

EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (REGISTRATION OF SHIPS) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 509

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 The purpose of these Regulations is to make amendments to the Merchant Shipping (Registration of Ships) Regulations 1993 (S.I. 1993/3138) (“the Registration Regulations”). There are three different reasons for these changes and these are described below.
- 2.2 Firstly, these Regulations are made in order to extend the eligibility to register a ship on the UK register to Commonwealth citizens and countries, citizens and companies of countries listed in an Annex to the Regulations, and to persons settled in the UK. This is to expand the UK’s role in the maritime industry, and to prevent undue competition between the UK register and the registers of the Crown Dependencies and Overseas Territories.
- 2.3 Secondly, these Regulations make amendments to allow ships to bareboat charter out to another register whilst remaining able to return to the UK register at the end of the charter-party. This is achieved by suspending the ship’s registration. This is required to meet a need of the maritime industry and to ensure the competitiveness of the UK flag. There is a consequential change to the Merchant Shipping (Fees) Regulations 2018 (S.I. 2018/1104).
- 2.4 Thirdly, these Regulations amend the Registration Regulations to enable the Registrar General of Shipping and Seamen (“the Registrar”) to refuse to register a ship, or to remove a ship from the register, if the registration of that ship is prohibited by sanctions regulations.

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 the United Kingdom and all United Kingdom ships.

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 British ships are registered on the Register of British Ships (“the Register”) pursuant to section 8 of the Merchant Shipping Act 1995 (“the Act”) and the Register is maintained by the Registrar. Section 10 of the Act gives powers to the Secretary of State to make regulations regarding the registration of ships. The requirements for registration are contained in the Registration Regulations. If the Registrar is not satisfied that the required conditions are met, the registration application must be refused. Moreover, if a ship already on the register no longer meets these conditions the Registrar may remove the ship from the register.

6.2 The amendments in relation to eligibility and sanctions have effect pursuant to section 9 of the Act, even though they are also made under the powers in section 10 of the Act. Under section 9, a ship may be registered if it is owned by qualified persons, and the ship has a British connection. The Act leaves the Secretary of State to determine what is required to show a British connection in respect of a ship. The Secretary of State considers that it is sufficient for a ship to make an application to be a British ship and for the owners to have either a place of business in the UK or to have appointed a representative person in the UK.

6.3 The amendments in relation to bareboat charter out provide for a registration to be suspended whilst a ship is subject to a bareboat charter and where it is intended that it be registered under that bareboat charter, to a registry of a commonwealth country or a country listed in the new Schedule 6 to the Registration Regulations. A bareboat charter is an arrangement for the hiring of a ship where the owners supply the ship without crew or provisions (and the ship is, to that extent, ‘bare’).

6.4 During the period of suspension, the ship is not registered and so the ship can be registered elsewhere and fly the flag of another state without the owners committing an offence under section 3 of the Act. The suspension is denoted by the issuance of a ‘certificate of permission’, which is a commonly used term across international ship registries that indicates that there is no impediment from a primary flag (in this case, the UK) to registering the ship on a secondary flag for the period of the charter-party. The term ‘certificate of permission’ is therefore used in these regulations even though there is no technical permission required (because the ship moves out of the UK’s jurisdiction upon suspension) and the certificate rather indicates the absence of any legal impediment under UK law.

6.5 At the end of the validity of the certificate, or upon its cancellation at the request of the owners, the ship can be restored to the UK register by the issuance of a carving and marking note and the remarking of the ship as a British ship. The amendments also allow for the certificate to be renewed, and for changed details about the ship to be recorded both on the certificate itself and on the suspended entry relating to the ship on the UK register. Finally, provisions exist for the certificate to be revoked in specified cases, and for the entry relating to the ship to be removed from the register

as a whole (notwithstanding the suspension) where it would not be appropriate for the ship to return to the register.

