

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

EXITING THE EUROPEAN UNION

CANALS AND INLAND WATERWAYS, ENGLAND AND WALES

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

HARBOURS, DOCKS, PIERS AND FERRIES

HIGHWAYS, ENGLAND AND WALES

MARINE POLLUTION

TRANSPORT AND WORKS, ENGLAND AND WALES

**The Harbours, Highways, Merchant Shipping and Other
Transport (Environmental Protection) (EU Exit) Regulations
2018**

Made - - - - - *2018*

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a) and section 7 of the European Union (Withdrawal) Act 2018^(b).

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to maritime transport^(c) and the environment^(d).

(a) 1972 c.68. Section 2 was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(b) [tbc]

(c) S.I. 1994/757.

(d) S.I. 2008/301.

In accordance with paragraph 1(1) 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 Harbours, Highways, Merchant Shipping and Other Transport (Environmental Protection) (EU Exit) Regulations 2018.

(2) Part 1 comes into force on [xxxxxx].

(3) Parts 2, 3 and 4 come into force on [...].

PART 1

Amendment of references to Council Directive 1999/32/EC

Amendment to the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

2.—(1) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008(a) are amended as follows.

(2) In regulation 2—

(a) omit the definition of “the 1999 Directive”(b);

(b) after the definition of “the 1995 Regulations” insert—

i“the 2016 Directive” means Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels(c);

(3) In regulation 32(3A)(b)(d), for “articles 4c2, 4c3 or 4d of the 1999 Directive” substitute “paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive”.

(4) In Schedule 2A(e)—

(a) in paragraph 1, in the definition of “emission abatement method”, for “1999 Directive”(f) substitute “2016 Directive”;

(b) in paragraph 2(g), at each place it occurs, for “Article 4c of the 1999 Directive” substitute “Article 8 of the 2016 Directive”;

(c) in paragraph 3(2)(d)(ii)(h), for “articles 4c2, 4c3 and 4d of the 1999 Directive” substitute “paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive”;

(d) in paragraph 4(2)(e)(ii)(i), for “articles 4c2, 4c3 and 4d of the 1999 Directive” substitute “paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive”;

(e) in paragraph 10(3)(j), for “articles 3a, 4, 4a and 4b of the 1999 Directive”, substitute “articles 4, 5, 6 and 7 of the 2016 Directive”.

(a) S.I. 2008/2924, as amended by S.I. 2010/895, S.I. 2010/3035, S.I. 2011/3056, S.I. 2014/3076, S.I. 2014/3306 and S.I. 2016/1025.

(b) Definition inserted by S.I. 2014/3076.

(c) OJ No L 132, 21/05/2016, p. 58.

(d) Regulation 32(3A) was inserted by S.I. 2010/895 and substituted by S.I. 2014/3076.

(e) Schedule 2A was inserted by S.I. 2010/895.

(f) Definition substituted by S.I. 2014/3076.

(g) Paragraph 2 was amended by S.I. 2014/3076.

(h) Paragraph 3(2)(d) was substituted by S.I. 2014/3076.

(i) Paragraph 4(2)(e) was substituted by S.I. 2014/3076.

(j) Paragraph 10(3) was substituted by S.I. 2014/3076.

PART 2

Amendment to primary legislation

Amendment to the Harbours Act 1964

3.—(1) Part 1 of Schedule 3(a) to the Harbours Act 1964(b) is amended as follows.

(2) In paragraph 1 (interpretation), as it applies in relation to England and Wales, for the definition of “environmental assessment” substitute—

i“environmental assessment” means an assessment carried out—

- (a) under an obligation arising under retained EU law (other than an obligation arising under any law of any part of the United Kingdom implementing the EIA Directive), or
- (b) under the law of any part of the United Kingdom other than law implementing the EIA Directive,

of the effect of anything on the environment;î.

(3) In paragraph 1 (interpretation), as it applies in relation to Scotland, for the definition of “environmental assessment” substitute—

i“environmental assessment” means an assessment carried out—

- (a) under an obligation arising under retained EU law (other than an obligation arising under any law of any part of the United Kingdom implementing the EIA Directive), or
- (b) under the law of any part of the United Kingdom other than law implementing the EIA Directive,

of the effect of anything on the environment;î.

