
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement certain requirements of [Directive 2015/1794/EC](#) (OJ No L 263, 8.10.2015, p 3) (“the Seafarers Directive”). The purpose of the Seafarers Directive is to place those employed at sea on an equal footing with land based employees and to remove unequal treatment across member States.

These Regulations amend the Employment Rights Act 1996, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Information and Consultation of Employees Regulations 2004 (“the 2004 Regulations”).

Part XII of the Employment Rights Act 1996 (insolvency of employers) implements in Great Britain the provisions of [Directive 2008/94/EC](#) of the European Parliament and of the Council (OJ No L 283, 28.10.2008, p 36) (“the 2008 Directive”). Article 1 of the Seafarers Directive amends the 2008 Directive by ensuring that seafarers employed as share fishermen are brought within the scope of the 2008 Directive.

In order to reflect the amendment, regulation 2(2) amends section 199(2) of the Employment Rights Act 1996 by removing the exclusion relating to Part XII in relation to employed share fishermen. Regulation 2(3) amends section 199(4) of the Employment Rights Act 1996 in order to bring merchant seamen within the scope of Part XII, as provided for by the 2008 Directive.

Part XI of the Employment Rights Act 1996 (redundancy payments etc) provides protection for employees in the event of a redundancy which may arise in the context of the insolvency of an employer. Regulation 2(2) removes the exclusion relating to Part XI in relation to employed share fishermen but is not made for the purposes of implementing the amendment made by Article 1 of the Seafarers Directive to the 2008 Directive.

Part IV, Chapter II of the Trade Union and Labour Relations (Consolidation) Act 1992 (procedure for handling redundancies) implements in Great Britain the provisions of [Directive 1998/59/EC](#) of the Council of the European Union (OJ No L 225, 12.08.1998, p 16) (“the 1998 Directive”). Article 4 of the Seafarers Directive amends Article 1(2)(c) of the 1998 Directive by removing the derogation for the crews of seagoing vessels. Merchant seamen are within the scope of Part IV, Chapter II of the Trade Union and Labour Relations (Consolidation) Act 1992 but the amendment also brings employed share fishermen within the scope of Part IV, Chapter II.

In order to reflect the amendment, regulation 3(2) amends section 284 of the Trade Union and Labour Relations (Consolidation) Act 1992 by removing the exclusion relating to Part IV, Chapter II in relation to employed share fishermen.

The 2004 Regulations implemented in Great Britain [Directive 2002/14/EC](#) (“the 2002 Directive”) establishing a general framework for informing and consulting employees in the European Union. Article 3(3) of the 2002 Directive permitted member States to exclude from the scope of the application of the Directive the crews of vessels plying the high seas. Regulation 43 of the 2004 Regulations implemented the derogation and allowed an employer to exclude merchant navy crew engaged on voyages of 48 hours or more from being a negotiating representative or an information and consultation representative as defined by the 2004 Regulations.

The Seafarers Directive amends the 2002 Directive by removing Article 3(3) from the scope of the 2002 Directive. In order to reflect the amendment, regulation 4 amends the 2004 Regulations by omitting regulation 43.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018 No. 407*

Regulation 5 requires the Secretary of State to review the operation and effect of regulation 4 and publish a report before the fifth anniversary of the date these Regulations come into force and within every five years after that. Following a review, it will fall to the Secretary of State to consider whether regulation 4 should remain or be amended.

An impact assessment has not been prepared for these Regulations as no significant impact on individuals or businesses is foreseen.

An Explanatory Memorandum is published alongside these Regulations at www.legislation.gov.uk and is also available from the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR.