

2019 No. 270

EXITING THE EUROPEAN UNION

MERCHANT SHIPPING

SAFETY

MARINE POLLUTION

**The Merchant Shipping (Recognised Organisations)
(Amendment) (EU Exit) Regulations 2019**

Made - - - - *12th February 2019*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a).

In accordance with paragraph 1(1) and 2(a) and (d) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

Transitional provision and savings

2.—(1) Any organisation which was—

- (a) recognised under Regulation (EC) 391/2009 on common rules and standards for ship inspection and survey organisations^(b), and
- (b) authorised to act on behalf of the Secretary of State,

immediately before exit day, continues to be recognised under Regulation (EC) 391/2009.

(2) For the purposes of the first paragraph of Article 5 of Regulation (EC) 391/2009 (requirement for preventive and remedial action), the Secretary of State may take into account

^(a) 2018 c. 16.

^(b) No L 131, 28.5.2009, p 11.

matters which occurred before exit day and, in the Secretary of State's opinion, amount to a failure to fulfil the minimum criteria set out in Annex 1.

(3) For the purposes of paragraph 1 of Article 6 of Regulation (EC) 391/2009 (fines and periodic penalty payments), the Secretary of State may take into account matters mentioned in subparagraphs (a) and (b) of paragraph 1 of Article 6 which occurred before exit day.

(4) For the purposes of Article 7 of Regulation (EC) 391/2009 (withdrawal of recognition), the Secretary of State may take into account matters mentioned in paragraph 1 of Article 7 which occurred before exit day.

(5) For the purposes of Article 5 (assessment of the seriousness of an infringement) and Article 6 (assessment of the effects of an infringement) of Commission Regulation (EU) 788/2014, the Secretary of State may take into account matters mentioned in those Articles which occurred before exit day.

Amendment of Regulation (EC) 391/2009

3.—(1) Regulation (EC) 391/2009 on common rules and standards for ship inspection and survey organisations is amended as follows.

(2) In Article 2 (definitions)—

- (a) in paragraph (a), after “conventions” insert “and “United Kingdom ship” means a ship registered under Part II of the Merchant Shipping Act 1995(a)”;
- (b) in paragraph (b), omit “in all Member States,”;
- (c) in paragraph (f), for “a Member State” substitute “the Secretary of State”;
- (d) in paragraph (g), for “a flag State” substitute “the Secretary of State”.

(3) In Article 3 (requests for recognition)—

- (a) in paragraph 1—
 - (i) for “Member States which wish to grant an authorisation to any organisation which is not yet recognised” substitute “Organisations which wish to be recognised under this Regulation”;
 - (ii) for “Commission” substitute “Secretary of State”;
- (b) in paragraph 2, for “Commission, together with the respective Member States submitting the request,” substitute “Secretary of State”;
- (c) in paragraph 3—
 - (i) for “Commission” substitute “Secretary of State”;
 - (ii) omit “, in accordance with the regulatory procedure referred to in Article 12(3),”.

(4) In Article 4 (granting of recognition)—

- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
- (b) in paragraph 1, omit “in accordance with the regulatory procedure referred to in Article 12(3)”;
- (c) in paragraph 4, omit “, acting in accordance with the regulatory procedure referred to in Article 12(3),”;
- (d) in paragraph 5, for “in the *Official Journal of the European Union*”, substitute “in Merchant Shipping Notice 1672 (M+F)(b)”.

(5) In Article 5 (requirement for preventive and remedial action)—

- (a) in the first paragraph for “Commission” substitute “Secretary of State”;
- (b) omit the third paragraph.

(a) 1995 c. 21.

(b) Merchant Shipping Notice 1672 (M+F) is available from the Maritime and Coastguard Agency of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk>.