- 6.6 The Regulations also contain amendments which are required following the passing of the Sanctions and Anti-Money Laundering Act 2018 (“SAMLA”). SAMLA was introduced by Her Majesty’s Government to provide powers for the UK to impose, update and lift sanctions independently following the UK’s withdrawal from the European Union (“EU”).
- 6.7 SAMLA provides for sanctions to be imposed which prevent the registration of (i) specified ships; and (ii) ships connected with designated persons and prescribed countries. The Registration Regulations did not contain provision for the Registrar to refuse an application for registration in these circumstances. Therefore, the Regulations amend the Registration Regulations to provide that the Registrar must refuse to register a ship if its registration is prohibited under sanctions regulations.
- 6.8 SAMLA also provides that the Secretary of State can direct the Registrar to terminate the registration of the sanctioned ships mentioned in paragraph 6.7 if they are already on the register. The Registration Regulations did not provide for the Registrar to follow these directions and therefore the Regulations amend the Registration Regulations so that the Registrar can terminate a ship’s registration on receipt of a termination direction.
- 6.9 The Regulations insert definitions of “relevant provisions of sanctions regulations” and “termination direction” for these purposes. The only sanctions regulations which currently exercise SAMLA powers in relation to ship registration are the Democratic People’s Republic of Korea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/411) (“the DPRK Regulations”) and therefore the definitions refer specifically to the DPRK Regulations. If future sanctions regulations contain provision of this kind then the definitions of “relevant provision of sanctions regulations” and “termination direction” will be updated.

7. Policy background

What is being done and why?

- 7.1 The eligibility criteria in their current form require that owners wishing to flag with the UK must have their body corporate located in the UK (including Overseas Territories or Commonwealth Dependencies) or an EEA State. This is restrictive and constraining, allows for applications from only a limited group of individuals and companies, comprising of UK nationals, UK companies, EU nationals living in the UK, British Dependant Territories and bodies corporate in an EEA State. Not only has previous business been lost because of these restraints, but future growth of the UK flag is also compromised, given that ship ownership is a worldwide business.
- 7.2 The current eligibility criteria also permit EU nationals living in the UK to register ships, but (with the limited exception of Commonwealth nationals for one small bit of the register) do not allow nationals of other countries living in the UK to register. Many other western countries do allow foreigners who have the right to live in their countries to register ships on their flag. Allowing those settled in the UK to register their ships would ensure that eligibility is kept to those approved by the immigration system, but on an equal level to those from EU countries.

- 7.3 The UK currently allows ‘Bareboat Charter In’ to the Ship Register but does not provide ‘Bareboat Charter Out’ which other competitive Flag States offer. A charter-party is an agreement whereby a vessel is hired for a stipulated period, during which the charterer has possession and control of the vessel, including the right to appoint the master and crew and to fly a flag different from that of the primary owners. Currently, the only way for this to be accomplished is for the ship to terminate its registration from the UK flag in order to transfer to another flag. This is inflexible, and also risks the ship not returning to the UK flag at the end of the charter-party.
- 7.4 Under the amendments in these Regulations, a UK vessel may be bareboat chartered out and registered outside UK in the name of the bareboat charterer. During the charter period, the vessel’s UK registry will be suspended, but the ship can be restored to the register by a simple process at the end of the charter-party. This maintains the practical link between the ship and the UK, whilst legally ensuring that it is not a part of the UK flagged fleet (and is therefore able to be a part of another country’s flag for the period of the charter-party).
- 7.5 As explained in section 6, the Regulations make the amendments required following the passage of SAMLA. Sanctioned regimes, individuals and entities use the shipping industry to transport or receive prohibited goods and to circumvent extant restrictive measures. The ability to prevent the registration of ships and to de-register ships assists in inhibiting such illegal activities. Removing a ship from a register is equivalent to removing its nationality, without which the ship is not able to freely travel internationally or to purchase adequate insurance. Therefore, de-registration is an increasingly common measure taken to disrupt and hinder sanctions-breaching maritime activity.
- 7.6 This measure forms a part of the full suite of sanctions provisions that may be applied to a ship, as defined in section 7 of SAMLA. Once a ship has been designated by the UN, or specified by the UK for activities in breach of sanctions provisions, the UK shall be able to control its movement within UK waters and prevent it from entering UK ports. If the ship in question is already within UK waters, powers now exist under SAMLA and sanctions regulations to detain it in a port to enable further enforcement action to be carried out, or to direct the ship to leave.

