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STATUTORY INSTRUMENTS

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**2008 No. 3257**

**The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008**

**PART 1**

**General**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008.

(2) These Regulations come into force on 1st February 2009.

**Interpretation**

2.—(1) In these Regulations—

“the 1995 Act” means the Merchant Shipping Act 1995;

“the 1995 Regulations” means the Merchant Shipping (Port State Control) Regulations 1995(1);

“additional survey” has the meaning given in regulation 10(4);

“Annex IV” means Annex IV to the Convention, being the Annex IV adopted by the Marine Environment Protection Committee of the IMO by resolution MEPC.115(51) on 1st April 2004, and includes—

(a) all the amendments to that Annex adopted by the Marine Environment Protection Committee of the IMO before the date on which these Regulations are made, and

(b) any subsequent amendment to that Annex which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“Annex V” means Annex V to the Convention, being the Annex V constituting part of attachment 1 to the final act of the International Conference on Maritime Pollution signed in London on 2nd November 1973, and includes—

(a) all the amendments to that Annex adopted by the Marine Environment Protection Committee of the IMO before the date on which these Regulations are made, and

(b) any subsequent amendment to that Annex which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“Antarctic area” means the sea area south of latitude 60° S;

“certified”, in relation to a ship, means certified in accordance with the Merchant Shipping (Survey and Certification) Regulations 1995(2);

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(1) S.I. 1995/3128, amended by S.I. 1998/1433, 1998/2198, 2001/2349 and 2003/1636.

(2) S.I. 1995/1210, amended by S.I. 1996/2418, 1996/3188, 2000/1334, 2000/2687, 2002/1473, 2003/771, 2004/302, 2004/1107, 2004/2883, and 2005/2114.

“Certifying Authority” means the Secretary of State or any organisation which is an authorised organisation for the purposes of the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996<sup>(3)</sup>;

“Contracting Government” means the Government of a State which has consented to be bound by the Convention, and for which Annex IV to that Convention is in force;

“the Convention” means the International Convention for the Prevention of Pollution from Ships 1973 (including its protocols, annexes and appendices thereto)<sup>(4)</sup> as amended by the Protocols of 1978<sup>(5)</sup> and 1997<sup>(6)</sup> and includes—

- (a) all the amendments to that Convention adopted by the Marine Environment Protection Committee of the IMO before the date on which these Regulations are made, and
- (b) any subsequent amendment to that Convention which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“controlled waters” means the waters specified by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996<sup>(7)</sup> as areas within which the jurisdiction and rights of the United Kingdom are exercisable;

“date of expiry”, in relation to a Sewage Certificate held in respect of a ship, means the last day of the period specified in that Sewage Certificate as the period for which that Certificate is valid;

“exclusive economic zone”, in relation to a foreign State, means the area beyond and adjacent to the territorial sea of that State, but not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured;

“flag State”, in relation to a ship, means the State whose flag the ship is entitled to fly;

“ground or comminuted to the required standard”, in relation to general garbage or food wastes, means ground or comminuted sufficiently finely so as to be capable of passing through a screen with openings no greater than 25 millimetres;

“GT” means gross tonnage, and the gross tonnage of a ship is to be determined for the purposes of these Regulations in accordance with the Schedule;

“harbour master” has the same meaning as in section 144(7) of the 1995 Act;

“holding tank” means a tank used for the collection and storage of sewage;

“IMO” means the International Maritime Organization;

“infrastructure”, in relation to a ship, means the structure, equipment, systems, fittings, arrangements and material of that ship, which are the subject of requirements in Annex IV;

“initial survey” has the meaning given in regulation 7(3);

“international voyage” means a voyage from a country to which the Convention applies to a port outside that country, or conversely;

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

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

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(3) [S.I. 1996/2908](#); an “authorised organisation” is defined in regulation 2 of those Regulations.

(4) Cmnd. 5748.

(5) Cmnd. 7347.

(6) Cmnd. 4427.

(7) [S.I. 1996/2128](#), amended by [S.I. 1997/506](#).