- (6) In Article 6 (fines and periodic penalty payments)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) in paragraph 1, omit “, in accordance with the advisory procedure referred to in Article 12(2),”;
 - (c) in the second sub-paragraph of paragraph 3, for “and the Member States concerned have” substitute “has”;
 - (d) for paragraph 4 substitute—
 - “(4) (a) A recognised organisation may appeal to the court against a decision by the Secretary of State to require a recognised organisation to pay a fine or periodic penalty payment;
 - (b) An appeal must be brought within the period of 28 days beginning with the date on which the recognised organisation is notified of the Secretary of State’s decision under Article 6(1) or (2);
 - (c) On appeal, the court may—
 - (i) allow the appeal and cancel the fine or periodic penalty payment;
 - (ii) allow the appeal and reduce the fine or periodic penalty payment;
 - (iii) dismiss the appeal and increase the fine or periodic penalty payment;
 - (iv) dismiss the appeal;
 - (d) An appeal—
 - (i) is to be a re-hearing of the Secretary of State’s decision to impose a fine or a periodic penalty payment; and
 - (ii) may be determined having regard to matters of which the Secretary of State was unaware;
 - (e) Sub-paragraph (d) has effect despite any provision of rules of court;
 - (f) In this paragraph, a reference to “the court” is a reference—
 - (i) in England and Wales, to the county court;
 - (ii) in Scotland, to the Sheriff; and
 - (iii) in Northern Ireland, to a county court;
 - (g) But—
 - (i) the county court in England and Wales, or a county court in Northern Ireland, may transfer proceedings under this paragraph to the High Court; and
 - (ii) the sheriff may transfer proceedings under this paragraph to the Court of Session”.
- (7) In Article 7 (withdrawal of recognition)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) omit paragraph 2(b);
 - (c) in paragraph 3 for the words from “Withdrawal of recognition” to “Article 12(3) and” substitute “The Secretary of State may decide to withdraw recognition from a recognised organisation only”.
- (8) In Article 8 (assessment of recognised organisations)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) for the first sentence in paragraph 1, substitute—
 - “1. All the recognised organisations must be assessed by the Secretary of State on a regular basis and at least every two years to verify that they meet the obligations under this Regulation and fulfil the minimum criteria set out in Annex I.”;
 - (c) in paragraph 2—
 - (i) after “performance of the recognised organisation”–

- (aa) omit the comma;
 - (bb) insert “and”;
 - (ii) omit the words from “and to the reports” to the end of the paragraph;
 - (d) in paragraph 3, omit the words after “performance”;
 - (e) in paragraph 4, for “Committee referred to in Article 12(1)” substitute “Secretary of State”.
- (9) In Article 9 (access to information for purposes of assessment of recognised organisations)—
- (a) in paragraph 1, for “Commission” substitute “Secretary of State”;
 - (b) in paragraph 2—
 - (i) before “ship” in the third line, insert “United Kingdom”;
 - (ii) for “Commission” substitute “Secretary of State’s”.
- (10) In Article 10 (duties of recognised organisations)—
- (a) in paragraph 1—
 - (i) in the fourth sub-paragraph for the words after “equipment” substitute “which comply with the Merchant Shipping (Marine Equipment) Regulations 2016(a)”;
 - (ii) in the fifth sub-paragraph for “Commission and the Member States” substitute “Secretary of State”;
 - (b) omit paragraph 2;
 - (c) in paragraph 4—
 - (i) in the first sub-paragraph—
 - (aa) for the words from “all Member States” to “Commission” substitute “the Secretary of State”;
 - (bb) for “their classed fleet,” substitute “United Kingdom ships classed by them including”;
 - (cc) omit “irrespective of the flag the ships fly”;
 - (ii) in the second sub-paragraph—
 - (aa) for “their classed ships, irrespective of the flag the ships fly” substitute “United Kingdom ships classed by them”;
 - (bb) for the words from “common” to “control” substitute “Secretary of State”;
 - (d) in paragraph 5—
 - (i) after “certificates to a” insert “United Kingdom”;
 - (ii) omit “irrespective of its flag,”;
 - (iii) for “competent administration of the flag State” substitute “Secretary of State”;
 - (iv) for “its” substitute “an”.
- (11) In Article 11 (quality assessment and certification entity)—
- (a) in paragraph 1, for the words “set up by 17 June 2011 and” substitute “continue to”;
 - (b) in paragraph 5, for the words “interested parties, including flag States and the Commission” substitute “Secretary of State”;
 - (c) in paragraph 6, for “Commission” substitute “Secretary of State”;
 - (d) omit paragraph 7.
- (12) Omit Article 12 (EU regulatory procedures).
- (13) In Article 13 (power to amend minimum criteria in Annex 1)—
- (a) for paragraph 1 substitute—

