

EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (MARINE EQUIPMENT) (AMENDMENT) (UK AND US MUTUAL RECOGNITION AGREEMENT) (EU EXIT) REGULATIONS 2019

2019 No. 1304

1. Introduction

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

2. Purpose of the instrument

- 2.1 These Regulations, which are made under powers in sections 85 and 86 of the Merchant Shipping Act 1995¹, make amendments to the Merchant Shipping (Marine Equipment) Regulations 2016² ('the 2016 Regulations') as they will have been amended by the Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2019³ ('the 2019 Amendment Regulations'). The instrument gives effect to an Agreement on the Mutual Recognition of Certificates of Conformity for Marine Equipment between the United Kingdom and the United States of America⁴ ('the UK-US MRA') signed on 14th February 2019. The UK-US MRA facilitates trade by providing for the mutual recognition of certificates of conformity for designated marine equipment. These Regulations are required to give the UK-US MRA effect in UK domestic law.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is all United Kingdom ships whether in the United Kingdom or anywhere else in the world.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

¹ 1995 c.21.

² S.I. 2016/1025.

³ S.I. 2019/470.

⁴ Cmnd. 53.

6. Legislative Context

- 6.1 The international instruments which set the standards for marine equipment are the 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGs); the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL); and the 1974 International Convention for the Safety of Life at Sea (SOLAS), together with the resolutions and circulars of the International Maritime Organisation (IMO) giving effect to those conventions.
- 6.2 EU Directive 2014/90/EU⁵ ('the Directive') ensures that marine equipment placed on board EU ships meets the design, construction and performance standards required by international conventions and harmonises the standards and procedures for assessing and approving marine equipment across the EU.
- 6.3 The Directive was implemented into UK domestic law by the 2016 Regulations. The 2016 Regulations require marine equipment, which is within the scope of the Directive and placed on board UK ships, to comply with the conformity approval procedures as set out in the Directive. The 2016 Regulations also include the criteria for appointing notified bodies, for example being established under national law and having a legal personality; conformity assessments can only be carried out by these bodies. Organisations can only become a notified body if they meet the conditions stipulated in the 2016 Regulations as amended by the 2019 Amendment Regulations. Once a notified body assesses marine equipment which complies with the required standards the equipment is marked with the EU's mark of conformity – the 'Wheelmark'.
- 6.4 In 2004, a mutual recognition agreement on marine equipment between the EU and US entered into force ('the EU-US MRA'). Pursuant to the EU-US MRA the two parties accept that their respective technical regulations, in relation to marine equipment specified in Annex II of the EU-US MRA, are equivalent. The EU-US MRA provides for the acceptance of conformity assessment certificates issued by the other party's conformity assessment bodies for such equipment without requiring further assessment against their own technical regulations. This means that manufacturers only need to have equipment tested and certified once reducing uncertainty, time, administrative burden and cost.
- 6.5 Neither the Directive nor the EU-US MRA will apply to the UK after we leave the EU. To replace the Directive, the 2019 Amendment Regulations will establish a UK conformity assessment system for marine equipment providing for the application of international standards for marine equipment placed on board UK ships and for the enforcement of those standards. 'Notified bodies' will become UK 'approved bodies' and a new UK conformity mark will replace the EU Wheelmark.
- 6.6 To replace the EU-US MRA, the UK and US have put in place a new MRA which delivers continuity and does not alter the original terms of the EU-US MRA in a way that materially changes its effect. Under the terms of the UK-US MRA the parties have committed that designated marine equipment which complies with UK requirements will be accepted for placing on board US registered ships without any additional testing or certification, and vice-versa. The designated marine equipment is listed in Annex II of the UK-US MRA and comprises life savings appliances, fire protection equipment and navigation equipment. At present the equipment listed in Annex II is all equipment related to safety. As did the EU-US MRA, the UK-US

⁵ OJ L257, 28.8.2014, p.146.

MRA provides for the expansion of the products within Annex II where it is agreed that each Party's respective technical regulations for a given product are equivalent.

- 6.7 The Regulations give effect to the UK-US MRA by providing that where marine equipment designated in the UK-US MRA has been approved by the United States Coast Guard, is accompanied by a US declaration of conformity and is affixed with the UK conformity mark, it may be placed on board a United Kingdom ship. They do so by amending the 2016 Regulations, as they in turn will be amended by the 2019 Amendment Regulations.
- 6.8 Under the current EU-US MRA, the US conformity assessment bodies can use the EU Wheelmark on equipment covered by the MRA. Although the UK will no longer be party to the EU-US MRA, the UK will continue to accept on UK ships marine equipment with an EU Wheelmark approved by the US conformity assessment bodies. This was achieved through a combination of the Conformity Assessment (Mutual Recognition Agreements) Regulations 2019⁶ ('the Conformity Assessment Regulations') and the 2019 Amendment Regulations. The Conformity Assessment Regulations recognise conformity assessments carried out by bodies in third countries that have entered into a mutual recognition agreement with the EU by treating them as if they were done by an EU notified body, whilst the 2019 Amendment Regulations provide for the ongoing acceptance of equipment approved by EU notified bodies.

7. Policy background

What is being done and why?