“nautical mile” means an international nautical mile of 1,852 metres;

“offshore terminal” means an installation situated away from the shore, where bulk, fluid or gas cargo (or more than one of these) is—

- (a) transferred between ships,
- (b) loaded onto a ship after having been transported from the shoreline, or
- (c) unloaded from a ship for transporting to the shoreline;

“operational wastes” means all maintenance wastes, cargo associated wastes and cargo residues except residues or wastes from—

- (a) oil or oily mixtures,
- (b) noxious liquid substances,
- (c) non-polluting liquid substances, or
- (d) harmful substances in packaged form;

“plastics” includes synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products which may contain toxic or heavy metal residues;

“relevant platform” means a fixed or floating platform which is used in connection with the exploration, exploitation or associated offshore processing of seabed mineral resources;

“renewal survey” has the meaning given in regulation 8(3);

“sea” includes any estuary or arm of the sea;

“Sewage Certificate” means an International Sewage Pollution Prevention Certificate referred to in Regulation 5 of Annex IV;

“ship” means a vessel of any type whatsoever, including a hydrofoil boat, an air-cushion vehicle, a submersible, a floating craft and a fixed or floating platform, which is operating in the marine environment;

“ship in dedicated trades” means a ship which is on a scheduled service on a regular route;

“short international voyage” means an international voyage—

- (a) in the course of which a ship is never more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety, and
- (b) which does not exceed 600 nautical miles between the last port of call in the country in which the voyage begins and the last port of call in the voyage before beginning any return voyage, and which on any return voyage does not exceed 600 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the country in which the voyage began,

and for the purposes of this definition no account is to be taken of any deviation by a ship from its intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled;

“STCW” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978<sup>(8)</sup>, as amended in 1995 by resolution 1 of the STCW Conference<sup>(9)</sup> convened at the IMO’s headquarters from 26th June to 7th July 1995; and

“surveyor” means a surveyor of ships, or any other person appointed by a Certifying Authority (other than the Secretary of State) to be a surveyor, and “survey” means a survey carried out by a surveyor.

(2) For the purposes of these Regulations—

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<sup>(8)</sup> Cmnd. 9266.

<sup>(9)</sup> Cmnd. 3772.

- (a) subject to paragraph (3), a “discharge”, in relation to sewage, means any release howsoever caused from a ship, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, and cognate expressions are to be construed accordingly;
  - (b) “garbage” means all kinds of victual, domestic and operational wastes generated during the normal operation of a ship and liable to be disposed of continuously or periodically, but does not include fresh fish and parts thereof, sewage, or any other substance the disposal of which is prohibited or otherwise controlled under an Annex to the Convention other than Annex V; and
  - (c) “sewage” means—
    - (i) drainage and other wastes from any form of toilets and urinals,
    - (ii) drainage from medical premises (including, for example, a dispensary or sick bay) via wash basins, wash tubs and scuppers located in such premises,
    - (iii) drainage from spaces containing living animals, or
    - (iv) other waste waters when mixed with any drainage referred to in sub-paragraph (i), (ii) or (iii).
- (3) A “discharge” does not include—
- (a) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, signed at London on 13th November 1972<sup>(10)</sup>, as amended by the 1996 Protocol<sup>(11)</sup>, or
  - (b) the release of sewage for the purposes of legitimate scientific research into pollution abatement or control.
- (4) For the purposes of these Regulations, an “old ship” means a ship whose date of construction is before 2nd October 1983, and the date of construction of a ship is the date on which the keel of the ship is laid or on which the ship is at a stage of construction at which—
- (a) construction identifiable with a specific ship has begun, and
  - (b) assembly of that ship has incorporated at least 50 tonnes of structural material or one per cent of the estimated mass of all structural material, whichever is less.
- (5) For the purposes of these Regulations, a “United Kingdom ship” means a ship which—
- (a) is registered in the United Kingdom, or
  - (b) is not registered under the law of any country but is wholly owned by persons each of whom is—
    - (i) a British Citizen, a British overseas territories citizen or a British Overseas citizen, or
    - (ii) a body corporate which is established under the law of any part of the United Kingdom and has its principal place of business in the United Kingdom.
- (6) In the application of these Regulations to—
- (a) an air-cushion vehicle, a reference to the master of a ship includes a reference to the captain of that air-cushion vehicle, and
  - (b) a platform, a reference to the master of a ship includes a reference to the manager of that platform.

### Meaning of “Special Area” in Part 5

3.—(1) Subject to paragraph (2), for the purposes of Part 5, a “Special Area” is any of the following areas, that is to say—

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<sup>(10)</sup> Cmnd. 5169.

<sup>(11)</sup> Cmnd. 4078.