(a) S.I. 2016/1025.

“1. The Secretary of State may by regulations modify the minimum criteria set out in Annex I.”

(b) after paragraph 1 insert—

“1A. The power in paragraph 1 may only be exercised where the Secretary of State considers it necessary in order to—

(a) take account of developments at international level and in particular in the International Maritime Organization; or

(b) improve the effectiveness of this Regulation.”;

(c) omit paragraph 2.

(14) After Article 13 (power to amend minimum criteria in Annex 1) insert—

“Article 13A

Regulations: procedure

1. The power to make regulations conferred on the Secretary of State under Article 13 is exercisable by statutory instrument.

2. No regulations may be made under Article 13 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House of Parliament.”

(15) In Article 14 (power to make provision for criteria to measure performance etc of recognised organisations)—

(a) in paragraph 1—

(i) for the first line substitute “The Secretary of State may by regulations make provision for:”;

(ii) after “classed” and before “ships” insert “United Kingdom”;

(iii) omit the second sub-paragraph;

(b) for paragraph 2 substitute—

“2. The Secretary of State may by regulations make provision for—

(a) criteria to establish the amount of a fine or periodic penalty payment that may be imposed pursuant to Article 6;

(b) a decision-making procedure to impose a fine or periodic penalty payment;

(c) criteria against which the recognition of a recognised organisation may be withdrawn pursuant to Article 7.”;

(c) for paragraph 3 substitute—

“3. The Secretary of State may by regulations provide for the interpretation of the minimum criteria in Annex I and in particular may establish objectives for the general minimum criteria referred to in point 3, Part A of Annex I.”;

(d) after paragraph 3 insert—

“4. The power to make regulations in paragraphs 1 and 3 may only be exercised where the Secretary of State considers it necessary in order to—

(a) take account of developments at international level and in particular in the International Maritime Organization; or

(b) improve the effectiveness of this Regulation.”

(16) After Article 14 (power to make provision for criteria to measure performance etc of recognised organisations) insert—

“Article 14A

Regulations: procedure

1. Any power to make regulations conferred on the Secretary of State under Article 14 is exercisable by statutory instrument.
 2. A statutory instrument containing regulations made under Article 14(1) and (3) is subject to annulment in pursuance of a resolution of either House of Parliament.
 3. No regulations may be made under Article 14(2) unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House of Parliament.”
- (17) Omit Article 15 (transitional provision in relation to recognition).
- (18) In Article 16 (verification of relevant legal entity)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) in the second paragraph, for “Member States shall adapt their” substitute “Secretary of State shall adapt the”.
- (19) Omit Articles 17 to 19 (reporting, cross-references and entry into force) and the final sentence following Article 19.
- (20) In Annex I, Part B (specific minimum criteria)—
- (a) in paragraph 3, for “administration” substitute “Secretary of State”;
 - (b) in paragraph 4, for “administration, to the Commission” substitute “Secretary of State”;
 - (c) in paragraph 5, for “Member States and the Commission” substitute “the Secretary of State”;
 - (d) in paragraph 11, for “administration” substitute “Secretary of State”.

Amendment of Commission Regulation (EU) 788/2014

4.—(1) Commission Regulation (EU) 788/2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Articles 6 and 7 of Regulation (EC) 391/2009 is amended as follows.

