

EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (TECHNICAL REQUIREMENTS FOR INLAND WATERWAY VESSELS) (AMENDMENT) REGULATIONS 2019

2019 No. 160

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument implements Directive (EU) 2016/1629 of 14th September 2016 of the European Parliament and of the Council laying down technical requirements for inland waterway vessels, amending Directive 2009/100/EC¹ and repealing Directive 2006/87/EC².
- 2.2 On 23 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 United Kingdom 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 United Kingdom has left the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Merchant Shipping (Technical Requirements for Inland Waterway Vessels) Regulations 2010³ (“the 2010 Regulations”), which this instrument amends, relied on the power in paragraph 1A of Schedule 2 to the European Communities Act 1972 to refer in those Regulations to the Annexes to Directive 2006/87/EC as amended from time to time (regulation 2(2)(b) of the 2010 Regulations). In this instrument, paragraph 1A of Schedule 2 is being used to remove that reference. References to Directive (EU) 2016/1629 (“the Directive”) in this instrument are references to the Directive as at the date on which this instrument is made and will not catch future amendments to the Directive. As footnote (c) to regulation 3(a)(i) of this instrument makes clear, the version of the Directive being referred to is that as last amended by Commission Delegated Directive (EU) 2018/970 of 18 April 2018 (amending Annexes II, III and V to the Directive).

¹ Directive 2009/100/EC of the European Parliament and of the Council of 16th September 2009 on reciprocal recognition of navigability licences for inland waterway vessels (Text with EEA relevance).

² 2006/87/EC Directive of the European Parliament and of the Council of 12th December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC.

³ S.I. No. 2010/1075.

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.

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5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument implements the Directive. The Directive repeals Directive 2006/87/EC and amends Directive 2009/100/EC. Those directives were implemented in the United Kingdom by the 2010 Regulations.

6.2 The proposal for a new directive to replace 2006/87/EC was the subject of Explanatory Memorandum (EM) 13717/13. The House of Commons European Scrutiny Committee considered the EM on 30th October 2013. The Committee recommended that the document was politically important, but cleared it (Report 21, Session 2013-2014, reference 35318). The House of Lords Select Committee on the European Union cleared the EM at the 1519th sif on 15th October 2013.

6.3 The Department has utilised the derogation in Article 24.1 of the Directive for vessels on inland waterways not linked to inland waterways of another Member State to grant an exemption from the Directive's requirements to all vessels that only operate on Union waters⁴ within the United Kingdom. It may be noted that the Republic of Ireland has no Union waterways. No question of a cross-border waterways link between the United Kingdom and Ireland therefore arises. The power in Article 24.1 allowing the United Kingdom to authorise derogations from the Directive therefore applies as respects all vessels which are subject to the Directive in the United Kingdom.

6.4 Annex II of the Directive refers to the technical requirements applicable to craft as set out in ES-TRIN standard 2017/1. Annex II itself does not contain the standard. The European Commission is empowered, by delegated act, only to update the reference to the ES-TRIN standard in Annex II and to set the date of application of subsequent versions. To this end, while the original version of the Directive referred to ES-TRIN standard 2015/1, the ES-TRIN standard 2017/1 applies from 7th October 2018. The contents of the ES-TRIN standard are published in full in Merchant Shipping Notice 1880(M) which will be updated as necessary.

6.5 The Directive was added to Annex XIII to the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 155/2018 of 6th July 2018.

⁴ The Directive only applies to vessels on Union waterways, see Article 4.1.

7. Policy background

What is being done and why?

- 7.1 The aim of the Directive is to further harmonise the technical requirements for inland waterway vessels for all EU inland waterways with those for vessels navigating on the Rhine in accordance with the Revised Convention for Rhine Navigation⁵, administered by the Central Commission for Navigation on the Rhine (“CCNR”).
- 7.2 To achieve these objectives, the CCNR has set up an international body which is open to attendance by EU and CCNR Member States where vessel standards will be agreed and subsequently incorporated into the respective legal mechanisms administered by the EU and CCNR. Both standards will be revised and harmonised in a timely and efficient manner, thus creating a level playing field. The United Kingdom does not object to this approach to standard setting in the field of inland navigation.
- 7.3 As stated in paragraph 6.3, Article 24.1 of the Directive allows Member States to authorise derogations for vessels on waterways that are not linked to those of another Member State. The United Kingdom has used that Article, and regulation 4 of the 2010 Regulations (as amended by this instrument), to authorise a derogation for all vessels that only operate on Union waterways within the United Kingdom.

