

EXPLANATORY MEMORANDUM TO
**THE SEAFARERS (TRANSNATIONAL INFORMATION AND CONSULTATION,
COLLECTIVE REDUNDANCIES AND INSOLVENCY MISCELLANEOUS
AMENDMENTS) REGULATIONS 2018**

2018 No. 26

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument is made under powers in section 2(2) of the European Communities Act 1972 and implements in the United Kingdom part of the requirements of Directive 2015/1794 which amends Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers (“the Seafarers Directive”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.
- 3.3 On 23rd June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

4. Legislative Context

- 4.1 The instrument amends the Transnational Information and Consultation of Employees Regulations 1999, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Pension Schemes Act 1993.
- 4.2 The Transnational Information and Consultation of Employees Regulations 1999 (“the 1999 Regulations”), implemented in the United Kingdom Directive 2009/38/EC of the European Parliament and of the Council (“the 2009 Directive”) on the establishment of a European Works Council or, alternatively, information and consultation procedures in Community-scale undertakings and Community-scale groups of undertakings. Directive 2009/38/EC is a recast of Council Directive 94/45/EC.

- 4.3 Article 1(7) of the 2009 Directive permitted member States to exclude merchant navy crews from the scope of the application of the Directive. The 1999 Regulations applied this derogation (with certain exclusions) but retained a discretion for central management to permit a long haul crew member to be a member of a special negotiating body or of a European Works Council, or an information and consultation representative.
- 4.4 The Seafarers Directive amends the 2009 Directive by omitting Article 1(7) from the 2009 Directive. Specific provisions for crew members in relation to participation in a special negotiating body or in a European Works Council or an alternative information and consultation procedure established by virtue of the 2009 Directive, are created under Article 2(2) of the Seafarers Directive.
- 4.5 In order to implement the amendment, regulation 2 amends the 1999 Regulations by removing the derogation in regulation 46 (merchant navy) and implements the provisions in Article 2(2) of the Seafarers Directive.
- 4.6 Part IV, Chapter II of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) implements in England and Wales and Scotland the provisions of Directive 1998/59/EC of the Council of the European Union (“the 1998 Directive”) relating to collective redundancies.
- 4.7 Article 4 of the Seafarers Directive amends the 1998 Directive by inserting in Article 3(1) an obligation on an employer to notify the competent authority of the vessel’s flag State in the event of a collective redundancy involving the crew of a seagoing vessel.
- 4.8 In order to implement the amendment, regulation 3(2) inserts section 193A in the 1992 Act which imposes this obligation.
- 4.9 The instrument also amends the Pension Schemes Act 1993 (“the 1993 Act”). Part VII of the 1993 Act implements in England and Wales and Scotland certain provisions of Directive 2008/94/EC of the European Parliament and of the Council (“the 2008 Directive”). Section 165(7) of the Act excludes employed share fishermen from the scope of Part VII, Chapter II (payment by Secretary of State of unpaid scheme contributions) and from section 157 (power of Secretary of State to obtain information in connection with applications under section 124).
- 4.10 In order to implement the amendment, regulation 4(2) amends section 165(7) of the 1993 Act by removing the exclusion of employed share fishermen from the provisions of Part VII, Chapter II and from section 157 (power of Secretary of State to obtain information in connection with applications under section 124).
- 4.11 Section 165(7) of the 1993 Act also excludes merchant seamen from the provisions of section 124 (duty of Secretary of State to pay unpaid contributions to schemes) and section 125 (certification of amounts payable under section 124 by insolvency officers). Regulations 4(2) and 4(3) amend sections 165(7) and 165(8) of the Pension Schemes Act 1993 in order to bring merchant seamen within the scope of sections 124 and 125, as provided for by the 2008 Directive.
- 4.12 The proposal that resulted in Directive 2015/1794 was the subject of Explanatory Memorandum (EM) 16472/13. The House of Commons European Scrutiny Committee considered the EM on 8th January 2014. The Committee recommended that the document was politically important and did not clear it, pending developments in negotiations (Report 29, Session 2013/2014, 35544).

- 4.13 The House of Lords European Union Committee referred the EM to its EU Internal Market Sub-Committee on 17th December 2013 following the 1528th sif. The proposal was cleared by a letter to the Minister dated 14th January 2014.
- 4.14 Ministerial letters on progress in negotiations were sent to both Committees on 27th November 2014. The House of Commons European Scrutiny Committee considered the letter on 9th December 2014 and cleared the proposal from scrutiny (Report 25, Session 2014-15).
- 4.15 This instrument does not implement the other provisions of the Seafarers Directive in relation to amendments to Directives 2008/94/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC. These requirements will be provided for under separate legislation and guidance.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom, except that the extent of regulations 3 and 4 is England and Wales and Scotland.
- 5.2 The territorial application of this instrument is the United Kingdom, except for regulations 3 and 4 which apply only to England and Wales and Scotland.

