

## EXPLANATORY MEMORANDUM TO

### THE MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT WORK) (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2018

2018 No. 1202

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 The purpose of these Regulations is to ensure that European Union (“EU”) derived maritime health and safety provisions continue to operate effectively after the United Kingdom has left the EU. These Regulations do not make any policy changes beyond the intent of ensuring continued operability of the relevant legislation.
- 2.2 The Regulations make minor amendments in order to update outdated references within maritime health and safety provisions.

#### *Explanations*

##### What did any relevant EU law do before exit day?

- 2.3 The EU regulates a variety of aspects of health and safety at work and this protection applies to workers on ships. Where necessary, the United Kingdom has introduced legislation to give effect to the EU measures. In some cases, the regulations amended by this instrument refer to EU Directives for information required to comply with the regulations.
- 2.4 The relevant EU law and its current effect is set out in Annex A.

##### Why is it being changed?

- 2.5 The European Union (Withdrawal) Act 2018 (c. 16) (“EUWA”) will retain such legislation in United Kingdom law. However, some changes are needed for the legislation to continue to operate as intended.
- 2.6 Annex A contains a description of why each amendment is being made.

##### What will it now do?

- 2.7 The instrument will maintain the policy status quo and therefore the relevant regulations will continue to operate in the same way. However, in some instances persons will be required to refer to sources published in the United Kingdom rather than to EU instruments.
- 2.8 Annex A contains a description of what each of the provisions will do now.

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument was laid for sifting under the EUWA on 18th October 2018. It was considered by the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee on 30th October 2018. The Sifting Committees both agreed that the instrument should proceed by way of the negative resolution procedure. The Minister has considered the decision 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 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 the United Kingdom.
- 4.2 The territorial application of this instrument is all United Kingdom ships, whether in United Kingdom waters or anywhere else in the world, and all seafarers on such vessels irrespective of nationality, ethnic origin, religion, gender etc. It also applies to non-United Kingdom ships when they are in United Kingdom waters.

### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

### **6. Legislative Context**

- 6.1 On 23rd June 2016, a referendum on the United Kingdom's membership of the European Union took place which concluded in a vote to leave the EU. The Government's intention is that the United Kingdom will leave the EU on 29th March 2019.
- 6.2 To ensure that the United Kingdom has a working statute book on the day that we leave the EU, this instrument addresses a number of legal inoperabilities in maritime legislation relating to the health and safety of seafarers and other workers. Those inoperabilities are found both in EU-derived domestic legislation and in retained EU law and they are explained in detail in Annex A. These amendments will come into force on exit day and they can be found in Part 2 of the Regulations.
- 6.3 The Regulations rely on section 8 of the EUWA to address those inoperabilities. In that respect, it makes only those changes necessary to preserve the legal status quo.
- 6.4 The remainder of the Regulations are made in exercise of the powers conferred by section 85 of MSA 1995, except in respect of its application to Government ships, where the power is provided by section 2(2) of the European Communities Act 1972.
- 6.5 Regulation 2 makes a number of minor amendments to the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995. These amendments are purely intended to aid the reader by clarifying the current position and do not make any substantive changes. The amendments:

