

2001 No. 152

MERCHANT SHIPPING

SAFETY

The Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001

<i>Made</i> - - - - -	<i>24th January 2001</i>
<i>Laid before Parliament</i>	<i>26th January 2001</i>
<i>Coming into force</i> - -	<i>16th February 2001</i>

The Secretary of State for the Environment, Transport and the Regions, being a Minister designated(a) in relation to safety of ships and the health and safety of persons on them, in exercise of the powers conferred upon him by section 2(2) of the European Communities Act 1972(b), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001 and, subject to paragraph (2), shall come into force on 16th February 2001.

(2) Regulation 4(2)(d) shall come into force on 31st January 2003.

Interpretation

2.—(1) In these Regulations:

“the Directive” means Council Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services(c);

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“Maritime and Coastguard Agency” means the Maritime and Coastguard Agency, an executive agency of the Department of the Environment, Transport and the Regions;

“Merchant Shipping Notice” means a Notice described as such, issued by the Maritime and Coastguard Agency, and any reference to a particular Merchant Shipping Notice includes a reference to any such document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time.

(2) Other expressions used in these Regulations shall have the meaning given to them by Article 2 of the Directive.

(a) S.I. 1993/595.

(b) 1972 c. 68; by virtue of the amendment of section 1(2) of the European Communities Act by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) O.J. L 138, 1.6.1999, p. 1.

Application

3. These Regulations apply to a ro-ro ferry or a high-speed passenger craft which is operating a regular service to or from a port in the United Kingdom either:

- (a) on international voyages, or
- (b) in sea areas covered by Class A as referred to in article 4 of Council Directive 98/18EC on Safety Rules and Standards for Passenger Ships^(a).

Verifications relating to vessels

4.—(1) The Maritime and Coastguard Agency shall ensure that the verifications set out in paragraph (2) below are carried out in relation to each vessel to which these Regulations apply:

- (a) where the vessel starts operation on a regular service after 16th February 2001, before the vessel starts operation, and
- (b) in any other case, before 1st December 2001.

(2) The verifications mentioned in paragraph (1) above are:

- (a) a check whether the vessel is carrying valid certificates issued by the administration of the vessel's flag State or by a recognised organisation acting on its behalf,
- (b) a check whether the vessel has been surveyed for the issue of certificates in accordance with the relevant procedures and guidelines annexed to the Survey Guidelines under the Harmonised System of Survey and Certification by the International Maritime Organisation by means of Resolution A.746(18) of 4th November 1993 or with procedures designed to achieve the same goal,
- (c) a check whether the vessel complies with the standards specified for classification by the rules of a recognised organisation, or rules accepted as equivalent by the administration of the vessel's flag State for construction and maintenance of its hull, machinery and electrical and control installation,
- (d) a check whether the vessel is fitted with a voyage data recorder, complying with the performance standards referred to in article 4(1)(d) of the Directive or any exemptions granted under that article, for the purpose of providing information for the benefit of a possible casualty investigation, and
- (e) subject to paragraph (3), a check whether the vessel complies with specific regional stability requirements, if any, adopted by a Member State or EEA State in accordance with article 4(1)(e) of the Directive.

(3) Paragraph 2(e) shall apply in relation to high speed passenger craft only where appropriate.

Operating companies and flag States

5.—(1) The Maritime and Coastguard Agency shall ensure that the following verifications are carried out in relation to each company operating or intending to operate vessels to which these Regulations apply:

- (a) a check whether the company is taking the necessary measures to ensure that the specific requirements laid down in Annex I of the Directive are applied,
- (b) a check whether the company has provided evidence of its compliance with subparagraph (a) above, and
- (c) a check whether the company has agreed in advance that the Secretary of State and any substantially interested Member State or EEA State may conduct, participate fully in or co-operate with any investigation of a marine casualty or incident in accordance with article 12 of the Directive, and whether the company will give them access to the information retrieved from the voyage data recorder of their vessel involved in such a casualty or incident.

(2) The Maritime and Coastguard Agency shall check for a vessel flying a flag other than that of a Member State or an EEA State whether that flag State concurs that it has accepted the company's commitment to meet the requirements of the Directive.

(a) O.J. L144, 15.5.1998, p. 1.

(3) The Maritime and Coastguard Agency shall ensure that a company operating a vessel on a regular service to or from a port in the United Kingdom is able to maintain and implement an integrated system of contingency planning for shipboard emergencies, using the framework provided on Guidelines for a Structure of an Integrated System of Contingency adopted by the International Maritime Organisation by means of Resolution A.852(20) of 27 November 1997.