6. European Convention on Human Rights

- 6.1 The Rt Hon Chris Grayling MP, Secretary of State for Transport, has made the following statement regarding Human Rights:

“In my view the provisions of the Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 In its 2009 Communication (“Strategic goals and recommendations for the EU’s maritime transport policy until 2018”), the European Commission stressed the need to promote maritime employment and address current shortages of European seafarers. It established a Task Force to look at measures to strike the balance between the employment conditions of EU seafarers and the competitiveness of vessels registered within the European Union.
- 7.2 The Task Force submitted its findings in early July 2011. The Task Force identified a number of EU labour law Directives where the current exemption for seafarers should be repealed. It called for an EU network to improve maritime training and stressed a role for the Commission in collating information and data to support future policy developments.
- 7.3 It subsequently identified five employment Directives that contained derogations for seafarers and therefore allowed land based workers greater employment rights than those at sea if member States chose to apply those derogations. The purpose of the Seafarers Directive is to remove the derogations and address an anomaly where land based workers may enjoy greater employment rights than those at sea. The five Directives amended by the Seafarers Directive are:

- a) Directive 2008/94/EC relating to the protection of employees in the event of the insolvency of their employer (the Insolvency Directive);
 - b) Directive 2009/38/EC on the establishment of a European Works Council (the EWC Directive);
 - c) Directive 2002/14/EC establishing a general framework for informing and consulting employees (the Information and Consultation Directive);
 - d) Directive 98/59/EC on the approximation of the laws of the member States relating to collective redundancies (the Collective Redundancies Directive); and
 - e) Directive 2001/23/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings (the Transfer of Undertakings Directive).
- 7.4 The UK Social Partners, Nautilus International (the officers union), RMT (the ratings union) and the UK Chamber of Shipping, have been fully supportive of the Seafarers Directive. The Government has been fully engaged with Social Partners on this proposal; UK Social Partners were at the forefront of the discussions with the European Social Partners and were instrumental in steering those discussions. The collaboration between industry, unions and Government allowed the UK to present a unified position in dialogue at the European level.
- 7.5 Because member States have been able to apply derogations on an ad-hoc basis, the result of this has been that undertakings in one member State have been able to apply less favourable social protection for seafarers than those in another member State.
- 7.6 The UK had made limited use of the derogation in relation to the 2009 Directive (EWC) in the Transnational Information and Consultation Regulations 1999. It was left to the discretion of the employing company as to whether a long haul crew member could be a member of a special negotiating body or of a European Works Council, or an information and consultation representative. However, the removal of the derogation is still subject to certain conditions, with the result that participation in meetings may only occur where the seafarer is in a port in the country in which the shipping company is domiciled.
- 7.7 The UK had also made use of the derogation in relation to the 2008 Directive (insolvency) in relation to share fishermen as it considers them to be self-employed. However, it is recognised that in certain limited circumstances, a share fisherman may be 'employed' and in such circumstances should have the same rights as required by the Seafarers Directive.
- 7.8 The Government recognised the importance of the harmonisation of employment legislation in regard to seafarers, and the levelling of the regulatory playing field in Europe has meant that other member States will be required to match our standards, which will greatly improve the competitiveness of UK companies.
- 8. Consultation outcome**
- 8.1 A formal consultation was not undertaken. The UK Social Partners have been fully engaged with the Government since the Commission first considered that action needed to be taken.
- 9. Guidance**
- 9.1 No guidance has been produced to accompany this instrument.

10. Impact

- 10.1 Removal of the exemption from the 1999 Regulations allows long haul crew members to be a member of a special negotiating body or of a European Works Council, or an information and consultation representative. The exemption for 'long haul crew' was not mandatory and employers could already choose to apply the Regulations in full to those employees.
- 10.2 Extension to share fishermen 'where employed' will have limited impact; the employment status of share fishermen is not being changed and the majority of share fishermen will have working practices that will define them as self-employed.
- 10.3 There is otherwise no impact on business and there is no impact on charities or voluntary bodies.
- 10.4 There is no impact on the public sector.
- 10.5 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The instrument contains a review clause pursuant to the provisions contained in sections 28 – 32 of the Small Business, Enterprise and Employment Act 2015. The Secretary of State must carry out a review of the implementation of the amendments to the 2009 Directive (EWC Directive) by the Seafarers Directive and which are implemented in the instrument before 6th February 2023 and at intervals not exceeding five years thereafter, taking into account in particular how the amendments are implemented in other member States.

13. Contact

- 13.1 John Cousley at the Department for Transport (Telephone: 020 7944 2011 or email: john.cousley@dft.gsi.gov.uk) can answer any queries regarding the instrument.