- 6.5.1 update superseded references to Merchant Shipping Notices which have been replaced;
- 6.5.2 remove references to the Marine Safety Agency (which no longer exists) and clarify that Merchant Shipping Notices are issued by the Secretary of State; and
- 6.5.3 update the definition of “Government Ships” to match the definition shown MSA 1995.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument is designed to ensure that the existing regulatory framework for maritime health and safety is retained and operates effectively when the United Kingdom withdraws from the European Union. This instrument does this by amendment to existing statutory instruments. In addition to ensuring that the same regulatory requirements continue to apply to United Kingdom-registered ships, the amendments also ensure that United Kingdom regulators are able to enforce these standards against foreign vessels in United Kingdom waters, including EU vessels. The amendments and the reasons for them are explained in detail in Annex A.
- 7.2 As far as possible, the Government’s intention is for maritime health and safety legislation to maintain alignment with the relevant land-based health and safety regimes. The policy reason for this is that it is appropriate for land-based workers and seafarers to be similarly protected and this avoids confusion at the margins between the land-based and maritime regimes. This has been possible where the structure of the corresponding maritime legislation and land-based legislation is sufficiently similar that amendments can be drafted in a similar way. However, where restructuring of the maritime legislation would be required to correspond to the land-based legislation, it was not considered appropriate to make the considerable changes that would have been needed to align the drafting. For example, in the maritime regime, three occupational health and safety directives, Directive 2000/54/EC (biological agents), 1998/24/EC (chemical agents) and 2004/37/EC (carcinogens and mutagens), were each transposed by a separate instrument. The land-based regime, which already had the Control of Substances Hazardous to Health Regulations in place when these Directives were adopted, amended that single instrument to implement the three Directives.
- 7.3 A number of the amendments which are being made facilitate this alignment by referring to domestic sources, including instruments which form part of the land-based health and safety regime, for detailed requirements rather than to EU Directives which will not be updated, after the United Kingdom exits the European Union.
- 7.4 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 contained a provision which referred to lists contained in Annexes to the relevant Directive. This is amended to refer instead to lists contained in Annexes A and B of Merchant Shipping Notice 1890 (M+F). The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010 and the Merchant Shipping and Fishing Vessels (Chemical Agents) Regulations 2010 refer to Annexes in the relevant Directive for the detailed specific requirements associated with the provisions. These requirements have been reproduced in Merchant Shipping Notices 1888 (M+F) and 1889 (M+F) and the Regulations are amended to refer to the Annexes in the Merchant Shipping Notices. The Annexes in the Merchant Shipping

Notices exactly reproduce the contents of the Annexes in the relevant Directives, apart from minor updating of cross-references, so these amendments do not make any substantive policy changes. The amendments maintain the policy status quo, whilst allowing for future updates via Merchant Shipping Notice in order to maintain consistency with the land-based regime.

- 7.5 Copies of the Merchant Shipping Notices referred to in the Regulations were published in draft alongside the Regulations on <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments> when the Regulations were laid for sifting under the EUWA. The final Merchant Shipping Notices are now available to be downloaded from <http://www.mcga.gov.uk>. That website will also have details of any amendments or replacements in the future. Copies of the Merchant Shipping Notices will also be able to be obtained by contacting M-Notices Subscriptions, PO Box 362, Europa Park, Grays, Essex RM17 9AY (telephone number 01375 484 548; fax 01375 484 556; email orders [mnotices@ecgroup.co.uk](mailto:mnotices@ecgroup.co.uk)).
- 7.6 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010 contain definitions of “group 2 biological agent”, “group 3 biological agent” and “group 4 biological agent” and each of these include agents classified as such in the relevant Directive or in the Approved List of Biological Agents, which is an administrative list maintained by the Health and Safety Executive. The definitions (in the Directive and in the Regulations) are not exhaustive. For example, “group 2 biological agent” means a biological agent that can cause human disease and might be a hazard to workers but is unlikely to spread to the community and for which there is usually an effective prophylaxis or treatment available and includes agents classified as such in the Directive. The Approved List of Biological Agents contains all of the agents mentioned in Annex III to the Directive as well as some which are not included in the Annex. Therefore there is no need to retain the reference to the Directive Annex and the definitions are amended to remove this reference. This maintains the policy status quo but ensures that the maritime legislation continues to be aligned with the land-based regime moving forwards.
- 7.7 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998 referred to the relevant Directive for the meaning of “group 3 biological agent” and “group 4 biological agent”. The Regulations are amended to refer instead to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010 for these definitions. The definitions are currently identical (as explained in paragraph 7.5) and therefore the policy status quo is maintained. However, this amendment will ensure that when the legislation relating to biological agents is updated, the changes will apply to the obligations of employers in relation to young persons. There are similar amendments in relation to the Merchant Shipping (Health and Safety at Work) (Safety Signs and Signals) Regulations 2001.
- 7.8 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) Regulations 2010 provided that in relation to a chemical agent the “national occupational exposure limit value” was the indicative occupational exposure limit value established in a variety of different Directives or, where more stringent, any workplace exposure limit established for that agent in document EH40. EH40 is a publication prepared by the Health and Safety Executive and the workplace exposure limits in EH40 are either identical to or more stringent than the indicative occupational exposure limit value in the Directives. The Regulations are amended to

refer to document EH40 only. This maintains the policy status quo but ensures that the maritime legislation continues to be aligned with the land-based regime moving forwards.