- (a) the Antarctic area;
  - (b) the Baltic Sea area, which means the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8' N;
  - (c) the Black Sea area, which means the Black Sea proper with the boundary between the Mediterranean and the Black Sea constituted by the parallel 41° N;
  - (d) the Gulfs area, which means the sea area located north-west of the rhumb line between Ras al Hadd (22°30' N, 59°48' E) and Ras al Fasteh (25°04' N, 61°25' E);
  - (e) the Mediterranean Sea area, which means the Mediterranean Sea proper including the gulfs and seas therein with the boundary between the Mediterranean and the Black Sea constituted by the 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian 5°36' W;
  - (f) the North Sea area, which means the North Sea proper including the seas within the following boundaries—
    - (i) the North Sea southwards of latitude 62° N and eastwards of longitude 4° W,
    - (ii) the Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57°44.8' N, and
    - (iii) the English Channel and its approaches eastwards of longitude 5° W and northwards of latitude 48°30' N;
  - (g) the Red Sea area, which means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°28.5' N, 43°19.6' E) and Husn Murad (12°40.4' N, 43°30.2'E);
  - (h) the Wider Caribbean Region, which means the Gulf of Mexico and Caribbean Sea proper including the bays and seas therein and that portion of the Atlantic Ocean within the boundary constituted by the 30° N parallel from Florida eastward to 77°30' W meridian, thence a rhumb line to the intersection of 20° N parallel and 59° W meridian, thence a rhumb line to the intersection of 7°20' N parallel and 50° W meridian, thence a rhumb line drawn south-westerly to the eastern boundary of French Guiana.
- (2) An area referred to in paragraph (1)(c), (e), (g) or (h) is not a Special Area until such date as the IMO—
- (a) establishes, pursuant to paragraph (4)(b) of Regulation 5 of Annex V, as the date from which the requirements of that Regulation take effect in respect of the area in question, and
  - (b) publishes on the website of the IMO.

### **Meaning of “from the nearest land”**

4. In these Regulations, “from the nearest land”, means—
- (a) in relation to all land other than that part of the north-eastern coast of Australia referred to in sub-paragraph (b), from the baseline from which the territorial sea of the territory in question is established in accordance with international law;
  - (b) in relation to the north-eastern coast of Australia, from a line drawn from a point on the coast of Australia in latitude 11°00' S, longitude 142°08' E to a point in latitude 10°35' S, longitude 141°55' E
    - thence to a point latitude 10°00' S, longitude 142°00' E,
    - thence to a point latitude 09°10' S, longitude 143°52' E,
    - thence to a point latitude 09°00' S, longitude 144°30' E,
    - thence to a point latitude 10°41' S, longitude 145°00' E,

thence to a point latitude 13°00' S, longitude 145°00' E,  
 thence to a point latitude 15°00' S, longitude 146°00' E,  
 thence to a point latitude 17°30' S, longitude 147°00' E,  
 thence to a point latitude 21°00' S, longitude 152°55' E,  
 thence to a point latitude 24°30' S, longitude 154°00' E,  
 thence to a point on the coast of Australia in latitude 24°42' S, longitude 153°15' E,  
 and “nearest land” is to be construed accordingly.

### Revocations

5. The Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1998(12) are revoked.

### Application

6.—(1) Subject to paragraphs (16) to (20), the provisions of these Regulations apply as follows.

(2) Regulations 7 to 12, 14, 15, 16(1) to (5), 17, and 18(1) and (2) apply to a United Kingdom ship, wherever it may be, which is engaged in international voyages and is—

- (a) of 400 GT or above, or
- (b) certified to carry more than 15 persons.

(3) Regulations 13 and 19(1) apply to a ship which is—

- (a) not a United Kingdom ship,
- (b) registered in, or is not registered but is entitled to fly the flag of, a country whose Government is a Contracting Government”,
- (c) engaged in international voyages,
- (d) of 400 GT or above, or certified to carry more than 15 persons, and
- (e) in United Kingdom waters, or controlled waters.

(4) Regulation 16(6) applies to a ship which is—

- (a) not a United Kingdom ship,
- (b) engaged in international voyages,
- (c) of 400 GT or above, or certified to carry more than 15 persons, and
- (d) in a port or offshore terminal in the United Kingdom.

(5) Regulation 18(3) and (4) applies in relation to a ship which is—

- (a) a United Kingdom ship, wherever it may be, which is engaged in international voyages and is—
  - (i) of 400 GT or above, or
  - (ii) certified to carry more than 15 persons; or
- (b) not a United Kingdom ship, but is—
  - (i) engaged in international voyages,
  - (ii) of 400 GT or above, or certified to carry more than 15 persons, and
  - (iii) in United Kingdom waters, or controlled waters, or any other waters which are sea.

(6) Regulation 19(2) applies to a ship which satisfies all the criteria set out in paragraph (3) except for the criterion in paragraph (3)(b).

(7) Regulation 20 applies to a ship which is a United Kingdom ship but which does not satisfy all the other criteria set out in paragraph (2).

