

TRANSPOSITION TABLE FOR IMPLEMENTATION OF AMENDMENTS TO DIRECTIVE 2009/38/EC, DIRECTIVE 1998/59/EC AND DIRECTIVE 2008/94/EC MADE BY DIRECTIVE (EU) 2015/1794 (THE SEAFARERS DIRECTIVE)

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

DIRECTIVE 2009/38/EC (EUROPEAN WORKS COUNCIL)	ARTICLE 2 OF DIRECTIVE (EU) 2015/1794 (SEAFARERS DIRECTIVE)	OBJECTIVE OF AMENDMENT	IMPLEMENTATION OF ARTICLE 1(7)	IMPLEMENTATION OF AMENDMENTS TO DIRECTIVE 2009/38/EC
<p>(a) Article 1(7):</p> <p>‘Member States may provide that this Directive shall not apply to merchant navy crews.’</p>	<p>(a) Article 2(1): ‘in Article 1, paragraph 7 is deleted;’</p> <p>(b) Article 10(3) is added: ‘A member of a special negotiating body or of a European Works Council, or such a member’s alternate, who is a member of the crew of a seagoing vessel, shall be</p>	<p>(a) To bring seafarers (merchant seamen) within the scope of the EWC Directive.</p> <p>(b) To enhance the information and consultation rights of merchant seamen, tailored to their unique position.</p>	<p>(a) The derogation was applied to some extent in the Transnational Information and Consultation of Employees 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. (See regulation 46)</p> <p>(b) Regulation 46 is replaced, incorporating the amendment made by the Seafarers Directive which added Article 10(3) to the EWC Directive (removing the derogation completely).</p>	<p>Regulation 2 in the Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018 amends regulation 46 to remove the derogation completely:</p> <p>1.—(1) The Transnational Information and Consultation of Employees Regulations 1999 are amended as follows.</p> <p>(2) For regulation 46 (merchant navy) substitute—</p> <p>“46.—(1) Subject to paragraph (2), a member of a special negotiating body or of a European Works Council or an information and consultation representative, or an alternate of such member or representative, who is the member of a crew of a</p>

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	<p>entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under any procedures established pursuant to Article 6(3), where that member or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.</p> <p>Meetings shall, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing vessels.</p> <p>In cases where a member of a special negotiating body or of a European Works Council, or such a</p>		<p>seagoing vessel, is entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under any procedures established pursuant to regulation 17(3).</p> <p>(2) A member or representative or alternate referred to in paragraph (1) may only participate in a meeting where that member, representative or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.</p> <p>(3) Paragraph (2) does not apply to—</p> <p>(a) a ferry worker, or</p> <p>(b) a person who normally works on voyages the duration of which is less than 48 hours.</p> <p>(4) The meetings must, where practicable, be scheduled to</p>
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	<p>member's alternate, who is a member of the crew of a seagoing vessel, is unable to attend a meeting, the possibility of using, where possible, new information and communication technologies shall be considered.'</p>			<p>facilitate the participation of a member, representative or alternate referred to in paragraph (1). (5) In cases where a member or a representative or alternate referred to in paragraph (1) is unable to attend a meeting, the use of information and communication technology to enable that person's participation in the meeting must be considered.'</p>
DIRECTIVE 98/59/EC (COLLECTIVE REDUNDANCIES)	ARTICLE 4 OF DIRECTIVE (EU) 2015/1794 (SEAFARERS DIRECTIVE)	OBJECTIVE OF AMENDMENT	IMPLEMENTATION OF ARTICLE 3(1)	IMPLEMENTATION OF AMENDMENT TO DIRECTIVE 98/59/EC
Article 3(1) [Procedure for collective redundancies – employers must notify the competent public authority in writing of any projected collective redundancies.] "1. Employers shall notify the competent public	In Article 3(1) , the following subparagraph is inserted after the second subparagraph: 'Where the projected collective redundancy concerns member of a seagoing vessel, the	The notification provided for by Article 3(1) of the Directive should always be made to the competent authority of the State of the flag. This clarification is necessary because of the potential coexistence of employment contracts under different	Section 193 of the Trade Union and Labour Relations (Consolidation) Act 1992.	Regulation 3 of the Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018 amends the Trade Union and Labour Relations (Consolidation) Act 1992