Initial specific surveys

6.—(1) Subject to paragraph (3), the Maritime and Coastguard Agency shall in relation to each vessel carry out an initial specific survey, in accordance with Annexes I and III of the Directive, to satisfy themselves that the vessel fulfils the necessary requirements for safe operation of a regular service.

(2) The survey shall be carried out:

(a) where the vessel starts operation on a regular service after 16th February 2001:

(i) before the vessel starts operation, and

(ii) no more than one month after receipt by the Maritime and Coastguard Agency of the evidence necessary to complete verification in relation to the vessel and the person operating the vessel in accordance with regulations 4 and 5 above, and

(b) in any other case, before 1st December 2001.

(3) The Maritime and Coastguard Agency may request another Member State or EEA State to or from whose ports a vessel will be engaged on a regular service to carry out an initial specific survey in relation to the vessel.

(4) The Maritime and Coastguard Agency may carry out an initial specific survey in relation to a vessel at the request of another Member State or EEA State to or from whose ports a vessel is engaged on a regular service.

Exemptions from regulations 4 to 6

7.—(1) The Maritime and Coastguard Agency may grant an exemption from the need to comply, prior to a vessel starting operations, with one or more of the requirements in regulations 4 to 6 where:

(a) the vessel was previously engaged on a regular service,

(b) the Agency has taken the utmost account of verifications and surveys previously carried out for that vessel for operation on a previous regular service, and

(c) the Agency is satisfied with these previous verifications and surveys, and that they are relevant to the vessel's new operational conditions.

(2) The Maritime and Coastguard Agency may grant an exemption from one or more of the requirements of regulations 4 to 6 where:

(a) a vessel which complies with the requirements of the Directive is operating a regular service,

(b) the vessel transfers to another regular service to or from a port in a Member State or EEA State where the route characteristics are agreed by the relevant host State or States to be similar, and

(c) the host States all agree that the vessel fulfils all the requirements for safe operation on that service.

(3) Where paragraphs (1) and (2) above do not apply, the Maritime and Coastguard Agency may grant an exemption from one or more of the requirements of regulations 4 to 6 where:

(a) following unforeseen circumstances, a replacement vessel must be introduced rapidly to ensure continuity of service,

(b) a visual inspection and document check raise no concerns that the vessel does not fulfil the necessary requirements for safe operation, and

(c) the Maritime and Coastguard Agency completes the verifications and surveys required in relation to the vessel by regulations 4 to 6 within one month of its starting operations.

Regular specific surveys and additional surveys

8.—(1) Subject to paragraph (3), the Maritime and Coastguard Agency shall in relation to each vessel carry out the following surveys once in every 12 month period:

- (a) where an initial specific survey in accordance with regulation 6 has not been carried out within the 12 month period, a specific survey in accordance with Annex III of the Directive, and
- (b) a survey during a regular service, which shall aim to cover enough items listed in Annexes I, III and IV of the Directive in order to satisfy itself that the vessel continues to fulfil all the necessary requirements for safe operation.

(2) Subject to paragraphs (3) and (4), the Maritime and Coastguard Agency shall carry out a specific survey in accordance with Annex III of the Directive in relation to any vessel which:

- (a) undergoes repairs, alterations and modifications of a major character, or
- (b) subject to paragraph (3), changes management, changes flag, or transfers class.

(3) The Maritime and Coastguard Agency may request another Member State or EEA State to or from whose ports a vessel is engaged on a regular service to carry out a survey in accordance with paragraph (1) or (2) in relation to the vessel.

(4) Where the safe operation of the vessel is not affected by the change of management or flag or transfer of class, the Maritime and Coastguard Agency, after taking account of verifications and surveys previously issued for the vessel, need not carry out a specific survey as required by paragraph (2)(b).

(5) The Maritime and Coastguard Agency may carry out a specific survey in relation to a vessel at the request of another Member State or EEA State to or from whose ports a vessel is engaged on a regular service.

Prevention of Operation notice

9.—(1) Subject to regulation 10, the Maritime and Coastguard Agency shall serve on a company operating a vessel a prevention of operation notice preventing the operation on a regular service of the vessel where:

- (a) compliance with articles 4 and 5 of the Directive in relation to the vessel cannot be demonstrated,
- (b) deficiencies in relation to the vessel are found during the surveys referred to in articles 6 and 8 of the Directive which pose an immediate danger to life, or to the vessel, its crew and passengers,
- (c) there is an established failure in relation to the vessel to comply with the instruments listed in Annex II to the Directive which poses an immediate danger to life, or to the vessel, its crew and passengers, or
- (d) the flag State of the vessel has not consulted the Maritime and Coastguard Agency on the matters referred to in article 13(1) or (5) of the Directive.

