

EXPLANATORY MEMORANDUM TO
THE SHIP RECYCLING (FACILITIES AND REQUIREMENTS FOR HAZARDOUS
MATERIALS ON SHIPS) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 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.

2. Purpose of the instrument

- 2.1 The United Kingdom (UK) has already introduced European Union (EU) exit legislation on ship recycling - the Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019 (SI 2019/277) (“the 2019 Regulations”) to ensure that legislation in this area would remain legally operable once the UK had withdrawn from the EU. However, Regulation (EU) 1257/2013 on ship recycling (“the EU Regulation”) is one of the provisions listed in Annex II of the Protocol on Ireland/Northern Ireland (“the Protocol”) in the withdrawal agreement. Consequently, the EU Regulation will continue to apply in Northern Ireland as it has effect in EU law (rather than the retained version which applies to the rest of the UK) without any further provision being made.

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. 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 applied from 31 December 2018, and these:
- a) require EU flagged ships to be recycled at an approved ship recycling facility on the EU’s European List (“the European List”). Facilities on the European List are authorised by the EU, with updated versions of the list published periodically in the Official Journal of the EU. The facilities on the European List can be located anywhere in the world if they meet the standards authorised by the EU;

- b) restrict the installation of new hazardous materials on ships, (such as asbestos and ozone-depleting substances) 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 and non-EU flagged ships which use EU ports to carry a valid Inventory of Hazardous Material (IHM) by 31 December 2020;
 - d) require an EU flagged ship at the end of its operational life 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 can go for recycling. In the UK, the Flag administration function is administered by the Maritime and Coastguard Agency (MCA).
- 2.4 The domestic 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 (HSE) and the relevant devolved agency responsible for environmental protection. The Ship Recycling Facilities Regulations (Northern Ireland) 2015 (S.R. 2015/229) designates the Department for the Environment (Northern Ireland)¹ and the HSE as joint competent authorities to authorise ship recycling facilities in Northern Ireland, so that they may be included on the European List.
- 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 implement the EU Regulation domestically. In particular, the MCA 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 about applications for inclusion in the European List by non-EU ship recycling facilities, as well as templates to validate a ship’s IHM and for reporting.
- 2.7 The 2019 Regulations will modify the EU Regulation so that UK flagged ships will need to use an approved ship recycling facility on the ‘United Kingdom List’ of approved recycling facilities, rather than on the European List. It will also replace all references which relate to the UK as an EU Member State and amended obsolete references, for example, those relating to ‘the Commission’. The amendments ensure that existing obligations will continue to apply; that necessary functions of the European Commission are transferred to the Secretary of State and any requirements on the UK which become redundant are removed.

Why is it being changed?

- 2.8 This Instrument will ensure that the legal framework relating to ship recycling remains legally operable, with particular regard to the Protocol, once the

¹ It is now called the Department of Agriculture, Environment and Rural Affairs (DAERA-NI)

implementation period where the UK continues to be subject to EU rules has been completed (“IP completion day”).

What will it now do?

- 2.9 This Instrument amends the 2019 Regulations, to reinstate the European List of facilities for EU flagged ships in respect of Northern Ireland in light of the Protocol. Domestic legislation is revised so that Northern Ireland facilities are prohibited from accepting an EU flagged ship for recycling unless the facility is on the European List. Along with ship recycling facilities in the rest of the UK, Northern Ireland facilities cannot accept any UK flagged ship after IP completion day unless the facility is included on the United Kingdom List. The joint competent authority in Northern Ireland (the Department of Agriculture, Environment and Rural Affairs and the HSE) will need to inform the Secretary of State about the status of Northern Ireland facilities – when the ship recycling permit has been renewed, suspended or withdrawn. The Secretary of State must also notify the European Commission.
- 2.10 The new regulations also remove the references in the 2019 Regulations to Articles 5A and 12A in the EU Regulation, which are no longer necessary. The requirement now under retained EU law is for existing UK ships, non-UK ships and ships which transfer onto the UK flag from another state, to carry a valid IHM by the end of 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 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 extend to the whole of the UK. Regulation 3 applies to Northern Ireland only.

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 regulation 3 is limited to ship recycling facilities in Northern Ireland. The territorial application of some provisions in regulation 4 is to Northern Ireland, but some apply to the whole of the UK.

5. European Convention on Human Rights

- 5.1 Rachel Maclean, 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 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8(1) and 8C of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”).
- 6.2 The agreement on the UK’s withdrawal from the EU includes a protocol to address the unique circumstances on the island of Ireland. This includes provision in Article 5(4) of the Protocol and Annex II which specify that certain provisions of EU law will apply to and in the UK in respect of Northern Ireland. The EU Regulation is one of the provisions listed in Annex II of the Protocol. Although the UK has amended and retained the EU Regulation in its domestic legislation, it is not the same as the version which has effect in EU law which applies to ship recycling facilities in Northern Ireland, under the Protocol.
- 6.3 Using section 8(1) and 8C, the new regulations make amendments to the 2019 Regulations. The main changes are listed under paragraph 7.5 and 7.6 below.
- 6.4 The requirement for existing ships (and non-EU flagged ships using European ports) to carry an IHM applies before the end of 2020. The 2019 Regulations were drafted on the basis that these provisions would not be “operative immediately before exit day” and therefore would not be caught by the provision in section 3(1) of the Withdrawal Act that would make these provisions retained EU law. However, the agreement on the UK’s withdrawal from the EU includes an implementation phase until the end of 2020. Consequently, the provisions of the EU Regulation - the first and third subparagraphs of Article 5(2), and Article 12(1) and (8) – will also now become retained EU law.

