

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING AND FISHING VESSELS (PROVISION AND
USE OF WORK EQUIPMENT) (AMENDMENT) REGULATIONS 2008**

2008 No. 2165

1. This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

- 2.1 The Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) (Amendment) Regulations 2008 (the “PUWER 2008 Regulations”) amend the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 (the “PUWER 2006 Regulations”) (SI 2006/2183) to correct an ambiguity identified by the Joint Committee on Statutory Instruments (JCSI) in Regulation 6(1) of the PUWER 2006 Regulations.
- 2.2 As originally drafted, regulation 6(1) could be construed as implying that the provision of sub-paragraph (c) of regulation 6(1), that work equipment made available to workers on the ship “*may be used by workers without impairment to their health and safety*”, only applied to sub-paragraph (b). In fact the provision of sub-paragraph (c) of regulation 6(1) is intended to apply to both sub-paragraph (a) and (b) of regulation 6(1) and the amendment makes the position clear.
- 2.3 It has also been brought to the attention of the Maritime and Coastguard Agency that 4 sets of Health and Safety Executive (“HSE”) Regulations referred to in the Schedule to the PUWER 2006 Regulations are not relevant to the maritime sector. The PUWER 2008 Regulations therefore amend the Schedule to the PUWER 2006 Regulations by deleting all references to the 4 HSE Regulations.
- 2.4 The amending regulations will be made available free of charge to all known recipients of the PUWER 2006 Regulations.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The PUWER 2008 Regulations correct a drafting error identified by the JCSI and reported on in the 37th Report of Session 2005/2006.

4. **Legislative Background**

- 4.1 Council Directive 89/391/EEC (the “Framework Directive”) introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962).

- 4.2 Council Directive 1989/655/EEC (the second individual Directive within the meaning of Article 16(1) of the Framework Directive), as amended by Directive 95/63/EC, introduced minimum safety and health requirements for the use of work equipment by workers at work, which built on the general safety and health provisions contained in the Framework Directive. The provisions of Directive 1989/655/EEC, as amended, were implemented for the maritime sector by means of the PUWER 2006 Regulations and the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006 (the “LOLER 2006 Regulations”) (SI 2006/2183). Regulations introduced by the Health and Safety Executive had previously implemented the Directives for land based workers.

5. Territorial Extent and Application

- 5.1 This instrument applies to all United Kingdom ships wherever they may be in the world and to non-UK ships when in UK waters in the normal course of business, other than when exercising their right of innocent passage.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 The PUWER 2006 Regulations and the LOLER 2006 Regulations completed the UK implementation of Council Directive 89/655/EEC, as amended by Council Directive 95/63/EC, concerning the introduction of minimum safety and health requirements for the use of work equipment by workers at work. Corresponding Regulations had previously been introduced by the Health and Safety Executive in respect of land based workers. It was therefore necessary to make the PUWER 2006 and LOLER 2006 Regulations to apply the provisions of the Directive to workers in the merchant shipping and fishing sectors to avoid disparity of regulatory coverage between land based workers and those working on ships. This is especially the case at the water margin, i.e. in dock and port areas, where land based workers (e.g. stevedores and other dock workers) could be working on board a ship alongside members of the crew.
- 7.2 In addition to implementing Directive 89/655/EEC, as amended, the two sets of Regulations referred to in paragraph 7.1 gave effect in part to the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organization Convention 147)(Cmnd. 7163), ratified by the United Kingdom in 1980 which requires provisions to be made substantially equivalent to those of (amongst other Conventions) the Prevention of Accidents (Seafarers) Convention 1970 (ILO 134 Article 4). The PUWER 2006 Regulations revoked and replaced ILO standards which were formerly contained in the Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988; regulation 10 of the Merchant Shipping (Safe Movement on

Board Ships) Regulations 1988; and regulation 2 of the Merchant Shipping (Safety at Work) (Non-UK Ships) Regulations 1988.

7.3 Following the making of the PUWER 2006 Regulations, the Joint Committee on Statutory Instruments (JCSI) raised concerns about regulation 6(1), the purpose of which was to ensure that work equipment made available to workers on a ship was suitable for the work to be carried out or properly adapted for that purpose, and in either case could be used by workers without impairment to their health or safety. In the view of the JCSI however, the drafting of regulation 6(1) implied that the provision in sub-paragraph (c), that work equipment made available to workers on the ship “*may be used by workers without impairment to their health and safety*”, only applied to work equipment covered by sub-paragraph (b), that is work equipment which had been properly adapted, and excluded work equipment covered by sub-paragraph (a), which only had to be suitable for the work to be carried out. This was not the intention and the provision in sub-paragraph (c) of regulation 6(1) applies to both sub-paragraph (a) and (b) of that regulation. Regulation 2(2) of the PUWER 2008 Regulations corrects this defect.

7.4 In addition to the comments received from the JCSI, the Health and Safety Executive commented that 4 sets of Health and Safety Executive Regulations referred to in the Schedule to the PUWER 2006 Regulations as being “Instruments which give effect to Community Directives concerning the Safety of Products” were not actually applicable to the maritime sector. These instruments are:

- (a) the Simple Pressure Vessels (Safety) Regulations 1991;
- (b) the Supply of Machinery (Safety) Regulations 1992;
- (c) the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996; and
- (d) the Pressure Equipment Regulations 1999.

Regulation 2(3) of the PUWER 2008 Regulations corrects this deficiency by providing for their omission from the Schedule.

7.5 347 consultees were consulted on the proposal to introduce the amending regulations, of which 223 covered the merchant shipping sector including the Chamber of Shipping (the trade association for the majority of UK shipowners) as well as companies, associations and individuals representing both large and small vessel owners and operators. The remaining 124 consultees covered the fishing sector, from individuals to local associations and those at national level. Responses were only received from 5 consultees of whom 4 offered no comment and 1 was in support of the proposals.

8. Impact Assessment

8.1 An Impact Assessment has not been produced as the purpose of this instrument is to bring the impact of the PUWER 2006 Regulations into line with that

anticipated on the making of those Regulations, for which a regulatory impact assessment was produced.

9. Contact

- 9.1 Michael Lines at the Maritime and Coastguard Agency Tel: 02380 329 246, Fax: 02380 329 251 or e-mail: mike.lines@mca.gov.uk can answer any queries regarding this instrument.