

## **STATUTORY INSTRUMENT CONSENT MEMORANDUM**

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

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("the Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. *The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018* was laid before Parliament on 27 November 2018 and is now being laid before the Assembly. The order can be found at: <https://beta.parliament.uk/statutory-instruments/fopeBO0Y>

#### **Summary of the Statutory Instrument and its objective**

3. The objective of the SI is to correct deficiencies in legislation governing environmental impact assessments for certain transport purposes arising from the UK leaving the European Union arising from the UK leaving the European Union. It updates some out of date references, including an out-of-date reference to the EEA agreement in the Transport and Works Act 1992. It also seeks to ensure that environmental protection provisions relating to air pollution (specifically the sulphur content of marine fuels) and anti-fouling systems are legally operable when the United Kingdom withdraws from the European Union. and update an out-of-date reference to the EEA agreement in the Transport and Works Act 1992
4. This SI makes technical corrections to the following legislation:
  - The Merchant Shipping (Prevention of Air Pollution on Ships) Regulations 2008
  - Commission Implementing Decision (EU) 2015/253
  - Regulation (EC) 782/2003
  - The Merchant Shipping (Anti-Fouling Systems) Regulations 2009
  - Commission Regulation (EC) 536/2008
    - Transport and Works Act 1992; and
    - Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

#### **Relevant provision to be made by the SI**

5. The primary legislation that is within the legislative competence of the Assembly that is amended by the draft SI is the Transport and Works Act 1992.

6. The relevant provisions in the SI are regulations 2 and 4, which update an out-of-date reference to the EEA and make technical amendments to accurately reflect the UK's status outside of the EU.
7. It is the view of the Welsh Government that the provisions described in above fall within the legislative competence of the National Assembly for Wales in so far as they relate to tramways, guided transport systems and the regulation of works which may obstruct or endanger navigation is reserved other than works relating to, or for constructing, reserved trust ports or harbours not wholly in Wales.

**Why it is appropriate for the SI to make this provision**

8. There is no divergence between the Welsh Government and the UK Government on the policy for the amendment. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. This approach promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

**Ken Skates AM**

**Cabinet Secretary for Economy and Transport**

**29 November 2018**