(2) A prevention of operation notice served in accordance with paragraph (1) above shall:

- (a) specify the matters in relation to which the notice has been served,
- (b) direct that the vessel shall not be operated on a regular service unless the matters so specified have been remedied, and
- (c) take immediate effect.

(3) A prevention of operation notice served in accordance with paragraph (1) shall be treated as a prohibition notice for the purposes of 264 to 266 of the Merchant Shipping Act 1995, and those sections shall apply as if:

- (a) for section 264(1) of that Act there were substituted:

“(1) Any question as to whether the notice was required to be issued in accordance with regulation 9 of the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferries and High Speed Passenger Craft) Regulations 2001 shall, if the person on whom the notice was served so requires by a notice given to the Maritime and Coastguard Agency within 21 days from the service of the notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be expeditiously decided by him.”,

- (b) for section 264(3) of that Act there were substituted:

“(3) Where on a reference under this section the arbitrator decides as respects any matter to which the reference relates, that in all the circumstances there was no requirement to issue the prohibition notice—

- (a) in whole, or
- (b) in part,

he shall either cancel the notice or affirm it with such modifications as he may in the circumstances think fit, and in any other case the arbitrator shall affirm the notice in its original form.”,

(c) for section 265(1) of that Act there were substituted:

“(1) If on a reference under section 264 relating to a prevention of operation notice issued in accordance with regulation 9 of the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferries and High Speed Passenger Craft) Regulations 2001 the arbitrator decides to cancel the notice or affirm it with modifications he may award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the service of the notice as the arbitrator thinks fit.”, and

(d) section 265(2) and (3) were omitted.

(4) The Maritime and Coastguard Agency shall ensure that a prevention of operation notice served in accordance with paragraph (1) is not withdrawn until it has established that the matters in relation to which the notice was served have been met.

Reports of inspection

10.—(1) Where a vessel is already operating a regular service, regulation 9 shall not apply so long as:

- (a) the defects do not pose an immediate danger to the safety of the vessel, its crew and passengers,
- (b) a report of the verification or inspection, giving the results of the verification or inspection and details of any decisions taken by the Maritime and Coastguard Agency, and of corrective action to be taken in relation to the vessel promptly or within a well-defined and reasonable period of time, is given by the inspector to the company operating the vessel, and
- (c) by the end of the period of time, if any, specified for rectification of the defects, the Maritime and Coastguard Agency has verified that the rectification has been carried out to its full satisfaction.

Improvement notices

11.—(1) If the Maritime and Coastguard Agency is of the opinion that a company operating a vessel is contravening one or more of the provisions of the Directive in relation to that vessel, or has contravened one or more of those provisions in circumstances which make it likely that the contravention will continue or be repeated, it may serve on that company a notice.

(2) A notice issued in accordance with paragraph (1) shall for the purposes of sections 261, 263, 264 and 266 of the Merchant Shipping Act 1995 be treated as an improvement notice served under section 261 of that Act, and in those provisions references to an “inspector” shall for these purposes be taken to mean “the Maritime and Coastguard Agency” and references to “the relevant statutory provisions” shall for these purposes be taken to mean “the relevant provisions of the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferries and High Speed Passenger Craft) Regulations 2001”.

Costs of issuing prevention of operation notices

12. Where a prevention of operation notice is issued in accordance with regulation 9 in relation to deficiencies confirmed or revealed by a survey in accordance with regulation 8(1), all costs of the Maritime and Coastguard Agency relating to that survey in any normal accounting period shall be covered by the company operating the vessel to which the notice relates.

Administrative duties of the Maritime and Coastguard Agency

13.—(1) The Maritime and Coastguard Agency shall notify a company operating a vessel of the outcome of the verification or survey in relation to that vessel under regulations 4 to 6 or 8 above promptly and in writing.

(2) Where the Maritime and Coastguard Agency decides to issue in accordance with regulation 9 a prevention of operation notice in relation to a vessel prior to the start of its operation on a regular service:

- (a) as a result of a failure to demonstrate compliance with articles 4 or 5 of the Directive, or
- (b) as a result of the finding, during a survey in accordance with article 6 of the Directive, of deficiencies which pose an immediate danger to life, or to the vessel, its crew and passengers,

the Agency shall take the decision to serve the prevention of operation notice within one month of the initial specific survey and shall serve the notice immediately after making that decision.