- 7.9 A number of provisions in maritime health and safety legislation will be redundant after the United Kingdom withdraws from the European Union. For example, the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995 contained a regulation which specifies that the purpose of the Regulations is to implement the Directive insofar as it relates to the carriage of medicines and other medical stores. This provision has no substantive effect and will be redundant following withdrawal. Therefore this provision is removed.
- 7.10 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) 2007 are not intended to apply to workers exposed only to ionising radiation because this is dealt with via different health and safety legislation. The Regulations made this distinction by reference to the Treaty establishing the European Atomic Energy Community (“EURATOM”). The United Kingdom will be withdrawing from EURATOM so this reference is no longer appropriate and has been updated accordingly. A similar amendment has been made in relation to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) Regulations 2010.
- 7.11 There are various references in maritime health and safety legislation to “relevant EU legislation” and “relevant EU Directives”. For clarity, these are amended to the specific obligation which is being referred to. In some instances this results in removing the wording altogether because the requirements of the Directives have been transposed into domestic law.
- 7.12 The overall effect of the amendments is to maintain the policy status quo whilst ensuring that the maritime and land-based health and safety regimes maintain alignment following the withdrawal of the United Kingdom from the EU.

## **8. European Union (Withdrawal) Act**

- 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 Annex B 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 The changes made in the Regulations will not have any effect on the shipping industry, seafarers or other groups because they maintain the policy status quo. However, there will be some minor changes in practice because persons will be required to consult United Kingdom rather than EU sources for some types of information. It is understood that this is already happening in many cases. A proportionate limited consultation was carried out via letters sent out to key stakeholders including trade unions, the UK Chamber of Shipping, the British Marine

Federation, the Marine Safety Forum, the Royal Yachting Association and the UK Marine Pilots Association. The consultation letter explained the amendments that are being made and asked for any comments. There were no responses to this consultation.

## **11. Guidance**

- 11.1 Guidance will not be issued to supplement this instrument. However, some existing guidance on the instruments amended by this instrument has been revised and reissued as part of the draft Merchant Shipping Notices, to reflect the changes in information sources. Further information is contained in paragraph 7.4 of this explanatory memorandum.

## **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 no, or no significant, impact is expected.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 There is no exemption as regards small business in this instrument because all workers are entitled to the same level of protection of their health and safety, regardless of the size of the business. However, this instrument has no adverse impact on small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is to use MCA's regular contacts with stakeholders, particularly through the National Maritime Occupational Health and Safety Committee, to seek views on any impact of the instrument and any improvements that could be made to the legislation or supporting guidance.

- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Nusrat Ghani MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument. The majority of the provisions in this instrument are made under the EU Withdrawal Act 2018 and no review clauses are required in relation to provisions made under these powers. The other amendments made in the instrument are minor changes to update references and it would therefore be disproportionate, taking into account the economic impact of the amendments, to include provision for review”.

## **15. Contact**

- 15.1 Julie Carlton at the Maritime and Coastguard Agency Telephone: 020 3817 2498 or email: Julie.Carlton@mcga.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ajit Jacob at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nusrat Ghani MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

# Annex A

<b>The Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995 (S.I. 1995/1802)</b>	
Directive	Amendments
Council Directive 92/29/EEC of 31st March 1992 (OJ No. L 113, 30.04.1992, p. 19) which specifies the minimum safety and health requirements for improved medical treatment on board vessels (including in relation to the carriage of medicines and other medical stores).	Regulation 2 of the Regulations specifies that the purpose of the Regulations is to implement the Directive insofar as it relates to the carriage of medicines and other medical stores. This regulation is redundant after the United Kingdom exits the EU and is therefore omitted.

<b>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962)</b>	
Directives	Amendments
<p>Council Directive 89/391/EEC (OJ No. L 183, 29.06.1989, p. 1) contains general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, consultation and training.</p> <p>Council Directive 91/383/EEC (OJ No. L 206, 29.07.1991, p. 19) ensures that workers with a fixed-duration contract of employment and workers in temporary employment are afforded, as regards health and safety at work, the same level of protection as other workers in the same undertaking.</p> <p>Council Directive 92/85/EEC (OJ No. L 348, 28.11.1992, p. 1) implements measures to encourage improvements in the safety at health at work of pregnant workers and workers who have recently give birth or who are breastfeeding.</p>	<p>Regulation 2 provides that, subject to particular definitions in the Regulations, words and expressions used in the Regulations have the same meaning as in Council Directive 89/391/EEC (as aforementioned). The regulation is amended to clarify that this refers to the version of the Directive which is in force immediately prior to exit day.</p> <p>Regulation 8 provides that a risk assessment must include consideration of the particular risks involved where workers include women with potential for child-bearing and the work is of a kind which could involve a risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any process, working condition or physical, chemical or biological agent. The regulation referred to non-exhaustive lists contained in Annexes to the Directive. The regulation is amended so that it instead refers to lists in Annexes to a Merchant Shipping Notice (MSN). The content of the lists in the MSN Annexes exactly matches the lists in the Directive Annexes, apart from some correction of cross-references. Therefore there is no practical policy change. If future health and safety guidance indicates that a particular process, working condition or physical, chemical or biological agent poses a particular risk that should be taken into account in the risk assessment then the MSN Annexes can be updated administratively alongside land-based health and safety guidance documents. This will facilitate continuing alignment between the maritime health and safety regime and the land-based health and safety regime.</p> <p>A consequential amendment is made in the interpretation section of the Regulations (regulation 2).</p>