(4) In paragraph 16 (projects likely to have significant effects on the environment in another EEA State)—

- (a) for “another EEA State”, at each place it occurs, substitute “an EEA State”;
- (b) for “the other EEA State”, at each place it occurs, substitute “the EEA State”;

(5) In paragraph 20C (exemption from environmental impact assessment in exceptional circumstances), for “another EEA State”, substitute “an EEA State”.

Amendment to the Highways Act 1980

4.—(1) Part VA of the Highways Act 1980(c) is amended as follows.

(2) In section 105ZA(1) (interpretation) for the definition of “environmental assessment” substitute—

i“environmental assessment” means an assessment carried out—

- (a) under an obligation arising under retained EU law (other than an obligation arising under any law of any part of the United Kingdom implementing the Directive), or
- (b) under the law of any part of the United Kingdom other than law implementing the Directive,

of the effect of anything on the environment.î.

(3) In section 105AA(6)(d) (exemptions) for “another EEA state” substitute “an EEA state”.

(a) As amended by 2000 c. 37, 2004 asp 6, 2005 asp 12, 2007 asp 8, S.I. 1994/3445, S.S.I. 2008/202, S.I. 2009/269, S.S.I. 2010/460, S.I. 2010/490, S.I. 2017/1012 and S.I. 2017/1070; there are other amendments which are not relevant.

(b) 1964 c. 40.

(c) 1980 c. 66, as amended by S.I. 1999/369, S.I. 2007/1062 and S.I. 2017/1070; there are other amendments which are not relevant.

(4) In section 105C(1)(a) (other EEA States) for “another EEA state” substitute “an EEA state”.

Amendment to the Transport and Works Act 1992

5.—(1) Part 1 of the Transport and Works Act 1992(a) is amended as follows.

(2) In section 6A(b) (cases where other Member States are affected)—

- (a) in the heading and subsection (2)(b) omit “other”; and
- (b) in subsections (1) and (2) for “another”, in each place it occurs, substitute “a”.

(3) In section 14(3AB)(c) (publicity for making or refusal of orders), in paragraph (a)(i), for “another” substitute “a”.

PART 3

Amendment to subordinate legislation for EU Exit purposes

Amendment to the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

6.—(1) The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(d) are amended as follows.

(2) In rule 7 (the requirement for environmental statement and screening decisions), in paragraphs (5) and (11)(b), for “European Union legislation” substitute “retained EU law”.

(3) In rule 11(2)(c) (environmental statements: provision of information) for “European Union legislation” substitute “retained EU law”.

(4) In rule 16 (developments likely to have significant effects on the environment of another part of the United Kingdom or certain other states)—

- (a) in paragraphs (1)(b), (1)(c) and (4) for “another” substitute “a”; and
- (b) in paragraph (7)(d) omit “other”.

(5) In rule 29(4) (review) omit “other”.

(6) In Schedule 1 (information to be included in environmental statements), in paragraph 8—

- (a) for “European Union legislation such as” substitute “retained EU law such as any law of any part of the United Kingdom implementing”; and
- (b) after “requirements of” insert “any law of any part of the United Kingdom implementing”.

(7) In Schedule 7 (proposals for order under section 7)—

- (a) in paragraph 7(b) for “European Union legislation” substitute “retained EU law”; and
- (b) in paragraph 30, in sub-paragraphs (1)(a), (1)(b) and (2)(c), for “another” substitute “a”.

Amendment to the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

7.—(1) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008(e) are amended as follows.

(a) 1992 c. 42.

(b) As inserted by S.I. 1998/2226, and subsequently amended by S.I. 2000/3199.

(c) As inserted by S.I. 2017/1070.

(d) S.I. 2006/1466, as amended by S.I. 2008/969, S.I. 2010/439, S.I. 2010/1551, S.I. 2011/556, S.I. 2011/1829, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/1659, S.I. 2012/2590, S.I. 2013/755, S.I. 2013/1888, S.I. 2014/469, S.I. 2015/627, S.I. 2015/1682 and S.I. 2017/1070.

