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STATUTORY INSTRUMENTS

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**2019 No. 270**

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

**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(1)”;
- (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)(2)”.

(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.

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(1) 1995 c. 21.

(2) 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—
    - (a) “(4) 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(3)”;
    - (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—
    - “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”.