<b>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998 (S.I. 1998/2411)</b>	
Directive	Amendments
Council Directive 94/33/EC (OJ No. L 216, 20.08.1994, p. 12) which contains	Regulation 2 provides that, subject to particular definitions in the Regulations, words and expressions used in the Regulations have the



<p>provisions in order to protect the health and safety of young people in employment.</p>	<p>same meaning as in Council Directive 94/33/EC. The regulation is amended to clarify that this refers to the version of the Directive which is in force immediately prior to exit day.</p> <p>The Schedule contains a non-exhaustive list of agents, processes and work which should be taken into account when determining whether the work will involve harm or risk for the purpose of these Regulations (regulation 5(5)). The Schedule referred to biological agents of risk groups 3 and 4 within the meaning specified in the second paragraph of Article 2 of Directive 2000/54/EC (see below). It has been amended so that it instead refers to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010 (S.I. 2010/323) (the “Biological Agents Regulations”). The amendment maintains the policy status quo (for further details see the section below regarding the Biological Agents Regulations). The Schedule also refers to chemical agents which meet the criteria for classification under Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures. This reference is amended to clarify that the criteria for classification as hazardous are located in Annex I.</p>
--	---

<b>The Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001 (S.I. 2001/3444)</b>	
Directives	Amendments
<p>Council Directive 92/58/EEC (OJ No. L 245, 26.08.1992, p. 23) which sets out the minimum requirements for the provision of health and safety signs at work.</p>	<p>Regulation 2 provided that a “safety colour” meant a colour to which a specific meaning was assigned in Annex 1 of Council Directive 92/58/EEC. The regulation has been amended to refer instead to Schedule 1 of the Health and Safety (Safety Signs and Signals) Regulations 1996 (S.I. 1996/341) (the “Safety Signs Regulations”). The content of the Schedule is currently the same as the content of the Directive Annex, but this amendment futureproofs the legislation by ensuring that any relevant amendments to the land-based regime will also be applicable on board ships.</p> <p>Regulation 5 relates to the provision of appropriate safety signs in the workplace. It referred to the requirements set out in Annexes of Council Directive 92/58/EEC. The regulation has been amended to refer instead to Schedule 1 of the Safety Signs Regulations. The content of the Schedule is currently the same as the content of the relevant Directive Annexes, but this amendment futureproofs the legislation by ensuring that any relevant amendments to the land-based regime also be applicable on board ships.</p> <p>These amendments ensure continuing alignment between the maritime health and safety regime and the land-based health and safety regime.</p> <p>The amendments remove all references to Council Directive 92/58/EEC and amending Directive 2014/27/EU of the European Parliament and of the Council (OJ No. L 65, 05.03.2014, p. 1). Consequentially the SI also removes these unnecessary definitions.</p>

<b>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens)</b>
---

<b>Regulations 2007 (S.I. 2007/3100)</b>	
Directive	Amendments
Directive 2004/37/EC of the European Parliament and of the Council (OJ No. L 158, 30.04.2004, p. 50) which relates to the protection of workers from the risks related to exposure to carcinogens and mutagens at work.	Regulation 3(4)(a) provided that the Regulations did not apply to workers exposed only to radiation covered by the Treaty establishing the European Atomic Energy Community (“EURATOM”). EURATOM covers exposure of workers to ionising radiation. The Regulations are amended to reflect the fact that the United Kingdom will be withdrawing from EURATOM. The definition of ionising radiation matches the scope of radiation covered by EURATOM.