- 7.1 The objectives of some of the international conventions referred to in paragraph 6.1 are to enhance safety at sea through the application of international design, construction and performance standards relating to marine equipment. They do this by ensuring equipment (e.g. life-saving appliances, firefighting equipment and navigation equipment) is approved by the Government of the flag a ship is entitled to fly, or an organisation recognised to do so on its behalf.
- 7.2 Conformity assessment, or product safety compliance, is a process that determines whether a product meets certain requirements that allow it to be legally placed on a national market. When the manufacturer's processes have been approved as meeting the applicable quality standards, the product receives conformity assessment approval enabling the conformity assessment mark to be affixed to it and the approved product or equipment may be placed on the market and on board ships. For example, a product must undergo conformity assessment against US regulatory requirements before it can be placed onto the US market.
- 7.3 The EU-US MRA promotes trade in goods between the EU and the US by reducing technical barriers to trade in marine equipment. One of the main technical barriers to trade that the MRA addresses is around the conditions under which one party (e.g. the EU) will accept outputs of conformity assessment undertaken in the territory of the other party (e.g. in the US).
- 7.4 While the UK remains an EU Member State, it benefits from the EU-US MRA on marine equipment. This means that equipment can be conformity assessed against EU regulations by UK based bodies and the US will accept the conformity assessment

⁶ S.I. 2019/392.

certificates issued by UK based bodies without requiring further assessment against its own technical regulations.

- 7.5 When the UK leaves the EU, we will no longer be party to the EU-US MRA. In order to mitigate this, the UK has signed the UK-US MRA. This is based closely on the EU-US MRA and does not alter the original terms of the EU-US MRA in a way that materially changes its effect.
- 7.6 The UK-US MRA will come into force when the EU-US MRA ceases to apply to the UK in accordance with Article 21 of the UK-US MRA.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018⁷ but relates to the withdrawal of the United Kingdom from the European Union because it implements a UK agreement with the US which is only needed because the UK will no longer be party to the EU-US Mutual Recognition Agreement when we leave the European Union.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation at this time.

10. Consultation outcome

- 10.1 The Department has engaged with notified bodies and marine equipment manufacturers regarding the Government's intention to provide continuity of the benefits enjoyed under the EU-US MRA through a UK-US MRA. This informal engagement has included regular meetings at established forums with key industry stakeholders where no objections have been received to the proposed approach.
- 10.2 The Government has also carried out a formal consultation. The consultation ran from 9th September to 23rd September 2019 and asked about the effects of the Regulations on the UK marine equipment industry. There were nine responses to the consultation. The responses were supportive of the UK-US MRA and only asked technical questions which the Maritime and Coastguard Agency ('the MCA') has followed up with the respondents.

11. Guidance

- 11.1 The MCA has prepared a Marine Guidance Note (MGN) for the marine equipment industry on the application of the UK-US MRA, which will be issued before these Regulations enter into force. This will provide instructions on the marking to be applied to equipment which has been approved in the UK by one or more UK approved bodies and which access to the US market is sought. The MCA will liaise with the United States Coast Guard regarding the affixing of the UK conformity mark to marine equipment designated in the UK-US MRA and approved by the United States Coast Guard.
- 11.2 Furthermore, the MCA will add an Annex 6 to Merchant Shipping Notice (MSN) 1874 Amendment 3, which includes the list of designated marine equipment covered by the UK-US MRA. This MSN was published with the 2019 Amendment

⁷ 2018 c.16.

Regulations and is available at <http://www.legislation.gov.uk/ukxi/2019/470/resources>. A copy of the revised MSN 1874 Amendment 3 will be published alongside these Regulations.

- 11.3 In addition, the MCA intends to amend Marine Information Notice (MIN) 590 which provides a plain English, self-contained guide to the UK's procedures for conformity assessment and acceptance of marine equipment and how this affects each stakeholder group (e.g. manufacturers, conformity assessment bodies, and ships). The MCA intends to issue the amended MIN 590 before the Regulations enter into force.
- 11.4 The MGN, MSN and MIN will be available for download from <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency> before these Regulations enter into force. Hardcopies will be able to be obtained by contacting M-Notices Subscriptions, PO Box 362, Europa Park, Grays, Essex RM17 9AY (telephone number 01375 484 548; fax 01375 484 556; email orders mnotices@ecgroup.co.uk).

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The effect will be the continuity of the rights and obligations enjoyed under the EU-US MRA.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument. This instrument itself will not create any direct costs to UK business as it only enables US approved equipment to continue to be used on UK ships.

13. Regulating small business

- 13.1 The legislation applies indirectly to activities that are in some cases undertaken by small businesses, but is not expected to have a significant effect on such businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is contained in Regulation 30 of the 2016 Regulations, which includes a statutory review clause.

15. Contact

- 15.1 Scott Partridge (Maritime International and Trade) at the Department for Transport Telephone: 07977 420551 or email: Scott.Partridge@dft.gov.uk can be contacted with any queries regarding the instrument. Andy Wibroe (International Relations Officer (Technical)) at the Maritime and Coastguard Agency Telephone: 07975 820721 or email: Andy.Wibroe@mcga.gov.uk can be contacted with any operational queries.
- 15.2 Haroona Chughtai, Deputy Director for Maritime International and Trade, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chris Heaton-Harris MP, Minister of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.