(e) S.I. 2008/2924, as amended by S.I. 2010/895, S.I. 2010/3035, S.I. 2011/3056, S.I. 2014/3076, S.I. 2014/3306 and S.I. 2016/1025.

- (2) In regulation 2(a) (interpretation), for the definition of “Certifying Authority” substitute—
 i “Certifying Authority” means the Secretary of State or any person authorised by the Secretary of State in accordance with regulation 4 of the Merchant Shipping (Survey and Certification) Regulations 2015(b);¹
- (3) For regulation 32(3A)(b)(c) (offences), substitute—
 i(b) authorised by an EEA state for the purposes of paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive¹.
- (4) In Schedule 2, in paragraph 1(c), before “the European Economic Area” insert “the United Kingdom or”.
- (5) In Schedule 2A—
- (a) for paragraph 3(2)(d)(ii)(d) (maximum sulphur content of marine fuel used by passenger ships), substitute—
 i(b) authorised by an EEA state for the purposes of paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive¹;
- (b) in paragraph 3(6)(e), for the definition of “regular service”, substitute—
 i “regular service” means a series of crossings operated so as to serve traffic between the same two or more ports where each port is either in the United Kingdom or within the European Union, or a series of voyages from and to the same port in the United Kingdom or within the European Union without intermediate calls, either—
 (a) according to a published timetable, or
 (b) with crossings so regular that they constitute a recognisable schedule.¹;
- (c) in paragraph 4(2)(e)(ii)(f) (maximum sulphur content of marine fuel used by ships at berth), omit the words “other than the United Kingdom”;
- (d) in paragraph 6(g) (trials of emission abatement technologies)—
 (i) for sub-paragraph (4) substitute—
 i(4) The Secretary of State must, at least six months before an intended trial begins, give notice of that trial in writing to any port State concerned.¹;
 (ii) in sub-paragraph 5, omit “(a)(ii)”.

Amendment to the Merchant Shipping (Anti-Fouling Systems) Regulations 2009

8.—(1) The Merchant Shipping (Anti-Fouling Systems) Regulations 2009(h) are amended as follows.

- (2) In regulation 2(i) (interpretation), for the definition of “Certifying Authority” substitute—
 i “Certifying Authority” means the Secretary of State or any person authorised by the Secretary of State in accordance with regulation 4 of the Merchant Shipping (Survey and Certification) Regulations 2015¹.
- (3) In regulation 3(1)(b) (application), for “another” substitute “an”.
- (4) In regulation 4 (surveyors and the issue of certificates)—
 (a) in the opening words of paragraph (1)—
 (i) for “ships flying the flag of a Member State” substitute “United Kingdom ships”;

(a) Regulation 2 was substituted by S.I. 2011/3056.
 (b) S.I. 2015/508, to which there are amendments not relevant to these Regulations.
 (c) Regulation 32(3A) was substituted by S.I. 2014/3076.
 (d) Paragraph 3(2)(d) was substituted by S.I. 2014/3076.
 (e) Paragraph 3(6) was added by S.I. 2010/895.
 (f) Paragraph 4(2)(e) was added by S.I. 2014/3076.
 (g) Paragraph 6 was added by S.I. 2010/895.
 (h) S.I. 2009/2796, amended by S.I. 2011/3056 and S.I. 2013/3306.
 (i) Definition substituted by S.I. 2011/3056.

- (ii) omit “, in relation to a United Kingdom ship”;
- (b) in paragraph (1)—
 - (i) in sub-paragraph (a), for “the administration of the Member State” substitute “the Secretary of State or the administration of a Member State”;
 - (ii) in sub-paragraph (b), for “a surveyor nominated for the purpose by one of those administrations, or by a recognised organisation acting on behalf of the administration” substitute “a surveyor nominated for the purpose by the Secretary of State or the administration of a Member State, or by a recognised organisation acting on behalf of the Secretary of State or the administration”;
- (c) in paragraph (2), after “carried out by” insert “the Secretary of State or”.

PART 4

Amendment to direct EU legislation

Amendment to Regulation (EC) 782/2003

9.—(1) Regulation (EC) 782/2003 of the European Parliament and of the Council of 14 April 2003 on the prohibition of organotin compounds on ships^(a) is amended as follows.