<b>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010 (S.I. 2010/323)</b>	
Directive	Amendments
Directive 2000/54/EC of the European Parliament and of the Council (OJ No. L 262, 17.10.2000, p. 21) which lays down minimum standards in relation to the protection of workers from exposure to biological agents.	<p>In regulation 2, the definitions of “group 2 biological agent”, “group 3 biological agent” and “group 4 biological agent” each include agents classified as such in Annex III to the Directive or in the Approved List of Biological Agents. The Approved List of Biological Agents contains all of the agents mentioned in Annex III to the Directive (as well as some which are not included in the Annex) so there is no need to refer to Annex III to the Directive after the United Kingdom exits the EU. The definitions are amended to remove the references to Annex III.</p> <p>There are also other incidental amendments to the definitions. These include a minor change to the definition of “biological agent” which is appropriate in order to maintain consistency with the land-based regime and with the Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677) in particular.</p> <p>Regulation 2(2) specified that any reference to an Annex to the Directive is a reference to that Annex as amended from time to time. All of the references to Directive Annexes are removed so this provision is now redundant and is therefore removed as well.</p> <p>There are various references throughout the Regulations to the Directive Annexes. These references have been amended so that they refer to Annexes to Merchant Shipping Notice 1889 (M+F). The content of the Directive Annexes has been reproduced in the Annexes to the Merchant Shipping Notice (apart from some minor updating of cross-references) so these amendments maintain the policy status quo, whilst allowing for future updates via Merchant Shipping Notice to maintain consistency with the land-based regime. For example, regulation 4(6) provided that certain regulations did not apply in relation to an activity listed in Annex I to the Directive in any case where the regulation 6 risk assessment showed that the activity did not involve a deliberate intention to work with biological agents and the result of the risk assessment suggested that the protections in the regulations were unnecessary. Regulation 4(6) is amended to substitute a reference to Annex 1 of Merchant Shipping Notice 1889 (M+F) for the previous reference to Annex I. The content of Annex 1 of Merchant Shipping Notice 1889 (M+F) exactly matches the content of Annex I to the Directive. Having the content in a Merchant</p>

	Shipping Notice, which does not require legislation to amend, rather than in the SI, will facilitate continuing alignment between the maritime health and safety regime and the land-based health and safety regime.
--	--

<b>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) Regulations 2010 (S.I. 2010/330)</b>	
Directive	Amendments
<p>Council Directive 98/24/EC (OJ No. L 131, 05.05.1998, p. 11) which lays down minimum requirements for the protection of workers from the effects of chemical agents that are present in the workplace as a result of any work activity involving chemical agents.</p>	<p>The definition of “hazardous chemical agent” is amended to clarify that the criteria for classification as hazardous are located in Annex I of Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures (the “CLP Regulation”).</p> <p>In relation to a chemical agent, the “national occupational exposure limit value” was the indicative occupational exposure limit value established in a variety of different Directives or, where more stringent, any workplace exposure limit established for that agent in document EH40. The workplace exposure limits in EH40 are either the same or more stringent than the indicative occupational exposure limit values in the Directives. Therefore the definition is amended so that it only refers to EH40. This maintains the policy status quo and ensures that alignment will be maintained between the maritime health and safety regime and the land-based regime moving forwards.</p> <p>Regulation 2(2) provided that a reference to an Annex to the Directive should read as amended from time to time – it is amended to clarify that it refers to the Directive as it had effect immediately before exit day.</p> <p>Regulation 5(2)(a) provided that the Regulations applied without prejudice to any provisions for chemical agents to which measures for radiation protection applied, and which provisions are contained in an instrument made for the purpose of implementing Directives adopted under the Treaty establishing the European Atomic Energy Community (“EURATOM”). EURATOM covers exposure of workers to ionising radiation. The Regulations are amended to reflect the fact that the United Kingdom will be withdrawing from EURATOM. The definition of “ionising radiation” matches the scope of radiation covered by EURATOM.</p> <p>Regulation 5(3) defined “the IBC Code”, “the IGC Code” and “the IMDG Code” by reference to Article 2 of Council Directive 93/75/EEC. The definitions are amended to refer to the definitions in relevant merchant shipping secondary legislation.</p> <p>Regulation 6(3) requires the employer to obtain additional information which is required for the risk assessment from the supplier of each chemical agent concerned or other readily available sources. The provision is amended to better reflect the terms in the Directive.</p>