(3) The Maritime and Coastguard Agency shall notify a person to whom a prevention of operation notice is issued under regulation 9 of his right to refer any question in relation to that notice to arbitration in accordance with section 264 of the Merchant Shipping Act 1995.

(4) The Maritime and Coastguard Agency shall, when so requested by a company operating a vessel, invite the administration of the flag State of that vessel to be represented at any specific survey it undertakes in accordance with the Directive.

(5) When planning to make a specific survey of a vessel, the Maritime and Coastguard Agency shall take due account of any operational and maintenance schedule for the vessel.

(6) The Maritime and Coastguard Agency shall record the findings of a specific survey in a report the format of which is established in accordance with article 11(6) of the Directive.

(7) The Maritime and Coastguard Agency shall ensure that a specific survey is carried out by a team composed of qualified inspectors, including the necessary expertise for qualitative assessment of the fulfilment of class-related provisions and, where necessary, a surveyor of a recognised organisation, and that the team of inspectors reports deficiencies to the Agency.

Shore-based navigational systems

14. The Maritime and Coastguard Agency shall operate a shore-based navigational guidance system and other information schemes in accordance with the Navigational Guidance and Information Scheme for Ro-Ro Ferry Operations adopted by the International Maritime Organisation by means of Resolution A.795(19) of 23rd November 1995 to assist vessels in the safe conduct of a regular service or the part of a regular service for the safety of which they bear responsibility.

Accident investigation

15.—(1) The Merchant Shipping (Accident Reporting and Investigation) Regulations 1999(a) shall be amended as follows.

(2) Regulation 6 shall be amended by the insertion after paragraph (7) of the following paragraphs:

“(8) Where an investigation conducted under these Regulations involves a ro-ro ferry or high speed passenger craft to which Council Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferries and high-speed passenger craft services applies(b), the Chief Inspector shall enable a substantially interested State which is a Member State of the European Communities or an EEA State to participate or co-operate in the investigation.

(9) In paragraph 8 above:

- (a) “ro-ro ferry” and “high-speed passenger craft” have the meanings given to them by Council Directive 1999/35/EC,

(a) S.I. 1999/2567.

(b) O.J. L 138/1, 1.6.1999, p. 1.

- (b) “substantially interested State” has the meaning given by the Code for the Investigation of Marine Casualties and Incidents adopted by the International Maritime Organisation by means of Assembly Resolution A.849(20) of 27th November 1997, and
- (c) “EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.”.

(3) Regulation 10(8) shall be amended by the insertion at the end of sub-paragraph (b) of the following sub-paragraph:

“(bb) where regulation 6(8) applies to the investigation, the European Commission;”.

Signed on behalf of the Secretary of State for
the Environment, Transport and the Regions

24th January 2001

Keith Hill
Parliamentary Under-Secretary of State
Department of the Environment, Transport and the Regions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.99, p.1).

The main provisions of the Regulations require the Maritime and Coastguard Agency:

- to carry out verifications in relation to the vessel, including checks of documentation and a check for the presence of a voyage data recorder (*regulation 4*),
- to carry out verifications in relation to the company operating the vessel, and the flag State of the vessel (*regulation 5*),
- to carry out an initial specific survey before the vessel begins operating on a regular service to or from a United Kingdom port (*regulation 6*),
- to carry out further surveys every year, or where the circumstances of the vessel change (*regulation 8*),
- to issue reports of prevention of operation notices preventing a vessel which does not meet the requirements of the Directive from operating, or reports of inspection or improvement notices requiring defects to be remedied (*regulations 9 to 11*),
- to comply with certain administrative requirements (*regulation 13*), and
- to operate a shore-based navigational guidance system (*regulation 14*).

The Regulations also require the Chief Inspector of Marine Accidents to allow substantially interested Member States or EEA States to be involved with a marine accident investigation (*regulation 15*).

Guidance on the application of the Directive and these Regulations is contained in Marine Guidance Note 171, which can be obtained from iForce, Unit B, Imber Court Trading Estate, Orchard Lane, East Molesey, Surrey KT8 0BN.

A regulatory impact assessment has been prepared and copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG. A copy has been placed in the Library of each House of Parliament. Copies of Resolutions of the International Maritime Organisation can be obtained from the International Maritime Organisation, 4 Albert Embankment, London SE1 7SR (telephone 020-7735 7611).

£2.00

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under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E2376 2/2001 577485 19585

ISBN 0-11-019144-7



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