Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

EXITING THE EUROPEAN UNION
CANALS AND INLAND WATERWAYS, ENGLAND AND WALES
ENVIRONMENTAL PROTECTION, ENGLAND AND WALES
MARINE POLLUTION
TRANSPORT AND WORKS, ENGLAND AND WALES

The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018

Made - - - - 2018
Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and section 8(1) of the European Union (Withdrawal) Act 2018(**2**).

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to maritime transport(**3**) and the environment(**4**).

(**1**) 1972 c. 68. Section 2 was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(**2**) 2018 c. 16.
(**3**) S.I. 1994/757.
(**4**) S.I. 2008/301.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018.

(2) Parts 1 and 2 come into force 21 days after making.

(3) Parts 3, 4 and 5 come into force on exit day.

PART 2

Amendment of legislation made under the European Communities Act 1972

Amendment of the Transport and Works Act 1992

2.—(1) Part 1 of the Transport and Works Act 1992(**5**) is amended as follows.

(2) For section 6A(3)(**6**) (cases where other Member States are affected) substitute—

"(3) "Member State", in relation to any time, includes a State which is at that time a party to the EEA agreement.".

Amendment of the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

3.—(1) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008(**7**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) omit the definition of "the 1999 Directive"(**8**);

(b) after the definition of "the 1995 Regulations" insert—

""the 2016 Directive" means Directive (EU) 2016/802 of the European Parliament and of the Council of 11th May 2016 relating to a reduction in the sulphur content of certain liquid fuels(**9**);".

(3) In regulation 32(3A)(b)(**10**) (offences) for "articles 4c2, 4c3 or 4d of the 1999 Directive" substitute "paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive".

(4) In Schedule 2A (sulphur oxides)(**11**)—

(a) in paragraph 1 (interpretation), in the definition of "emission abatement method"(**12**), for "1999 Directive" substitute "2016 Directive";

(**5**) 1992 c. 42.
(**6**) As inserted by S.I. 1998/2226, and subsequently amended by S.I. 2000/3199.
(**7**) S.I. 2008/2924, as amended by S.I. 2010/895, S.I. 2010/3035, S.I. 2011/3056, S.I. 2014/3076, S.I. 2014/3306 and S.I. 2016/1025.
(**8**) Definition inserted by S.I. 2014/3076.
(**9**) O.J. No. L 132, 21.05.2016, p. 58.
(**10**) Regulation 32(3A) was inserted by S.I. 2010/895 and subsequently substituted by S.I. 2014/3076.
(**11**) Schedule 2A was inserted by S.I. 2010/895.
(**12**) Definition substituted by S.I. 2014/3076.

(b) in paragraph 2(**13**) (control of sulphur oxide emissions: general provisions), in each place it occurs, for "Article 4c of the 1999 Directive" substitute "Article 8 of the 2016 Directive";

(c) in paragraph 3(2)(d)(ii)(**14**) (maximum sulphur content of marine fuel used by passenger ships) for "articles 4c2, 4c3 and 4d of the 1999 Directive" substitute "paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive";

(d) in paragraph 4(2)(e)(ii)(**15**) (maximum content of marine fuel used by ships at berth) for "articles 4c2, 4c3 and 4d of the 1999 Directive" substitute "paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive";

(e) in paragraph 10(3)(**16**) (analysis) for "articles 3a, 4, 4a and 4b of the 1999 Directive" substitute "Articles 4, 5, 6 and 7 of the 2016 Directive".

PART 3

Amendment of primary legislation for EU Exit purposes

Amendment of the Transport and Works Act 1992

4.—(1) Part 1 of the Transport and Works Act 1992(**17**) is amended as follows.

(2) In section 6A(**18**) (cases where other Member States are affected)—

(a) in the heading omit "other";

(b) in subsections (1) and (2) for "another", in each place it occurs, substitute "a";

(c) in subsection (2)(b) for "that other" substitute "a".

(3) In section 13C(3)(**19**) (EIA orders: monitoring measures and remedial action) for "implementing" substitute "which implemented".

(4) In section 14(3AB)(**20**) (publicity for making or refusal of orders), in paragraph (a)(i), for "another" substitute "a".

PART 4

Amendment of subordinate legislation for EU Exit purposes

Amendment of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

5.—(1) The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(**21**) are amended as follows.

(2) In rule 4 (interpretation and notices), after paragraph (4) insert—

(**13**) Paragraph 2 was amended by S.I. 2014/3076.
(**14**) Paragraph 3(2)(d) was substituted by S.I. 2014/3076.
(**15**) Paragraph 4(2)(e) was substituted by S.I. 2014/3076.
(**16**) Paragraph 10(3) was substituted by S.I. 2014/3076.
(**17**) 1992 c. 42.
(**18**) As inserted by S.I. 1998/2226, and subsequently amended by S.I. 2000/3199.
(**19**) As inserted by S.I. 2017/1070.
(**20**) As inserted by S.I. 2017/1070.
(**21**) S.I. 2006/1466, as amended by S.I. 2008/969, S.I. 2010/439, S.I. 2010/1551, S.I. 2011/556, S.I. 2011/1829, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/1659, S.I. 2012/2590, S.I. 2013/755, S.I. 2013/1888, S.I. 2014/469, S.I. 2015/627, S.I. 2015/1682 and S.I. 2017/1070.