(8) Regulations 21 to 25 apply to a ship which is—

(a) a United Kingdom ship, wherever it may be, which is engaged in international voyages and is—

- (i) of 400 GT or above, or
- (ii) certified to carry more than 15 persons; or

(b) not a United Kingdom ship, but is—

- (i) engaged in international voyages,
- (ii) of 400 GT or above, or certified to carry more than 15 persons, and
- (iii) in United Kingdom waters, or controlled waters, or any other waters which are sea.

(9) Regulations 26 to 28 apply to a ship which is—

- (a) a United Kingdom ship wherever it may be, or
- (b) a ship other than United Kingdom ship, but which is in—
  - (i) United Kingdom waters,
  - (ii) controlled waters, or
  - (iii) any other waters which are sea.

(10) Regulation 29 applies to a ship which is referred to in paragraph (9)(a) or (b) and is—

- (a) a relevant platform, or
- (b) alongside or within 500 metres of such a platform.

(11) Regulation 30 applies to a United Kingdom ship wherever it may be.

(12) Regulation 31 applies to a ship which is referred to in paragraph (9)(a) or (b) and has a length overall of 12 metres or more.

(13) In paragraph (12), “length overall” means the extreme length of the hull of the ship measured between the foremost part of the bow and the aftmost part of the stern.

(14) Regulation 32 applies to a ship which is referred to in paragraph (9)(a) or (b) and is—

- (a) of 400 GT or above, or
- (b) certified to carry 15 or more persons.

(15) Regulations 33 and 34 apply to a ship which is referred to in paragraph (9)(a) or (b) and is—

- (a) of 400 GT or above,
- (b) certified to carry 15 or more persons, and engaged in voyages to ports or offshore terminals under the jurisdiction of a Party to the Convention other than the ship’s flag State, or
- (c) a relevant platform.

(16) Regulation 35 applies to a ship which is referred to in paragraph (9)(a) or (b) and is—

- (a) certified to carry 15 or more persons, and engaged on a voyage whose duration is one hour or less, or
- (b) a relevant platform, while it is engaged in exploration and exploitation of the sea-bed.

(17) These Regulations do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government, non-commercial service.

(18) Regulation 21(2) does not apply to a ship other than an old ship.

- (19) Regulations 23 to 25 do not apply to—
- (a) the discharge of sewage which is necessary for the purpose of—
    - (i) securing the safety of the ship,
    - (ii) securing the safety of those on board the ship, or
    - (iii) saving life at sea; or
  - (b) the discharge of sewage which results from damage to a ship or its equipment, except to the extent that the discharge is due to a failure to take all reasonable precautions before and after the occurrence of the damage, for the purpose of preventing or minimizing the discharge.
- (20) Regulations 26 to 29 do not apply to—
- (a) the disposal of garbage which is necessary for the purpose of—
    - (i) securing the safety of the ship,
    - (ii) securing the safety of those on board the ship, or
    - (iii) saving life at sea;
  - (b) the escape of garbage which results from damage to a ship or its equipment, except to the extent that the escape is due to a failure to take all reasonable precautions before and after the occurrence of the damage, for the purpose of preventing or minimizing the escape; or
  - (c) the accidental disposal into the sea of synthetic fishing nets or synthetic material incidental to the repair of such nets, except to the extent that the disposal is due to a failure to take all reasonable precautions to prevent the loss.

## PART 2

### Sewage: Survey and Certification of Ships

#### **Requirement for Sewage Certificate: initial survey**

- 7.—(1) A ship to which this regulation applies must not—
- (a) be put into service, or
  - (b) (if it is already in service) continue in service,
- unless the requirements set out in paragraph (2) are met.
- (2) The requirements are that—
- (a) a survey has been carried out in respect of the ship,
  - (b) at the date of the survey the surveyor is satisfied that the structure, equipment, systems, fittings, arrangements and materials of the ship fully comply with the requirements of Part 3, and
  - (c) a Sewage Certificate has been issued in respect of that ship and is still valid.
- (3) A survey carried out under paragraph (2) is referred to in these Regulations as an “initial survey”.

#### **Renewal of Sewage Certificate: renewal survey**

- 8.—(1) A ship to which this regulation applies must not—
- (a) proceed to sea, or
  - (b) (if it is already at sea) remain at sea,



after the date of expiry of a Sewage Certificate issued in respect of that ship unless the requirements set out in paragraph (2) are met.

- (2) The requirements are that—
  - (a) a survey has been carried out in respect of the ship,
  - (b) at the date of the survey the surveyor is satisfied that the structure, equipment, systems, fittings, arrangements and materials of the ship fully comply with the requirements of Part 3, and
  - (c) in consequence a Sewage Certificate has been issued in respect of that ship and is still valid.
- (3) A survey carried out under paragraph (2) is referred to in these Regulations as a “renewal survey”.