- (2) In Article 1 (subject matter)—
 - (a) in the first paragraph, for “Commission” substitute “Secretary of State”;
 - (b) in the second paragraph, omit the words after “organisation”.
- (3) In Article 2 (definitions), omit the second subparagraph.
- (4) In Article 3 (identification of infringements), at each place it occurs, for “Commission” substitute “Secretary of State”.
- (5) In Article 5 (assessment of the seriousness of an infringement), at each place it occurs, for “Commission” substitute “Secretary of State”.
- (6) In Article 6 (assessment of the effects of an infringement), for “Commission” substitute “Secretary of State”.
- (7) In Article 7 (periodic penalty payments), at each place it occurs, for “Commission” substitute “Secretary of State”.
- (8) In Article 8 (determination of maximum aggregate amount of fines and periodic penalty payments), at each place it occurs, for “Commission” substitute “Secretary of State”.
- (9) In Article 9 (calculation of turnover), for “Commission’s” substitute “Secretary of State’s”.
- (10) In Article 10 (withdrawal of recognition)—
 - (a) in paragraph 1, for the words from “Upon” to “adopt” substitute “The Secretary of State may make”;
 - (b) in paragraph 3, for “Commission” substitute “Secretary of State”.

- (11) Omit Article 11 (procedure to withdraw recognition at the request of a Member State).
- (12) In Article 12 (statement of objections)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) in paragraph 1, omit “and notify the Member State concerned”;
 - (c) in paragraph 2(b), omit “or by the European Maritime Safety Agency acting on the Commission’s behalf”;
 - (d) in paragraph 3, omit “and the Member State concerned”.
- (13) In Article 13 (requests for information), at each place it occurs, for “Commission” substitute “Secretary of State”.
- (14) In Article 14 (oral hearing)—
- (a) in paragraph 1, for “Commission” substitute “Secretary of State”;
 - (b) for paragraph 2 substitute—
 - “2. The Secretary of State may invite any other persons with a legitimate interest in the infringement to take part in the oral hearing.”;
 - (c) in paragraph 3, omit the second sentence;
 - (d) in paragraph 5, omit “and to Member States concerned”.
- (15) In Article 15 (periodic penalty payments for non-cooperation)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) in paragraph 1—
 - (i) for “adopt” substitute “make”,
 - (ii) for “it” substitute “the Secretary of State”.
- (16) In Article 16 (access to the file)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) in paragraph 4, omit “or the European Maritime Safety Agency”;
 - (c) for paragraph 5 substitute—
 - “5. For the purposes of paragraph 4, internal documents of the Secretary of State may include documents or parts of documents pertaining to the internal deliberations of the Secretary of State.”.
- (17) In Article 18 (confidentiality, professional secrecy and the right to remain silent)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) in paragraph 2, omit the words from “, the European Maritime Safety Agency” to “supervision”, and “by them”.
- (18) In Article 19 (decision)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) in paragraph 4, for “adopted” substitute “made”;
 - (c) omit paragraphs 5 and 6.
- (19) In Article 20 (judicial remedies, notification and publication)—
- (a) at each place it occurs, for “Commission” substitute “Secretary of State”;
 - (b) omit paragraph 2;
 - (c) in paragraph 3, omit “or informing the Member States”.
- (20) In Article 21 (recovery of fines and penalty payments)—
- (a) in the first line for “Commission” substitute “Secretary of State”;
 - (b) for the words “establishing a recovery order and issuing a debit note” substitute “service of a notice demanding payment of the debt”;

(c) omit the words “in accordance with” to “Commission Delegated Regulation (EU) No 1268/2012”.

