

2003 No. 2002

**MERCHANT SHIPPING
SAFETY**

**The Merchant Shipping (Safe Loading and Unloading of
Bulk Carriers) Regulations 2003**

<i>Made</i> - - - - -	<i>5th August 2003</i>
<i>Laid before Parliament</i>	<i>7th August 2003</i>
<i>Coming into force</i> - -	<i>1st March 2004</i>

Whereas the Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the prevention, reduction and elimination of pollution of water;

And whereas, in so far as the following Regulations are made in the exercise of powers conferred by section 85 of the Merchant Shipping Act 1995(c), the Secretary of State has, in pursuance of section 86(4) consulted such persons in the United Kingdom as he considers will be affected by the proposal to make safety regulations;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 2(2) of the European Communities Act 1972, and by sections 85(1)(a) and (b), (3) and (5) to (7) and section 86 of the Merchant Shipping Act 1995, hereby makes the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Safe Loading and Unloading of Bulk Carriers) Regulations 2003 and shall come into force on 1st March 2004.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

“the Directive” means Directive 2001/96/EC(d) of the European Parliament and of the Council of 4 December 2001, establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers, as amended by Directive 2002/84/EC(e) of the European Parliament and of the Council of 5 November 2002, amending the Directives on maritime safety and the prevention of pollution from ships;

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

(a) S.I. 1989/2393.

(b) 1972 c. 68.

(c) 1995 c. 21; sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 8.

(d) O.J. No. L13, 16.1.2002, p 9.

(e) O.J. No. L324, 29.11.2002, p 55.

“the MCA’s SLU Bulk Carriers publication” means the MCA publication entitled “Safe Loading and Unloading of Bulk Carriers 2003 Implementing EC Directive 2001/96/EC (establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers)”, published July 2003; and a reference to this publication shall include a reference to any amendment to it which—

- (a) relates to an amendment of—
 - (i) the Directive,
 - (ii) the Code of Practice for the Safe Loading and Unloading of Bulk Carriers, as contained in the Annex to the International Maritime Organization’s Assembly Resolution A.862(20) of 27 November 1997, as it stood on 4 December 2001, or
 - (iii) the International Convention for the Safety of Life at Sea, 1974, together with the Protocols and amendments thereto, in force on 4 December 2001,
- (b) relates to all or any of the purposes set out in section 85(1) of the Act,
- (c) is contained in a document considered by the Secretary of State to be relevant from time to time, and
- (d) is specified in a Merchant Shipping Notice;

“Merchant Shipping Notice” means a notice described as such and issued by the MCA.

(2) In these Regulations, any expression which is defined in Section 3 of the MCA’s SLU Bulk Carriers publication has the meaning given by that Section.

(3) None of the text referred to as “Guidance” in the MCA’s SLU Bulk Carriers publication shall be construed as forming part of the requirements imposed by these Regulations.

Purpose

- 3. The purpose of these Regulations is to provide for the implementation of the Directive.

Application

- 4.—(1) Subject to paragraph (2), these Regulations apply to—
 - (a) all terminals in the United Kingdom or in United Kingdom waters visited by bulk carriers;
 - (b) all bulk carriers which are United Kingdom ships and which call at a terminal to which these Regulations apply; and
 - (c) all other bulk carriers which call at a terminal to which these Regulations apply, while they are within United Kingdom waters.
- (2) These Regulations do not apply—
 - (a) to terminals which only in exceptional circumstances are used for loading or unloading dry cargo in bulk into or from bulk carriers, or
 - (b) in cases where the loading or unloading is carried out solely with the equipment of the bulk carrier concerned.

Requirements in relation to the operational suitability of bulk carriers for loading and unloading solid bulk cargoes

5. In relation to a bulk carrier calling at a terminal to which these Regulations apply, the terminal operator shall satisfy himself as to the operational suitability of the bulk carriers for the loading or unloading of solid bulk cargoes by checking for compliance with the requirements set out in Part 1 of Schedule 1 to the MCA’s SLU Bulk Carriers publication.

Requirements in relation to the suitability of terminals

6.—(1) Subject to the following paragraphs and to regulation 12, the terminal operator of a terminal to which these Regulations apply shall comply with the requirements set out in Schedule 2 to the MCA’s SLU Bulk Carriers publication.

(2) The requirement, which is set out in paragraph 4 of Part 1 of that Schedule, to ensure that a quality management system is developed, implemented and maintained, shall not apply until 5 February 2005.

