment to the International Convention for the Prevention of Pollution from Ships. These requirements will be implemented into domestic law under a separate statutory instrument.
- 7.6 The United Kingdom will continue to accept certificates of compliance issued under the EU regime, which will, in future, no longer require such ships to monitor and report on voyages between the United Kingdom and ports outside the EU.
- 7.7 The draft instrument does not retain the provisions relating to expulsion orders (regulation 7) and the associated power to permit prohibited ships to enter UK ports (regulation 8) in the 2017 Regulations. The power to issue expulsion orders is discretionary under the EU Regulation and the UK did not seek to exercise such a power, although it would be required to recognise expulsion orders issued by another EU Member State. It is not our policy to ban or expel ships from a port, unless there is immediate risk to safety or the environment – neither of which would apply in this case.

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 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 any of the legislation amended by this instrument.

10. Consultation outcome

- 10.1 No formal consultation has been carried out for this instrument, as the instrument maintains the regulatory status quo and ensures that those to whom the amended instruments apply are able to continue within the same regime once the UK withdraws from the European Union.

11. Guidance

- 11.1 The Maritime and Coastguard Agency will issue guidance to industry on the revised reporting regime which will apply 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 this is a zero cost measure.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 However, as this instrument maintains the current regulatory position and is not anticipated to have any impact on small businesses, it is not necessary to take action to minimise the impact of the requirements on small businesses.

14. Monitoring & review

- 14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, 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 Tom Newman-Taylor, Deputy Director for Maritime, Environment, Technology and Innovation at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 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/ESIC
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) 2018 Act

1. Appropriateness statement

1.1 The Minister 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:

1.2 “In my view the draft Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions from Ships) (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”. 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 Minister 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:

2.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. These are that the United Kingdom wishes to preserve as far as possible the current scope of the EU regime for monitoring carbon dioxide emissions from ships in view of the importance of such emissions in relation to climate change.

3. Equalities

3.1 The Minister the Parliamentary Under Secretary of State at the Department for Transport, Nusrat Ghani has made the following statement(s) “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. Explanations

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

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