(21) In Article 22 (limitation periods for the imposition of fines and periodic penalty payments)—

(a) at each place it occurs, for “Commission” substitute “Secretary of State”;

(b) in paragraph 2—

(i) in the first line omit “or the European Maritime Safety Agency”;

(ii) in the third line omit “or the Agency”;

(c) in paragraph 4—

(i) before “proceedings” insert “judicial”;

(ii) omit “pending before the Court of Justice of the European Union”.

(22) In Article 23 (limitation periods for the collection of fines and periodic penalty payments)—

(a) in paragraph 1, for “start a recovery procedure” substitute “commence judicial proceedings or arbitration”;

(b) in paragraph 2, for the word from the first “Commission” to the second “Commission” substitute “Secretary of State”;

(c) in paragraph 4(b), for “Court of Justice of the European Union” substitute “Court seized of the action or an arbitration tribunal”.

(23) In Article 24 (application of time limits)—

(a) in paragraph 1, for “Commission’s” substitute “Secretary of State’s”;

(b) at each place it occurs, for “Commission” substitute “Secretary of State”.

(24) Omit Article 25 (cooperation of national competent authorities) and Article 27 (entry into force) and the final sentence following Article 27.

(25) In the Annex, in the second column of the entry relating to Article 10(5) of Regulation (EC) No 391/2009, for “flag State” substitute “Secretary of State”.

Amendment of Commission Decision 2009/491/EC

5.—(1) Commission Decision 2009/491/EC on criteria to be followed in order to decide when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and the environment, is amended as follows.

(2) In Article 2 (criteria to be followed), for “a flag State” substitute “the Secretary of State”.

(3) In Article 3 (additional factors to be taken into account)—

(a) at each place it occurs, for “Commission” substitute “Secretary of State”;

(b) in paragraph 1—

(i) for “a flag State” substitute “the Secretary of State”;

(ii) omit “that come to its knowledge”.

(4) In Article 4 (power to amend Annex I)—

(a) omit paragraph 1;

(b) in paragraph 2—

(i) in the first line for the words “Where” to “Directive 94/57/EC” substitute “The Secretary of State may by regulations”;

(ii) for sub-paragraph (b) substitute—

“(b) determine the circumstances in which a recognised organisation’s authorisation may be suspended or withdrawn.”.

(5) After Article 4 (power to amend Annex I) insert—

“Article 4A

Regulations: procedure

1. The power to make regulations conferred on the Secretary of State by paragraph 2 of Article 4 is exercisable by statutory instrument.
2. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.”

(6) Omit Articles 5 (form of reports to the Commission) and 6 (application) and Annex II.

Amendment of Commission Implementing Regulation (EU) 1355/2014

6. Commission Implementing Regulation (EU) 1355/2014 amending Regulation (EC) 391/2009 with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols is revoked.

Signed by authority of the Secretary of State for Transport

12th February 2019

Nusrat Ghani
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c.16). They address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union, in particular those described in section 8(2)(a), (b), (c) and (d) and section 8(3)(a) of that Act.

These Regulations amend provisions of retained EU law relating to inspection and survey organisations and the regime for recognising them as “recognised organisations”. The amendments in these Regulations ensure that the existing regulatory framework for recognised organisations in the United Kingdom continues to function effectively and that the United Kingdom continues to comply with its international obligations in relation to the International Maritime Organization’s (IMO) Code for Recognized Organizations.

The Regulations amend provisions of Regulation (EC) 391/2009 enabling the making of tertiary legislation supplementing or amending the Regulation by substituting powers for the Secretary of State to make regulations. The Regulations also amend provisions of Commission Decision 2009/491/EC enabling the making of tertiary legislation amending Annex I of the Decision. The Regulations also revoke Commission Implementing Regulation (EU) 1355/2014 which amended the definition of “international conventions” in Article 2(a) of Regulation (EC) 391/2009.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

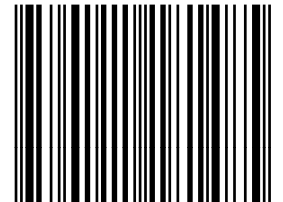
An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

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