

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (ACCIDENT REPORTING AND INVESTIGATION)
AND THE RAILWAYS (ACCIDENT INVESTIGATION AND REPORTING)
(AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1400

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 European Union (EU) introduced legislation in the area of marine and railway accident investigation. The United Kingdom transposed these requirements and obligations into existing domestic legislation to give effect to them. The European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) will retain this legislation in UK law. However, some changes are needed for the legislation to continue to work as intended. There are also some provisions in the legislation which the UK’s departure from the EU makes redundant.
- 2.2 This instrument makes a number of changes designed to ensure that relevant UK Regulations continue to operate effectively and do not contain provisions which are no longer required once the UK leaves the EU.
- 2.3 The instrument also revokes an EU Regulation, 651/2011 that would not have a practical impact on the UK after exit but would otherwise form part of UK law by virtue of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”).

Explanations

What did any relevant EU law do before exit day?

Marine Accident Investigation

- 2.4 The EU introduced Directive 2009/18/EC, which came into force in 2009, that established the fundamental principles governing the investigation of accidents in the maritime transport sector. Its purpose was to improve maritime safety and the prevention of pollution by ships, and to reduce the risk of future marine casualties by:
 - a) Facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes; and
 - b) Ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.
- 2.5 Directive 2009/18/EC built on the International Maritime Organisation Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (the Casualty Investigation Code), which came

into force on 1 January 2010 (MSC-MEPC.3/Circ.2 dated 13 June 2008 refers) (“the IMO Code”).

- 2.6 The UK implemented the mandatory requirements of the IMO Code and Directive 2009/18/EC within SI 2012 No. 1743, the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (“the 2012 Regulations”), under powers conferred by s267 of the Merchant Shipping Act 1995.
- 2.7 EU Regulation 651/2011 dealt with the rules and procedures of the permanent cooperation framework, pursuant to Art. 10 of Directive 2009/18/EC.
- 2.8 EU Regulation 1286/2011 dealt with the adoption of a common methodology for investigating marine casualties and incidents, pursuant to Art. 5(4) of Directive 2009/18/EC.

Rail Accident Investigation

- 2.9 The Railway Safety Directive (2004/49/EU) (“the Rail Safety Directive”) established a common European regulatory framework for safety. The Directive requires every Member State to have a National Investigating Body to carry out independent investigations of serious railway accidents and incidents without apportioning blame or liability. This body must publish reports which identify causes and make recommendations to improve the safety of the railway and prevent future accidents and incidents. In the UK this function is fulfilled by the Rail Accident Investigation Branch (RAIB).
- 2.10 Before the Directive, the UK had already introduced domestic legislation to create an investigatory body. This was in response to a recommendation made by Lord Cullen following the public inquiry into the collision at Ladbroke Grove in 1999. The Railways and Transport Safety Act 2003 established the RAIB. The Railways (Accident Investigation and Reporting) Regulations 2005 set out the details of the duties and responsibilities of the RAIB and other bodies in the railway industry. The Act and Regulations implemented the requirements of the Rail Safety Directive.

Why is it being changed?

- 2.11 The European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) will retain the above legislation in UK law. However, some changes are needed for the legislation to continue to work as intended. There are also some provisions in the legislation which the UK’s departure from the EU makes redundant.
- 2.12 The government is introducing a number of statutory instruments to correct such matters in maritime and rail legislation.
- 2.13 This instrument deals with matters that are not covered in the other statutory instruments dealing with the consequences for maritime and rail policy and legislation of the UK leaving the EU. This makes changes to legislation that is retained as UK law by virtue of the Withdrawal Act. This includes minor changes to UK Regulations that derive from EU legislation and the revocation of EU Regulation 651/2011.
- 2.14 The purpose of this instrument is to ensure that relevant UK Regulations continue to operate effectively and do not contain provisions that are no longer required once the UK leaves the EU.

What will it now do?

- 2.15 The instrument will maintain the policy status quo. For most practical purposes the relevant Regulations will continue to operate in the same way. The primary impact will be to reduce the obligations of the MAIB and RAIB to EU institutions. This will not preclude voluntary cooperation where mutually beneficial.