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

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 There are no plans to consolidate the 2010 Regulations at this time.

10. Consultation outcome

- 10.1 Four responses were received to the consultation. Three of the responses either expressed support for the United Kingdom’s approach to implementation of the Directive, or were not opposed to it. One organisation did not support the proposal to continue not providing a system for the certification of vessels intending to operate in mainland Europe. In view of the low number of vessels affected by this, the United Kingdom continues to take the view that providing for this is not justified on the basis of cost and benefit.

11. Guidance

- 11.1 The Maritime and Coastguard Agency (“MCA”) has revised Merchant Shipping Notice 1824(M) in support of this instrument, which has been re-published as Merchant Shipping Notice 1879(M). It has also published Merchant Shipping Notice 1880(M) containing the ES-TRIN standard referred to in Annex II (see paragraph 6.4 above) and Merchant Shipping Notice 1881(M) containing the technical requirements of Annex V of the Directive. Finally, Merchant Shipping Notice 1894(M) has been published, which contains information on how United Kingdom cargo vessels which come within the scope of Directive 2009/100/EC can obtain a navigability licence.

⁵ The Revised Convention for Rhine Navigation signed at Mannheim on 17th October 1868, as set out in the text of 20th November 1963.

- 11.2 Merchant Shipping Notices are published by the Maritime and Coastguard Agency. Copies may be downloaded from the MCA's website <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency> or by e-subscription from mnotices@ecgroup.co.uk with 'Subscribe' in the subject heading, or from M-Notices Subscriptions, P.O. Box 362, Europa Park, Grays Essex RM17 9AY, tel 01375 484548, fax 01375 484556. Hard copies of the Merchant Shipping Notices referred to in this instrument are available for inspection free of charge but by appointment at the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies that operate United Kingdom vessels within the United Kingdom is zero. The impact on business, charities or voluntary bodies that operate other vessels within the United Kingdom is as a result of maintaining its existing safety regime.
- 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 because the costs and benefits to businesses are expected to fall below £5 million net in any one year.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to make use of the derogation available in accordance with Article 24.1 of the Directive to the extent that small businesses that operate vessels only within the United Kingdom, are exempt from the requirements in the Directive.
- 13.3 The basis for the final decision on what action to take to assist small businesses was to consider the regulatory burden that the Directive will impose, in comparison to the current regulatory framework. The technical requirements in the Directive are based on standards developed for large vessels operating on the river Rhine, and other similar rivers in mainland Europe. Because the inland waterway network in the United Kingdom is on a much smaller scale, many of those requirements are deemed overly burdensome for vessels operating in the United Kingdom.
- 13.4 To minimise the regulatory burden, maintaining our policy of continuing with arrangements currently in place was therefore deemed the preferred approach. That approach relies on regulations already in place in the United Kingdom which are more suited to the existing fleet of domestic vessels. The consultation included all the primary inland navigation authorities who are responsible for regulating such vessels on their waterways, and no adverse comments were received from them regarding our policy approach to implementation. As a result, no small businesses in the United Kingdom will be significantly affected by this Directive.

14. Monitoring & review

- 14.1 Nusrat Ghani MP, Parliamentary Under Secretary of State for the Department for Transport, has made the following statement:
- “Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Guidance under s.31 of that Act, I have

decided that it is not appropriate to make provision for review of this instrument because it would be disproportionate to do so taking into account the economic impact of the regulations. The impact on businesses is expected to be minimal and would not reach the threshold impact of greater or less than +/- £5 million (net annualised). There are no additional factors which would make it desirable to include such a clause.”

15. Contact

- 15.1 David Unsworth at the Department for Transport Telephone: 020381 72404 or email: david.unsworth@mcga.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Katy Ware at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nusrat Ghani at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.