(3) The requirement, which is set out in paragraph 4 of Part 1 of that Schedule, to ensure that such a system is certified, shall not apply until 5 February 2006.

(4) The MCA may grant an exemption from paragraph (1) so far as it relates to the requirement referred to in paragraph (2) or (3) above, if it is satisfied that the terminal is newly established and that the terminal operator has demonstrated a plan to implement a quality management system in accordance with paragraph 5 of Part 1 of that Schedule.

(5) Such an exemption shall—

- (a) not be valid for more than 12 months,
- (b) be given in writing,
- (c) specify the date on which it takes effect, and
- (d) specify the terms (if any) on which it is granted.

Responsibilities of the master

7. Subject to regulation 12, the master of a bulk carrier to which these Regulations apply shall have the responsibility set out in paragraph 1 of Part 1 of Schedule 3 to the MCA's SLU Bulk Carriers publication, and shall comply with the requirements set out in that Schedule.

Responsibilities of the terminal representative and terminal operator

8.—(1) Subject to paragraph (2) and to regulation 12, the terminal representative of a terminal to which these Regulations apply shall comply with the requirements set out in Schedule 4 to the MCA's SLU Bulk Carriers publication.

(2) In relation to paragraph 4 of Part 2 of that Schedule, the terminal operator shall provide the information on minimum water depth to the master.

Procedures between bulk carriers and terminals

9. Subject to regulation 12, the master of a bulk carrier to which these Regulations apply, and the terminal representative of a terminal to which these Regulations apply, shall comply with the requirements set out in Schedule 5 to the MCA's SLU Bulk Carriers publication.

Repair of damage incurred during loading and unloading

10.—(1) The master of a bulk carrier to which these Regulations apply, and a terminal representative of a terminal to which these Regulations apply, shall comply with the requirements set out in paragraphs 1 and 2 of Schedule 6 to the MCA's SLU Bulk Carriers publication.

(2) Paragraph (1) is subject to the Merchant Shipping (Port State Control) Regulations 1995(a).

Role of the MCA

11.—(1) The MCA shall comply with the requirements set out in Schedule 7 to the MCA's SLU Bulk Carriers publication.

(2) The MCA shall regularly verify compliance by the following persons with the requirements set out in the following Schedules to MCA's SLU Bulk Carriers publication—

- (a) terminal operators, with the requirements set out in paragraph 1 of Part 1, and Part 2 (including paragraphs 2 to 4), of Schedule 2;
- (b) terminal representatives, with the requirements set out in Schedule 4; and
- (c) masters and terminal representatives, with the requirements set out in Schedule 5.

(3) In addition, the MCA shall verify that the requirements referred to in regulation 6(2) and (3) are complied with—

- (a) on and after 5 February 2005, in the case of regulation 6(2), and on and after 5 February 2006 in the case of regulation 6(3), and
- (b) at the end of the period of any exemption granted by the MCA under regulation 6(4).

(a) S.I. 1995/3138, to which there are amendments not relevant to these Regulations.

Avoidance of duplication of requirements

12.—(1) To the extent to which a requirement imposed on a terminal operator, a master, or a terminal representative under these Regulations is also a requirement imposed on that person under any of the Regulations referred to in paragraph (2), the requirement imposed by these Regulations (that is to say, the Merchant Shipping (Safe Loading and Unloading of Bulk Carriers) Regulation 2003) shall not apply.

(2) The Regulations referred to in paragraph (1) are—

- (a) the Shipbuilding and Ship Repairing (Northern Ireland) Regulations 1971(a),
- (b) the Docks Regulations 1988(b),
- (c) the Working Time Regulations (Northern Ireland) 1988(c),
- (d) the Docks Regulations (Northern Ireland) 1989(d),
- (e) the Personal Protective Equipment at Work Regulations 1992(e),
- (f) the Personal Protective Equipment at Work Regulations (Northern Ireland) 1993(f),
- (g) the Confined Spaces Regulations 1997(g),
- (h) the Working Time Regulations 1998(h),
- (i) the Provision and Use of Work Equipment Regulations 1998(i),
- (j) the Lifting Operations and Lifting Equipment Regulations 1998(j),
- (k) the Confined Spaces Regulations (Northern Ireland) 1999(k),
- (l) the Lifting Operations and Lifting Equipment Regulations (Northern Ireland) 1999(l),
- (m) the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999(m),
- (n) the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999(n),
- (o) the Merchant Shipping (Carriage of Cargoes) Regulations 1999(o),
- (p) the Dangerous Substances and Explosive Atmospheres Regulations 2002(p), and
- (q) the Dangerous Substances and Explosive Atmospheres Regulations (Northern Ireland) 2003(q).