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 on 5th October 2018. It was considered by the European Statutory Instruments Committee and by the Secondary Legislation Scrutiny Committee on 23rd 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

Marine Accident Investigation

- 4.1 The territorial extent of this instrument is the United Kingdom, including its territorial waters.
- 4.2 The territorial application is the United Kingdom, including all United Kingdom ships whether in the UK or anywhere else in the world. It also applies to non-UK ships when in UK waters.

Rail Accident Investigation

- 4.3 The territorial extent of this instrument is the United Kingdom.
- 4.4 The territorial application is the United Kingdom, and the UK part of the Channel Tunnel.

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 23 June 2016, a referendum on the United Kingdom's membership of the EU took place which resulted in a vote to leave the EU. The Government's intention is that the UK will cease to be a Member State of the EU on 29 March 2019.
- 6.2 To ensure that the UK has a working statute book on the day that it leaves the EU, the Withdrawal Act incorporates retained EU law, as it stands, in domestic law. It also creates temporary powers to make secondary legislation to correct laws that would

otherwise no longer work appropriately once the UK has left the EU, including powers to revoke legislation.

- 6.3 This statutory instrument relies on section 8(2)(a) and (g) of the Withdrawal Act which empower Ministers to deal with EU retained law that (i) is deficient because it has no practical application to the UK or is wholly or partly redundant; and (ii) contains EU references which are no longer appropriate.
- 6.4 The legislation being amended is set out in Annex A.

7. Policy background

What is being done and why?

- 7.1 This statutory instrument makes a number of changes designed to ensure that relevant UK Regulations continue to operate effectively and do not contain provisions which are no longer required once the UK leaves the EU. The instrument also revokes an EU Regulation that would not have practical impact on the UK after exit. The legislation that is being amended or revoked is listed in Annex A. The aim of the amendments is to maintain the status quo; the aim of the revocation is to remove legislation that has no practical effect in the UK after EU Exit.
- 7.2 Many of these changes relate to removing reference to the UK being a Member State, as the Government's intention is that the UK will cease to be a Member State of the EU on 29 March 2019.

Marine Accident Investigation

- 7.3 A number of changes address the references in the 2012 Regulations to "Directive Vessel" or "vessel covered by the Directive". Directive 2009/18/EC excludes a number of vessels from its application. The scope of the term "Directive" vessel has been captured under the replacement term "relevant vessel".
- 7.4 The legislation imposes a number of obligations on the Chief Inspector of Marine Accidents, such as to make reports to the Commission and to complete the European accident database. These obligations have been removed.
- 7.5 The 2012 Regulations also refer to certain Articles and Annexes within the EU Directive (2009/18/EC). These have been amended to state the wording of the relevant Article, rather than refer to it, and to add a Schedule in place of reference to an Annex to the Directive.
- 7.6 The 2012 Regulations have little mention of the IMO Code, as 2009/18/EC was more demanding. With the demise of 2009/18/EC there is a need to capture the UK's obligations under the IMO Code.

Rail Accident Investigation

- 7.7 A number of changes address references to the Rail Safety Directive. The changes ensure continuity of definitions and interpretations, without changing the operation of the Regulations themselves.
- 7.8 The legislation imposes obligations on the Chief Inspector of Rail Accidents, such as providing reports and information to the European Railways Agency. These obligations have been removed.

7.9 The purpose of these changes is to remove redundant references without compromising the ability of the RAIB to carry out its duties in line with UK law.

8. European Union (Withdrawal) Act

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. 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 is no consolidation with other legislative provisions. The amendments being made within this instrument only relate to provisions within the existing secondary legislation for marine and rail accident investigation.

10. Consultation outcome

Marine Accident Investigation

10.1 No consultation was undertaken on the details of this instrument because the changes and corrections do not have any effect on the shipping industry, seafarers or other groups. There will be no changes to the existing affect, powers, duties and obligations under the legislation as a result of this statutory instrument.