### **Responsibilities of the owner and master of a ship**

9.—(1) The owner and the master of a ship to which this regulation applies must ensure that the condition of the ship and its equipment are maintained to conform with the provisions of Parts 3 and 4 so as to ensure that the ship in all respects remains fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) The owner and the master of a ship to which this regulation applies must ensure that after any survey of the ship required by this Part has been completed, no change, except by way of direct replacement, is made to the infrastructure of that ship covered by the survey without the approval of—

- (a) the Certifying Authority who appointed the surveyor to carry out the survey, or
- (b) the Secretary of State, where the Sewage Certificate was issued by a Contracting Government” following a request made pursuant to regulation 12,

as the case may be.

- (3) Whenever—
  - (a) an accident occurs to a ship, or
  - (b) a defect is discovered in a ship,

which substantially affects the integrity of the ship or the efficiency or completeness of the equipment of the ship required under Part 3, the owner and the master of the ship must ensure that the requirements of paragraph (4) are complied with.

- (4) The requirements are that—
  - (a) the accident or defect, as the case may be, is reported at the earliest opportunity to the Certifying Authority who issued the Sewage Certificate in respect of the ship, and
  - (b) in the case of a ship in a port outside the United Kingdom, the accident or the defect, as the case may be, is also immediately reported to the appropriate maritime authorities in the country in which the port is situated.
- (5) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a), the Certifying Authority—
  - (a) must cause an investigation to be initiated to determine whether or not an additional survey is necessary, and
  - (b) if it considers that an additional survey is necessary, must cause that survey to be carried out.
- (6) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a) and the ship in question is in a port outside the United Kingdom, the Certifying

Authority must take all appropriate steps to ascertain that the requirement in paragraph (4)(b) has been complied with.

### **Additional surveys**

**10.**—(1) This regulation applies to a ship where—

- (a) a repair resulting from an investigation referred to in regulation 9(5) has been made to the ship, or
- (b) an important repair or renewal has been made to the ship.

(2) A ship to which this regulation applies must not—

- (a) proceed to sea, or
- (b) (it is already at sea) remain at sea,

unless the requirements set out in paragraph (3) are met.

(3) The requirements are that—

- (a) a survey has been carried out in respect of the ship,
- (b) at the date of the survey the surveyor is satisfied that—
  - (i) the repair or renewal has been made effectively,
  - (ii) the materials used in, and the workmanship of, the repair or renewal are satisfactory in all respects, and
  - (iii) the ship complies in all respects with the requirements of Part 3; and
- (c) the surveyor has issued a survey report expressing the satisfaction required by sub-paragraph (b).

(4) A survey carried out under paragraph (3) is referred to in these Regulations as an “additional survey”.

### **Issue of Sewage Certificates by a Certifying Authority**

**11.**—(1) Subject to the payment of any fee due under the Merchant Shipping (Fees) Regulations 2006(13), on being notified by a surveyor that the surveyor—

- (a) has carried out an initial survey or a renewal survey in respect of a ship to which this regulation applies; and
- (b) is satisfied at the date of the survey that the structure, equipment, systems, fittings, arrangements and materials of the ship fully comply with the requirements of Part 3,

a Certifying Authority must issue a Sewage Certificate in respect of that ship.

(2) Where a ship becomes a ship to which this regulation applies on transfer from the flag of another Contracting Government”, a Certifying Authority must issue a Sewage Certificate in respect of that ship where—

- (a) a Sewage Certificate has been issued in respect of the ship and was still valid immediately before the date of the transfer,
- (b) the Certifying Authority has caused a survey to be carried out in respect of the ship, and
- (c) the Certifying Authority is satisfied that—
  - (i) the condition of the ship and its equipment is maintained to conform with the provisions of Annex IV, so as to ensure that the ship is fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment, and

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(13) [S.I. 2006/2055](#), to which there are amendments not relevant to these Regulations.

(ii) no change, other than a change referred to in paragraph (3), has been made to the structure, equipment, systems, fittings, arrangements or materials of the ship covered by the last survey carried out under Regulation 4.1 of Annex IV without the approval of the Contracting Government” in question.

(3) The changes referred to in paragraph (2)(c)(ii) are the direct replacement of equipment and fittings.

(4) A Sewage Certificate issued under this regulation must be in English and in the form set out in the Appendix to Annex IV.