7. Policy background

What is being done and why?

- 7.1 The EU Regulation is one of the provisions listed in Annex II of the Protocol, which specifies that certain provisions of EU law will continue to apply to and in the UK in respect of Northern Ireland. As part of the work to implement the Protocol, Departments are bringing forward a series of statutory instruments in order to ensure that the statute book is fully functioning after IP completion day.
- 7.2 There is a long-standing international concern that ship recycling takes place in poorly regulated or unregulated ship yards – mainly in the Indian sub-continent - putting workers’ lives and health at risk and posing a serious environmental risk. The EU Regulation attempts to ensure that ships flagged in EU countries are only recycled at well-regulated facilities, irrespective of where these are located. The EU Regulation enabled the European Commission to set up a list (“the European List”) of approved recycling facilities at which ships may be recycled. The European List has two parts (i) Part A – ship recycling facilities located in a member State, and (ii) Part B – ship recycling facilities located in a third country. The 7th iteration of the European List was published on 3rd August 2020 in draft², inviting feedback from stakeholders before the EU Ship Recycling Committee votes on whether to accept it.
- 7.3 Out of the 41 ship recycling facilities shown on the draft European List, nine are non-EU facilities (eight from Turkey, and one from the US). There have been up to four

² <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11678-Updating-the-European-List-of-ship-recycling-facilities-7th-version>

UK ship recycling facilities shown in Part A of the European List at any one time. After IP completion day however, the listing of the three facilities located on the UK mainland will become void. These facilities will need to reapply for inclusion on Part B of the European List as a non-EU third country, if they want to continue recycling EU flagged ships from next year. However, under the Protocol, the facility in Northern Ireland will continue to be listed under Part A of the European List after IP completion day. Providing it has a valid UK ship recycling permit, the facility will remain on the European List without the need to reapply for inclusion.

- 7.4 After IP completion day, like other UK recycling facilities, ship recycling facilities in Northern Ireland must be on the United Kingdom List before they can recycle any UK flagged ships.
- 7.5 This Instrument is designed to ensure that the legal framework relating to ship recycling remains legally operable following IP completion day with particular regard to the Protocol. This instrument will do this by amending the 2019 Regulations to:
- require the joint competent authority for ship recycling facilities in Northern Ireland to notify the Secretary of State of any change of circumstances regarding the status of the sole ship recycling facility in Northern Ireland (e.g. the permit has been renewed, suspended or withdrawn);
 - require the Secretary of State to carry out some of the functions of a member State (by virtue of the EU Regulation as it has effect in Union law by virtue of the Protocol) and notify the European Commission of any change of status regarding ship recycling facilities in Northern Ireland; and
 - prohibit facilities in Northern Ireland from recycling an EU flagged ship unless that facility is included on the European List.
- 7.6 The amendments made by this Instrument to the 2019 Regulations change the Ship Recycling Facilities Regulations (Northern Ireland) 2015 and the EU Regulation to give effect to the measures listed in paragraph 7.5. Other amendments made to the EU Regulation take account of the need for existing ships to carry an IHM before the end of 2020, as referred to above in paragraphs 2.10 and 6.4.

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 and 8C 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 UK from the EU, and in order to give effect to the Protocol in the withdrawal agreement. In accordance with the requirements of the 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. 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 through such engagement. This includes plans for making secondary legislation to ensure that the statute book continues to function to comply with the Protocol requirements in respect of ship recycling facilities.

11. Guidance

- 11.1 The MCA has issued guidance to industry which will apply to ships with regard to ship recycling [MGN 633 \(M+F\)](#). The Government has discussed the implications of EU exit and the Protocol with UK Ship recycling facilities which are on the European List.

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 significant, impacts. The new regulations implement obligations under the Protocol into domestic law. Consequently, any impacts on business are associated with the Protocol and not this statutory instrument. There is only one ship recycling facility in Northern Ireland, and the impact of the Protocol is that this company will remain on Part A of the European List of approved ship recycling facilities after IP completion day. In contrast, facilities on the UK mainland will have to reapply for inclusion as facilities located in a non-EU third country under Part B of the European List.

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, because this legislation does not impose any burdens. The impact of the Protocol will be beneficial for ship recycling facilities in Northern Ireland, allowing them to remain on the European List of approved ship recycling facilities after IP completion day.

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. As this instrument is made under the Withdrawal Act and the European Union (Withdrawal Agreement) Act 2020, and 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 Naomi Hyland at the Maritime and Coastguard Agency (telephone: 0203 817 2511 or email: naomi.hyland@mcga.gov.uk) can also be contacted with any queries regarding the instrument.
- 15.3 Morna Cannon at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.4 Minister Rachel Maclean, 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	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 Parliamentary Under Secretary of State at the Department for Transport, Rachel Maclean 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 2020 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, Rachel Maclean 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 UK 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 of ship recycling facilities.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State at the Department for Transport, Rachel Maclean 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, Rachel Maclean 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 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.