"(5) For the purposes of these Rules, references to Annex III of the Directive are to be read as if—

(a) in point 2(c)(v), the reference to Member States were a reference to the Secretary of State;

(b) in point 2(c)(vi), the reference to Union legislation were a reference to retained EU law.".

(3) In rule 7 (the requirement for environmental statement and screening decisions)—

(a) in paragraphs (5) and (11)(b)—

(i) for "European Union legislation" substitute "retained EU law";

(ii) for "implementing" substitute "which implemented";

(b) in paragraph (10) omit "for the purposes of the Directive";

(c) in paragraph (11)(c) before "are relevant" insert "the Secretary of State determines";

(d) in paragraph (14) before "in Annex III" insert "set out".

(4) In rule 7A(2)(b) (environmental impact assessment) after "protected under" insert "any law of any part of the United Kingdom which implemented".

(5) In rule 11(2)(c) (environmental statements: provision of information) for "European Union legislation" substitute "retained EU law".

(6) In rule 16 (developments likely to have significant effects on the environment of another part of the United Kingdom or certain other states)—

(a) in paragraphs (1)(b), (1)(c) and (4) for "another" substitute "a";

(b) in paragraph 7(a) for "the authorities referred to in Article 6(1) of the Directive" substitute "any authority which the Member State has indicated it wishes to be consulted by reason of the authority's specific environmental responsibilities or local or regional competencies";

(c) in paragraph (7)(d) omit "other".

(7) In Schedule 1 (information to be included in environmental statements)—

(a) in paragraph 5(2) for the second sentence substitute—

"This description should take into account the environmental protection objectives which are relevant to the project.";

(b) in paragraph 8—

(i) for "European Union legislation such as" substitute "retained EU law such as any law of any part of the United Kingdom which implemented";

(ii) before "domestic legislation" insert "other";

(iii) after "requirements of" insert "any law of any part of the United Kingdom which implemented".

(8) In Schedule 7 (proposals for orders under section 7)—

(a) in paragraph 3 for "within the meaning of the Directive," substitute "(as defined in Article 1(2)(a) of the Directive)";

(b) in paragraph 7(b)—

(i) for "European Union legislation" substitute "retained EU law";

(ii) for "implementing" substitute "which implemented";

(c) in paragraph 30, in sub-paragraphs (1)(a), (1)(b) and (2)(c), for "another" substitute "a".

Amendment of the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

6.—(1) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008(**22**) are amended as follows.

(2) In regulation 2(**23**) (interpretation) for the definition of "Certifying Authority" substitute—

""Certifying Authority" means the Secretary of State or any person authorised by the Secretary of State in accordance with regulation 4 (certifying authorities) of the Merchant Shipping (Survey and Certification) Regulations 2015(**24**);".

(3) In regulation 32(3A)(b)(**25**) (offences) omit "other than the United Kingdom".

(4) In Schedule 2 (engines excluded from regulation 21), in paragraph 1(c), before "the European Economic Area" insert "the United Kingdom or".

(5) In Schedule 2A(**26**) (sulphur oxides)—

(a) in paragraph 3(2)(d)(ii)(**27**) (maximum sulphur content of marine fuel used by passenger ships) omit "other than the United Kingdom";

(b) in paragraph 3(6) for the definition of "regular service" substitute—

""regular service" means a series of crossings operated so as to serve traffic between the same two or more ports where each port is either in the United Kingdom or within the European Union, or a series of voyages from and to the same port in the United Kingdom or within the European Union without intermediate calls, either—

(a) according to a published timetable, or

(b) with crossings so regular that they constitute a recognisable schedule.";

(c) in paragraph 4(2)(e)(ii)(**28**) (maximum content of marine fuel used by ships at berth) omit "other than the United Kingdom";

(d) in paragraph 6 (trials of emission abatement technologies)—

(i) for sub-paragraph (4) substitute—

"(4) The Secretary of State must, at least six months before an intended trial begins, give notice of that trial in writing to any port State concerned.";

(ii) in sub-paragraph (5) omit "(a)(ii)".

Amendment of the Merchant Shipping (Anti-Fouling Systems) Regulations 2009

7.—(1) The Merchant Shipping (Anti-Fouling Systems) Regulations 2009(**29**) are amended as follows.

(2) In regulation 2(**30**) (interpretation) for the definition of "Certifying Authority" substitute—

""Certifying Authority" means the Secretary of State or any person authorised by the Secretary of State in accordance with regulation 4 (certifying authorities) of the Merchant Shipping (Survey and Certification) Regulations 2015;".

(**22**) S.I. 2008/2924, as amended by S.I. 2010/895, S.I. 2010/3035, S.I. 2011/3056, S.I. 2014/3076, S.I. 2014/3306 and S.I. 2016/1025.
(**23**) Regulation 2 was substituted by S.I. 2011/3056.
(**24**) S.I. 2015/508, to which there are amendments not relevant to these Regulations.
(**25**) Regulation 32(3A) was substituted by S.I. 2014/3076.
(**26**) Schedule 2A was inserted by S.I. 2010/895.
(**27**) Paragraph 3(2)(d) was substituted by S.I. 2014/3076.
(**28**) Paragraph 4(2)(e) was substituted by S.I. 2014/3076.
(**29**) S.I. 2009/2796, amended by S.I. 2011/3056 and S.I. 2013/3306.
(**30**) Definition substituted by S.I. 2011/3056.