(2) In Article 2 (definitions)—

- (a) in paragraph 6, for the definition of ‘recognised organisation’ substitute—
 - i [placeholder] î;
- (b) in paragraph 7, after “when it is issued by”, insert “the Secretary of State, a Certifying Authority or”;
- (c) in paragraph 9, after “issued by a recognised organisation on behalf of” insert “the Secretary of State, a Certifying Authority or”;
- (d) after paragraph 10, insert—

11. ‘United Kingdom ship’ has the same meaning as in section 85(2) of the Merchant Shipping Act 1995.

12. ‘Certifying Authority’ means the Secretary of State or any person authorised by the Secretary of State in accordance with regulation 4 of the Merchant Shipping (Survey and Certification) Regulations 2015.ⁱ

(3) In Article 3—

- (a) before point (a) of paragraph 1, insert—
 - i(za)United Kingdom ships,î;
- (b) in point (b) of paragraph 1, after “the authority of” insert “the United Kingdom or”;
- (c) in point (c) of paragraph 1, after “offshore terminal of” insert “the United Kingdom or”.

(4) In Article 5, at the beginning of paragraph 1 insert “United Kingdom ships and”.

(5) In Article 6—

- (a) in paragraph 1—
 - (i) for “ships flying the flag of a Member State” substitute “United Kingdom ships”;
 - (ii) after point (b) of paragraph 1, omit the unnumbered paragraph;
 - (iii) omit point (c);

(a) OJ No L 115, 09.05.2003, p. 1, amended by Commission Regulation (EC) No 536/2008 of 13 June 2008 (OJ L 156, 14.6.2008, p. 10), and Regulation (EC) No 219/2009 of the European Parliament of the Council of 11 March 2009 (OJ L 87, 31.3.2009, p. 109). Added to Annex III of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 159/2003 of 7th November 2003 (OJ L 41, 12.2.2004, p. 57).

- (b) in paragraph 2, for “Member States”, at each place it occurs substitute “the Secretary of State and a Certifying Authority”;
 - (c) omit paragraph 3.
- (6) In Article 7—
- (a) in the first unnumbered paragraph, for “Member States”, at each place it occurs substitute “the Secretary of State or persons appointed by the Secretary of State”;
 - (b) omit the second unnumbered paragraph.
- (7) For Articles 8 and 9, substitute—

Article 8

Adaptations

(1) Subject to paragraph 2, the Secretary of State may make regulations to amend references in this Regulation to—

- (a) the AFS-Convention;
- (b) the AFS-Certificate;
- (c) the AFS-Declaration;
- (d) the AFS-Statement of Compliance;
- (e) the Annexes to this Regulation, including relevant International Maritime Organisation guidelines in relation to Article 11 of the AFS-Convention.

(2) 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 Organisation; or
- (b) improve the effectiveness of this Regulation.

(3) Any power to make regulations under paragraph 1 is exercisable by statutory instrument.

(4) Regulations made under paragraph 1 may—

- (a) make different provision for different purposes, cases or areas;
- (b) make consequential, incidental, supplementary, transitional or transitory or saving provisions.

(5) A statutory instrument containing regulations made under paragraph 1 is subject to annulment in pursuance of a resolution of either House of Parliament.

(8) Omit Article 10.

(9) Omit the second sentence of Article 11.

(10) In Annex 1—

- (a) in the heading, for “flying the flag of a Member State” substitute “United Kingdom ships”;

- (b) in paragraph 1—

- (i) for point 3, substitute—

11.3 Surveys shall be carried out by officers duly authorised by the Secretary of State or the administration of a Member State, or of a party to the AFS-Convention, or by a surveyor nominated for the purpose by the Secretary of State or the administration of a Member State, or by a recognised organisation acting on behalf of the Secretary of State or the administration.