#### **Issue of Sewage Certificates by another Government in respect of United Kingdom ships**

12.—(1) The Secretary of State may request a Contracting Government”—

- (a) to survey a ship to which this regulation applies, and
- (b) to issue, or authorise the issue of, a Sewage Certificate in respect of that ship, if the Contracting Government” is satisfied that the ship complies with the requirements of Annex IV.

(2) Where a Sewage Certificate is issued pursuant to paragraph (1)—

- (a) the Secretary of State is to be treated as the Certifying Authority in relation to it, and
- (b) any reference in these Regulations to the Certifying Authority who issued the Certificate is to be treated as a reference to the Secretary of State.

#### **Issue of Sewage Certificates in respect of ships which are not United Kingdom ships**

13.—(1) When requested to do so by a Contracting Government”, the Secretary of State—

- (a) may cause a survey to be carried out in respect of a ship to which this regulation applies, and
- (b) must, subject to the payment of any fee due under the Merchant Shipping (Fees) Regulations 2006, issue in respect of that ship a Sewage Certificate if the Secretary of State is satisfied that the requirements of Annex IV are complied with.

(2) A Sewage Certificate issued pursuant to paragraph (1) is to—

- (a) be in English and in the form set out in the Appendix to Annex IV,
- (b) contain a statement that it has been so issued, and
- (c) have the same effect as if it had been issued by the Contracting Government” who made the request referred to in paragraph (1) and not by the Secretary of State.

(3) The Secretary of State must send as soon as possible to the Contracting Government” who made the request referred to in paragraph (1) a copy of—

- (a) the Sewage Certificate issued pursuant to that paragraph, and
- (b) the survey report.

(4) The Secretary of State must not issue a Sewage Certificate in respect of a ship which is—

- (a) registered in a State whose Government is not a Contracting Government”, or
- (b) is not registered, but is entitled to fly the flag of a State whose Government is not a Contracting Government”.

#### **Duration and validity of Sewage Certificates**

14.—(1) Subject to the following paragraphs and to regulations 16(3) and 18(1), a Sewage Certificate which is issued in respect of a ship to which this regulation applies is valid for such period

as is specified in the certificate, not exceeding five years, beginning with the date of the completion of the relevant initial or renewal survey.

(2) Subject to paragraph (3) and regulation 15(9), where a renewal survey is completed—

- (a) within the final three month period, or
- (b) after the date of expiry of the latest Sewage Certificate,

the new Sewage Certificate is valid for such period as is specified in the Certificate, beginning with the date of the completion of the renewal survey and ending with a date not exceeding five years from the date of expiry of the latest Sewage Certificate.

(3) A Sewage Certificate issued in respect of a ship ceases to be valid upon whichever is the earliest of the following—

- (a) upon the ship being transferred to the flag of another State,
- (b) upon a ship proceeding to sea where—
  - (i) a repair or renewal referred to in regulation 10(1) has been made, and
  - (ii) the requirements set out in regulation 10(3) have not been complied with,
- (c) upon a new Sewage Certificate being issued in respect of the ship, or
- (d) upon the date of expiry of the Certificate.

(4) Where a ship is transferred to the flag of another State whose Government is a Contracting Government”, and within three months after the date of transfer that Government so requests, the Secretary of State must send the Government a copy of—

- (a) the Sewage Certificate issued in respect of the ship, and
- (b) if available, the survey report.

(5) In this regulation, the “final three month period” means the period of three months ending on the date of expiry of the Sewage Certificate in question.

### **Extension of periods of validity of Sewage Certificates**

**15.—**(1) Where the period of the validity of a Sewage Certificate in respect of a ship to which this regulation applies is less than five years, the Certifying Authority who issued the Sewage Certificate may extend its period of validity to a maximum period of five years.

(2) Where—

- (a) a renewal survey has been completed by a surveyor; but
- (b) the new Sewage Certificate cannot be issued or placed on board the ship before the date of expiry of the latest Sewage Certificate,

the surveyor may endorse the latest Sewage Certificate.

(3) Where a Sewage Certificate has been endorsed under paragraph (2), that Certificate is valid for such further period as is specified in the Certificate, not exceeding five months beginning with the original date of expiry of the Certificate.

(4) Where—

- (a) a renewal survey has not been completed before the date of expiry of the latest Sewage Certificate in question; and
- (b) at that date of expiry the ship is not in the port in which the survey is to be carried out,

the Certifying Authority who issued the latest Sewage Certificate may extend the period of validity of that Sewage Certificate for a period not exceeding three months, if it appears to the Certifying Authority that it is proper and reasonable to do so solely for the purpose of allowing the ship to complete its voyage to its port of survey.

(5) Where the period of validity of a Sewage Certificate has been extended pursuant to paragraph (4), the ship in question must not leave its port of survey until a new Sewage Certificate has been issued in respect of that ship.