Offences and penalties

13.—(1) Where the master of a bulk carrier, or a terminal operator or terminal representative, contravenes any of these Regulations, that person shall be guilty of an offence, punishable only on summary conviction by a maximum fine not exceeding level 5 on the standard scale.

(2) In any proceedings for an offence under these Regulations, it shall be a defence for a person to prove that all reasonable steps had been taken by that person to ensure compliance with these Regulations.

(a) S.R. & O. (N.I.) 1971 No. 372.

(b) S.I. 1988/1655.

(c) S.R. 1988 No. 386.

(d) S.R. 1989 No. 320.

(e) S.I. 1992/2966.

(f) S.R. 1993 No. 20.

(g) S.I. 1997/1713.

(h) S.I. 1998/1833.

(i) S.I. 1998/2306.

(j) S.I. 1998/2307.

(k) S.R. 1999 No. 13.

(l) S.R. 1999 No. 304.

(m) S.I. 1999/2205.

(n) S.R. 1999 No. 305.

(o) S.I. 1999/336.

(p) S.I. 2002/2776.

(q) S.R. 2003 No. 152.

(3) Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence. A person may be charged with and convicted of the offence by virtue of this regulation, whether or not proceedings are taken against the first mentioned person.

Signed by authority of the Secretary of State for Transport

5th August 2003

David Jamieson,
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in the United Kingdom Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 (establishing the harmonised requirements and procedures for the safe loading and unloading of bulk carriers). They also implement Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002 (amending the Directives on maritime safety and the prevention of pollution from ships), in so far as that Directive relates to the 2001 Directive.

The Regulations provide for their application generally to all terminals in the United Kingdom or in United Kingdom waters visited by bulk carriers, and to all bulk carriers which are United Kingdom ships or which call at a terminal to which the Regulations apply (regulation 4).

The Regulations impose requirements in relation to terminal operators satisfying themselves as to the operational suitability of bulk carriers for loading and unloading solid bulk cargoes (regulation 5). They impose requirements on terminal operators in relation to the suitability of terminals, but provide for the MCA to grant exemptions in some cases (regulation 6).

Responsibilities and requirements are imposed on masters of bulk carriers (regulation 7), and on terminal representatives (regulation 8). Both masters and terminal representatives are required to follow certain procedures (regulation 9), and have duties where damage occurs during loading or unloading (regulation 10).

The MCA has the role of verifying compliance with certain requirements (regulation 11).

The Regulations include provision to avoid duplicating requirements which already exist in other Regulations (regulation 12).

Non-compliance with the requirements is made an offence, punishable with a fine (regulation 13).

Section 2(2) of the European Communities Act 1972 is cited as an enabling power, in addition to sections 85 and 86 of the Merchant Shipping Act 1995. This is because the requirements imposed under regulation 11 may oblige the MCA to intervene where this is required in the interests of the marine environment, whether or not this is also in the interests of safety.

A Regulatory Impact Assessment and a Transposition Note have been prepared and copies may 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.

Merchant Shipping Notices can be obtained from Marl Marketing (Scotland), Unit 6, Blooms Grove Industrial Estate, Norton Street, Nottingham NG7 3JG (telephone 0115 901 3336; fax 0115 901 3334; e-mail orders mca@promo-solution.com). They may also be accessed via the MCA's website <http://www.mcga.gov.uk>.

The MCA publication "Safe Loading and Unloading of Bulk Carriers 2003, Implementing EC Directive 2001/96/EC (establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers)" will be obtainable from The Stationery Office on or before 1st March 2004, when these Regulations come into force. In the meantime, copies may be obtained from the MCA on payment of the photocopying fee. A copy will also be available (free of charge) on the MCA's website, which the MCA intends to keep up to date with any amendments.

Copies of the International Convention for the Safety of Life at Sea, 1974, together with the Protocols and amendments thereto, and of the Code of Practice for the Safe Loading and Unloading of Bulk Carriers, may be obtained from the International Maritime Organization at 4 Albert Embankment, London SE1 7SR.

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