	<p>Regulation 10(3) provided that employers shall ensure that workers or their representatives, or both, are given access to relevant safety data sheets provided by suppliers under regulation 5 of the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (S.I. 2002/1689). These Regulations were revoked by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009 (SI 2009/716). The relevant obligation originates from Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency (the “REACH Regulation”). The provision is modified to clarify the safety data sheet which is being referred to. This change will not have any practical effect. There are consequential amendments which add definitions of “the REACH Regulation” and “safety data sheet”.</p> <p>Regulation 10(4) provides that the employer shall ensure that the nature and any associated hazards of the contents of containers and pipes for hazardous chemical agents are clearly identifiable. Regulation 10(5) confirmed that the obligation in paragraph (4) would be satisfied where containers or pipes were marked in accordance with relevant EU legislation on the labelling of chemical agents or safety signs at the workplace. The provision is amended to specifically refer to the relevant EU Regulation (the CLP Regulation) and to Schedule 1, Part III to the Health and Safety (Safety Signs and Signals) Regulations 1996 (S.I. 1996/341) which directly reproduces the Annexes to Council Directive 92/58/EEC (OJ No. L 245, 26.08.1992, p. 23) which set out the minimum requirements for the provision of health and safety signs at work. Consequently, paragraph 6 of regulation 10 was redundant because its purpose was to define “relevant EU legislation”, a term which is no longer used in the Regulations.</p> <p>There are various references throughout regulations 11 and 12 to the Directive Annexes. These references have been amended so that they refer to Annexes to Merchant Shipping Notice 1888 (M+F). The content of the Directive Annexes has been reproduced in the Annexes to the Merchant Shipping Notice (apart from some minor updating of cross-references) so these amendments maintain the policy status quo, whilst allowing for future updates via Merchant Shipping Notice to maintain consistency with the land-based regime. For example, regulation 12(5) provided that in certain circumstances a person must not work with a hazardous chemical agent unless that person was the subject of health surveillance that accorded with Annex II to the Directive. Regulation 12(5) is amended to substitute a reference to Annex 2 of Merchant Shipping Notice 1888 (M+F) for the previous reference to Annex I. The content of Annex 2 of Merchant Shipping Notice 1888 (M+F) exactly matches the content of Annex II to the Directive, apart from the amendments necessary in order to update cross-references.</p>
--	---

**The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Artificial Optical Radiation)**

<b>Regulations 2010 (S.I. 2010/2987)</b>	
<b>Directive</b>	<b>Amendments</b>
Council Directive 2006/25/EC (OJ No. L 114, 27.04.2006, p. 38) which sets out the minimum health and safety requirements regarding the exposure of workers to risks arising from artificial optical radiation.	<p>Regulation 2(2) provided that a reference to an Annex to the Directive should read as amended from time to time – it is amended to clarify that it refers to the Directive as it had effect immediately before exit day.</p> <p>Regulation 6(3) referred to appropriate EU standards or recommendations. There are no standards or recommendations which fall into this category so this reference is omitted.</p> <p>There were various references in regulation 6 and 7 to “relevant European Union Directives”. These references are no longer relevant because the obligations have been transposed in domestic law. Therefore these references have been removed.</p>

# Annex B

## 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) 2018 Act

#### 1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, Nusrat Ghani MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 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 the Regulations do not fall into the category of regulations identified in Schedule 1 Part 1 paragraph 1(2) as requiring approval in draft by resolution of both Houses of Parliament. These Regulations address deficiencies in maritime health and safety legislation arising out of the United Kingdom’s withdrawal from the EU. The instrument makes changes of a technical nature to ensure the continued effective operability of the relevant legislation.

#### 2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, Nusrat Ghani MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 does no more than is appropriate”.
- 2.2 This is the case because the instrument does no more than is appropriate to ensure that maritime health and safety legislation continues to operate effectively after the withdrawal of the United Kingdom from the EU. The full detail of these amendments is shown in Annex A of this explanatory memorandum.

#### 3. Good reasons

- 3.1 The Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, Nusrat Ghani 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 These are to address deficiencies in maritime health and safety legislation to ensure that it can continue to operate effectively after exit day. The reasons for these amendments are set out in section 7 of the main body to this explanatory memorandum.



#### **4. Equalities**

4.1 The Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, Nusrat Ghani 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 with responsibility for maritime policy at the Department for Transport, Nusrat Ghani 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, 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.”

#### **5. Explanations**

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