10.2 In addition, a consultation with industry was carried out as part of a Post Implementation Review of the 2012 Regulations, carried out in 2017. The results of this consultation were significantly positive. Responses were received from ferry operators, trade bodies, port authorities, medium-large vessel operators, workboat contractors, small businesses, membership organisations for small commercial craft, and associations (e.g. pilots, harbour masters, inland waterways). These responses are considered to be representative of the UK marine sector.

Rail Accident Investigation

10.3 No consultation was undertaken on the details of this instrument because the changes and corrections do not have any effect on the rail industry or other groups. There will be no changes to the existing affect, powers, duties and obligations under the legislation as a result of this statutory instrument.

10.4 The RAIB will continue to investigate accidents in the UK part of the Channel Tunnel. The RAIB will seek to update the existing non-binding Memorandum of Cooperation (MoC) with the national investigation body in France to maintain current cooperation. The RAIB will also seek to update the existing MoC with the national investigation body in the Republic of Ireland.

11. Guidance

11.1 No guidance will be issued in relation to this instrument because it does not make changes that affect businesses or others and it will not require anyone to take any different action in order to comply with the Regulations in question.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A De Minimis Impact Assessment has been prepared by the Department for Transport for this instrument, to reflect that it maintains the policy status quo in relation to existing Regulations and the legislation that is being revoked has no practical effect in the UK. The changes do not add burdens to stakeholders or the public, or reduce services. The De Minimis Impact Assessment has received internal clearance through the DfT self-certification process via the Better Regulation Unit.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. However, the legislation has no impact on small business because it maintains the policy status quo.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the effect will be monitored by the department on a continuing basis in light of the future progress of the UK's withdrawal from the EU.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required. However, the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 that it amends are subject to a 5-yearly review clause that will encompass these amendments in the future.

15. Contact

- 15.1 Helen Johnston at the Marine Accident Investigation Branch (Department for Transport) Telephone: 023 80395530 or email: helen.johnston@dft.gov.uk and Joe Finlay at the Rail Accident Investigation Branch (Department for Transport) Telephone: 01932 440032 or email: joe.finlay@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Haroona Chughtai, Deputy Director for Maritime International and Trade, at the Department for Transport and Jeremy Hotchkiss, Deputy Director for Rail Industry Competitiveness, at the Department for Transport 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

**Table 1: List of Maritime Legislation amended
by this instrument**

	The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012	EU Regulation 1286/2011 – Adoption of a Common Methodology
To ensure references to “the Directive”, its Articles and Annexes operate properly	✓	✓
To remove references to Member State	✓	✓
To remove EU obligations on the Chief Inspector	✓	✓
To amend references to “Directive Vessel” and “vessel covered by the Directive” to ensure they operate properly	✓	✓
To remove reference to the EU accident database “EMCIP”	✓	✓

Table 2: List of Railway Legislation amended by this instrument

	The Railways (Accident Investigation and Reporting) Regulations 2005
To ensure references to “the Directive”, its Articles and Annexes operate properly or are removed	✓
To remove references to Member State	✓
To remove EU obligations on the Chief Inspector	✓
To remove references to the European Railway Agency.	✓

Table 3: Maritime Legislation revoked by this instrument

<u>Legislation</u>	<u>Why Revoked</u>
Regulation (EU) No 651/2011 on the establishment of a permanent cooperation framework.	This Regulation is about the establishment of a permanent cooperation framework for Member States. The UK will no longer be a Member State on leaving the EU.

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	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.

		alongside all EUWA SIs	
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 (Accident Reporting and Investigation) and the Railways (Accident Investigation and Reporting) (Amendment) (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 in addressing deficiencies in retained EU law the instrument makes minor technical amendments and does not make policy changes.

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 (Accident Reporting and Investigation) and the Railways (Accident Investigation and Reporting) (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because the instrument does no more than appropriate to ensure that redundant provisions are revoked. Further details, including examples of amendments made are set out in section 7 of the main body 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 (i) to maintain the policy status quo by ensuring that references to the UK and Member States in maritime legislation work effectively after exit; and (ii) to remove redundant provision. Further details, including examples of amendments made are set out in section 7 of the main body of 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 statements:

“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.

5. Explanations

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