- (ii) in point 4, for “Member States” substitute “Secretary of State or a Certifying Authority”;

- (c) in paragraph 2—

- (i) for point 1, substitute—
 - i2.1 After completion of a survey referred to in point 1.1(a) or (b), the Secretary of State or a Certifying Authority appointed by the Secretary of State shall issue an AFS-Certificate.†;
- (ii) in point 2, for “A Member State” substitute “The Secretary of State and a Certifying Authority”;
- (iii) in point 3, for “Member States” substitute “The Secretary of State”;
- (iv) in point 4, for “Member States” substitute “The Secretary of State and a Certifying Authority.”.

Amendment to Commission Regulation (EC) 536/2008

10.—(1) Commission Regulation (EC) No 536/2008 of 13 June 2008 giving effect to Article 6(3) and Article 7 of Regulation (EC) No 782/2003 of the European Parliament and of the Council on the prohibition of organotin compounds on ships and amending that Regulation(a) is amended as follows.

(2) In Article 3, for “Member States”, at each place it occurs, substitute “the Secretary of State or persons appointed by the Secretary of State”.

(3) In Article 4, for “Member States” substitute “the Secretary of State or persons appointed by the Secretary of State”.

(4) In Article 6, omit the second sentence.

Amendment to Commission Implementing Decision (EU) 2015/253

11.—(1) Commission Implementing Decision (EU) 2015/253 of 16 February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels(b) is amended as follows.

(2) In Article 1, for “Directive 1999/32/EC” substitute “Directive (EU) 2016/802”.

(3) In Article 2—

- (a) in paragraph 4, for “Directive 1999/32/EC” substitute “Directive 2016/802”;
- (b) omit paragraph 5.

(4) In Article 3—

- (a) in paragraph 1—
 - (i) for “Member States”, substitute “The Secretary of State or persons appointed by the Secretary of State”;
 - (ii) for “relevant Member State” substitute “United Kingdom”;
- (b) in the first unnumbered paragraph—
 - (i) for “a Member State” substitute “the United Kingdom”;
 - (ii) omit the words “as reported through SafeSeaNet”;
- (c) for paragraph 2, substitute—

i2. As from 1 January 2016, the sulphur content of the marine fuel being used on board shall also be checked by sampling or analysis or both of at least 30 per cent of the inspected ships referred to in paragraph 1.

The Secretary of State or persons appointed by the Secretary of State may comply with the frequencies specified in this paragraph by selecting ships on the basis of national risk-based targeting mechanisms and of specific alerts on individual ships.†;

(a) OJ No L 156, 14.06.2008, p. 10.

(b) OJ No L 41, 17.02.2015, p. 55.

- (d) in paragraph 3(b)—
 - (i) for “relevant Member State” substitute “the United Kingdom”;
- (e) omit the unnumbered paragraph after point (b);
- (f) in paragraph 4—
 - (i) for “a Member State” substitute “the Secretary of State”;
 - (ii) for “the Union” substitute “a”;
- (g) omit paragraph 5.
- (5) In Article 4—
 - (a) in paragraph 1—
 - (i) for “Article 6(1a)(b) of Directive 1999/32/EC” substitute “Article 13(2) of Directive (EU) 2016/802”;
 - (ii) for “Member States” substitute “the Secretary of State or persons appointed by the Secretary of State”;
 - (iii) for “that Member State” substitute “the United Kingdom”;
 - (iv) omit the words “on the basis of the reporting in the Union information system or in the annual report referred to in Article 7”;
 - (b) omit paragraph 2.
- (6) In paragraph 1 of Article 5, for “Member States” substitute “the Secretary of State or persons appointed by the Secretary of State”.
- (7) In Article 6, at each place it occurs, for “Member States” substitute “The Secretary of State or persons appointed by the Secretary of State”.
- (8) Omit Articles 7 and 8.

Signed by authority of the Secretary of State for Transport

Date

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Order)

The provision made by Part 1 of these Regulations is made under section 2(2) of the European Communities Act 1972 (c. 68) in order to update references to Directive 1999/32/EC, which was repealed and replaced (without substantive amendment) by Directive (EU) 2016/802 (OJ No L 132, 21/05/2016, p. 58).

The remaining Regulations are made in exercise of the powers in section 7 of the European Union (Withdrawal) Act 2018 (c. []) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. Part 2 amends primary legislation, Part 3 amends secondary legislation and Part 4 amends retained EU Regulations and Decisions.

An Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.