(6) Subject to paragraph (7), the Certifying Authority who issued the latest Sewage Certificate in respect of a ship engaged solely on short international voyages may extend the period of validity of that Sewage Certificate for a period not exceeding one month.

(7) A Certifying Authority must not extend the period of validity of a Sewage Certificate under paragraph (6) if the period of validity of that Sewage Certificate has already been extended under paragraph (1), (3) or (4).

(8) Subject to paragraph (9) and to regulations 16(3) and 18(1), where a renewal survey has been completed and a new Sewage Certificate has been issued in respect of a ship referred to in paragraph (5) or (6), that new Certificate is valid for such period as is specified in the Certificate, not exceeding five years beginning with the original date of expiry of the previous Sewage Certificate.

(9) In the special circumstances set out in Merchant Shipping Notice MSNNo. 1807, the period of validity of a new Sewage Certificate which is—

- (a) issued in respect of a ship referred to in paragraph (5) or (6), or
- (b) referred to in regulation 14(2) and issued where the renewal survey is completed after the date of expiry of the latest Sewage Certificate,

is such period as is specified in the new Certificate, not exceeding five years beginning with the date of the completion of the renewal survey in question.

(10) Where the period of validity of a Sewage Certificate is extended under paragraph (1), (4) or (6), the Certifying Authority in question must endorse the Sewage Certificate in accordance with the relevant form set out in the Appendix to Annex IV.

(11) An endorsement issued pursuant to paragraph (2) must be in the relevant form set out in the Appendix to Annex IV.

(12) In this regulation, “the original date of expiry” means the date on which a Sewage Certificate would have expired but for any extension of its period of validity.

### **Procedure to be adopted when a ship is deficient**

**16.—**(1) This regulation applies where a surveyor determines that—

- (a) the condition of a ship to which paragraphs (1) to (5) of this regulation apply, or its equipment, does not correspond substantially with the particulars of the Sewage Certificate (if any) issued in respect of the ship, or
- (b) a ship, to which paragraphs (1) to (5) of this regulation apply, is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) The surveyor must—

- (a) advise the owner or master of the corrective action which in the opinion of the surveyor is required, and
- (b) where a Sewage Certificate has been issued in respect of the ship and is still valid, notify the Certifying Authority who issued the Certificate—
  - (i) that the surveyor has so advised the owner or master, and
  - (ii) if that corrective action is not taken.

(3) Where a Sewage Certificate has been issued in respect of the ship and is still valid, the Certifying Authority may suspend the validity of that Certificate until the corrective action has been taken.

(4) Where the Certifying Authority suspends the validity of a Sewage Certificate issued in respect of a ship, it must immediately give notice of such suspension—

- (a) to the owner of the ship, and
- (b) where the ship is in a port outside the United Kingdom, to the appropriate maritime authorities of the country in which the port is situated.

(5) Where the owner of a ship is given notice of suspension, that owner must notify the master of the ship in question of the suspension.

(6) Paragraphs (1) and (2) have effect in relation to a ship to which this paragraph applies as they have effect in relation to a ship to which those paragraphs apply, and as if—

- (a) the reference to “the Certifying Authority” were to the Government of the State where the ship is registered (or if the ship is not registered, the Government of the flag State), and
- (b) the reference to a “surveyor” included a reference to a person authorised by that Government to survey the ship.

### **Arbitration**

**17.**—(1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out in respect of a ship to which this regulation applies, the applicant may serve a written notice on the responsible person within 21 days of receiving notification of that outcome—

- (a) stating that there is a dispute between them; and
- (b) requesting that the dispute be referred to a single arbitrator.

(2) An arbitrator referred to in paragraph (1) must be appointed by agreement between the applicant and the responsible person.

(3) No person is to be an arbitrator under this regulation unless that person is—

- (a) a person who holds a certificate to act as—
  - (i) a master or chief mate on a seagoing ship of 3,000 GT or more, in accordance with Regulation II/2 of Chapter 2 of the Annex to STCW, or
  - (ii) a chief engineer officer or second engineer officer on a seagoing ship powered by main propulsion machinery of 3,000 kW propulsion power or more, in accordance with Regulation III/2 of Chapter 3 of the Annex to STCW;
- (b) a person who holds a certificate of competency equivalent to a certificate referred to in sub-paragraph (a);
- (c) a naval architect;
- (d) a qualified person;
- (e) a person with special experience of shipping matters, or of the fishing industry, or of activities carried on in ports; or
- (f) a member of the Chartered Institute of Arbitrators.

(4) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 259 of the 1995 Act.