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<p>authority in writing of any projected redundancies.</p> <p>However, Member States may provide that in the case of planned collective redundancies arising from termination of the establishment's activities as a result of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests.</p> <p>This notification shall contain all relevant information concerning the projected collective redundancies and the consultations with workers' representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally</p>	<p>employer shall notify the competent authority of the State of the flag which the vessel flies.'</p>	<p>national laws (see Commission's Explanatory Memorandum at p10).</p>	<p>New section 193A is inserted:</p> <p>"193A. Duty of employer to notify competent authority of a vessel's flag State of certain redundancies</p> <p>(1) section 193 has effect subject to this section if—</p> <p>(a) the duty under section 193(1) or 193(2) applies to a proposal to dismiss employees as redundant, and</p> <p>(b) the employees concerned are members of a crew of a seagoing vessel which is registered at a port outside Great Britain.</p> <p>(2) the employer shall give the notification required by section 193(1) or (2) to the competent authority of the state where the vessel is registered (instead of to the Secretary of State). "</p> <p>The requirement is in a separate section rather than an</p>
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<p>employed and the period over which the redundancies are to be effected.”</p>				<p>amendment to s193 as s193 is drafted as an obligation to notify the Secretary of State. It would be difficult to modify this requirement to notify the flag State for foreign registered seagoing vessels. Breach of the s193 notice requirement also carries a penalty (s194). The duty to report projected collective redundancies to the SoS therefore remains (and this would cover the UK flag state as the duty is to report to the SoS at large), but, separately, there is an obligation to notify the flag state of a foreign registered vessel.</p> <p>A further consequential change is needed to s285 (Employment outside Great Britain):</p> <p>(3) “In section 285 (employment outside Great Britain)—</p> <p>(a) in subsection (1) for “193 and 194” substitute “193 to 194”;</p>
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				<p>(b) after subsection (1A) insert— “(1B) For the purposes of subsection (1) as it relates to sections 193 to 194, employment on board a ship registered in the United Kingdom shall be treated as employment where under his contract a person ordinarily works in Great Britain.”;</p> <p>(c) in subsection (2), for “purposes of subsections (1) and (1A)” substitute “other purposes of subsection (1) and the purposes of subsection (1A)”.</p> <p>(2) The amendments made by paragraphs (2) and (3) only have effect in relation to dismissals which are first proposed by an employer on or after the date on which these Regulations come into force.’</p>
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DIRECTIVE 2008/94/EC (INSOLVENCY)	ARTICLE 1 OF DIRECTIVE (EU) 2015/1794 (SEAFARERS DIRECTIVE)	OBJECTIVE OF AMENDMENT	IMPLEMENTATION OF ARTICLE 1(3) IN RELATION TO PENSION RIGHTS ON INSOLVENCY	IMPLEMENTATION OF AMENDMENT TO DIRECTIVE 2008/94/EC
<p>Article 1(3):</p> <p>‘Where such provision already applies in their national legislation, Member States may continue to exclude from the scope of this Directive:</p> <p>(a) domestic servants employed by a natural person;</p> <p>(b) share fishermen.’</p>	<p>‘Article 1(3) of Directive 2008/94/EC is replaced by the following:</p> <p>3. Where such provision already applies in their national legislation, Member States may continue to exclude domestic servants employed by a natural person from the scope of the Directive.’</p>	<p>To bring share fishermen within the scope of the Insolvency Directive but only where Member States treat them as employed.</p>	<p>Sections 165(7) and (8) Pension Schemes Act 1993 (Application of certain provisions to cases with a foreign element):</p> <p>‘(7) Chapter II of Part VII and section 157 do not apply--</p> <p>(a) to employment where under his worker’s contract the worker ordinarily works outside the territory of the member States, or</p> <p>(b) to employment as master or as a member of the crew of a fishing vessel where the worker is remunerated only by a share in the profits or gross earnings of the vessel,</p>	<p>Regulation 4 of the Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018 amends the Trade Union and Labour Relations (Consolidation) Act 1992</p> <p>4.—(1) Section 165 of the Pension Schemes Act 1993 (application of certain provision to cases with foreign element) is amended as follows.</p> <p>(2) For subsection (7) substitute—</p> <p>“(7) Chapter II of Part VII and section 157 do not apply to employment where under his</p>

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			<p>and sections 124 and 125 do not apply to employment as a merchant seaman, but [section 201 of the Employment Rights Act 1996] (power to extend employment protection legislation) applies to Chapter II of Part VII and section 157 as it does to the provisions of that Act.</p> <p>(8) In this section--</p> <p>"continental shelf operations" means any activities which, if paragraphs (a) and (d) of [subsection (8) of section 11 of the Petroleum Act 1998] (application of civil law to certain off-shore activities) were omitted, would nevertheless fall within subsection (2) of that section; and</p> <p>"employment as a merchant seaman" has the meaning given in [section 199(5) of the Employment Rights Act 1996].</p>	<p>worker's contract the worker ordinarily works outside the territory of the member States, but section 201 of the Employment Rights Act 1996 (power to extend employment protection legislation) applies to Chapter II of Part VII and section 157 as it does to the provisions of that Act."</p> <p>(3) In subsection (8) omit the definition of "employment as a merchant seaman" and the "and" preceding it.</p> <p>(4) The amendments made by paragraphs (2) and (3) only have effect in relation to employers who become insolvent on or after the date on which these Regulations come into force.'</p>
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