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 but relates to the withdrawal of the United Kingdom from the European Union because parts of this instrument are required as a consequence of the passage of SAMLA, which was itself required due to the withdrawal of the United Kingdom from the EU. Since joining the EU, the UK’s implementation of UN and other multilateral sanctions has relied on the direct effect of EU Regulations and on the legal powers provided by the European Communities Act 1972 (c. 68). The European Union (Withdrawal) Act 2018 will freeze EU law on the day the UK leaves the EU, so will not provide the UK with the powers necessary to update, amend or lift sanctions in response to fast moving events. SAMLA was introduced to provide the legal framework necessary for the UK to implement all current sanctions obligations from day 1 after exiting the EU and to pursue an autonomous sanctions policy in the future. Section 6 explains the background to this.

9. Consolidation

- 9.1 The Department recognises that a consolidation of these Regulations would be appropriate and is currently in the process of reviewing all aspects of the UK flag as a part of its response to the Maritime Growth Study (available at <https://www.gov.uk/government/collections/maritime-growth-study>). Therefore, the Department intends to consolidate the Regulations alongside any amendments suggested by those reviews (once completed) and as soon as resources allow.

10. Consultation outcome

- 10.1 The Maritime & Coastguard Agency did not undertake any formal consultation in relation to the eligibility or bareboat charter out amendments, however through the Maritime Growth Study (2015) and the Flag Advisory Panel (2015), recommendations were made by industry that the UK should expand eligibility and amend the Registration Regulations in order to be in a position to grow the Flag. Bareboat out will provide a service which other Flags already offer and therefore the UK will have parity.
- 10.2 The Foreign and Commonwealth Office, as lead department responsible for sanctions policy and SAMLA, held a public consultation on SAMLA as a whole. Over 30,000 individuals and companies received a copy of the White Paper, and 34 individuals provided written responses. Officials held a number of roundtables with key stakeholders from a range of sectors, including financial services, the legal profession, NGOs and industry professionals and regulators. The issue of ship registration was not mentioned in either the responses received in the consultation, nor in the roundtable events.
- 10.3 As these Regulations are required as a consequence of the provisions in SAMLA, already subject to significant consultation, a separate public consultation in relation to these specific amendments has not been conducted. The Department is working with the Foreign and Commonwealth Office on outreach and engagement with parliamentarians and representatives of the business and NGO communities to ensure that stakeholders are aware of, and can be prepared for, the practical implications of changes to the implementation of sanctions under SAMLA.

11. Guidance

- 11.1 No guidance will be issued in relation to this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 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 changes introduced are expected to have a minimal impact.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The eligibility and bareboat charter out amendments do not impose or remove any regulatory burdens and therefore no mitigating action is considered to be necessary.

Although it is considered that the sanctions amendments could impact upon small businesses, mitigating action is not appropriate because this would provide a route for those who are subject to sanctions to evade restrictions.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the Department will continue its ongoing work in reviewing all aspects of the UK flag, as described in paragraph 9.1.
- 14.2 The Registration Regulations and the Merchant Shipping (Fees) Regulations 2018 already contain statutory review clauses which require the Secretary of State to regularly review the regulations and to publish reports setting out the conclusion of each review.

15. Contact

- 15.1 Mark Holleley at the Department for Transport. Telephone: 07342 087153 or email: mark.holleley@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Jane Peters, Deputy Director for sanctions, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nusrat Ghani MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.