(5) In the application of this regulation to Scotland—

- (a) any reference to an arbitrator is to be construed as a reference to an arbiter; and
- (b) the reference in paragraph (2) to a single arbitrator appointed by agreement between the applicant and the responsible person is to be construed as a reference to a single arbiter so appointed or, in default of agreement, appointed by a sheriff.

(6) The rules for arbitration set out in Merchant Shipping Notice No. M.1613 apply unless alternative procedures are agreed between the applicant and the responsible person before the commencement of arbitration proceedings.

(7) In this regulation—

- (a) “applicant” means a person who makes an application for a survey required by these Regulations;
- (b) “qualified person” means—
  - (i) a person who has a 10 year general qualification, within the meaning of the section 71 of the Courts and Legal Services Act 1990<sup>(14)</sup>;
  - (ii) a person who is an advocate or solicitor in Scotland of at least 10 years’ standing; or
  - (iii) a person who is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland of at least 10 years’ standing;
- (c) “responsible person” means—
  - (i) the Certifying Authority responsible under regulation 11 or 12 for the issue of the Sewage Certificate in connection with which a survey required by these Regulations is carried out, or
  - (ii) in the case of a dispute relating to an additional survey, the Certifying Authority which issued the Sewage Certificate in respect of the ship.

#### **Miscellaneous provisions relating to Sewage Certificates**

**18.**—(1) The Secretary of State may cancel a Sewage Certificate issued in respect of a ship to which this paragraph applies, where the Secretary of State has reason to believe that—

- (a) the Sewage Certificate was issued on false or erroneous information; or
- (b) since the completion of any survey required by these Regulations, the structure, equipment or machinery of the ship has sustained damage or is otherwise deficient.

(2) The Secretary of State may require that a Sewage Certificate, issued in respect of a ship to which this paragraph applies, and which has expired or has been suspended or cancelled, is to be surrendered within such time and in such manner as the Secretary of State may in writing direct.

(3) In relation to a ship to which this paragraph applies, no person may—

- (a) intentionally alter a Sewage Certificate;
- (b) intentionally make a false Sewage Certificate;
- (c) knowingly or recklessly provide false information in connection with a survey required under these Regulations;
- (d) with intent to deceive, use or lend a Sewage Certificate or permit a Sewage Certificate to be used by another person;
- (e) fail to surrender a Sewage Certificate when required to do so pursuant to paragraph (2); or
- (f) in Scotland, forge a Sewage Certificate.

(4) The owner and master of a ship, in respect of which a Sewage Certificate has been issued and in relation to which this paragraph applies, must ensure that the Certificate is readily available on board the ship for examination at all times.

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<sup>(14)</sup> 1990 c.41, to which there are amendments not relevant to these Regulations.

### **Prohibition on non United Kingdom ships proceeding to sea without a Sewage Certificate**

**19.**—(1) A ship to which this paragraph applies must not proceed to sea from a port in the United Kingdom unless—

- (a) a Sewage Certificate has been issued pursuant to Annex IV in respect of that ship and is still valid,
- (b) a surveyor of ships is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment, or
- (c) a person having powers to detain the ship has permitted the ship to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.

(2) A ship to which this paragraph applies must not proceed to sea from a port in the United Kingdom unless documentation has been issued in respect of that ship which is still valid and shows that—

- (a) a survey has been carried out in respect of the ship as if regulation 7 applied to the ship, and
- (b) a surveyor of ships is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment, or a person having powers to detain the ship has permitted the ship to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.

### **Survey and certification of ships to which regulations 7, 8 and 10 do not apply**

**20.**—(1) When requested by the owner of a ship to which this regulation applies, a surveyor may carry out a survey equivalent to one carried out under regulation 7, 8 or 10 in respect of that ship.

(2) In the following paragraphs, a “relevant ship” means a ship to which this regulation applies and in respect of which such a survey is carried out.

(3) The provisions referred to in paragraph (4) have effect—

- (a) in relation to a relevant ship as they have effect in relation to a ship to which regulations 7, 8 and 10 apply,
- (b) in relation to a Sewage Certificate issued in respect of a relevant ship as they have effect in relation to a Sewage Certificate issued in respect of a ship to which those regulations apply,
- (c) as if any reference in those provisions to a ship to which one of those provisions applies included a reference to a relevant ship, and
- (d) as if any reference in those provisions to a Sewage Certificate included a reference to a Sewage Certificate issued in respect of a relevant ship.

(4) The provisions are—

- (a) regulation 9,
- (b) regulation 11,
- (c) regulation 14,
- (d) regulation 15 other than paragraph (5),
- (e) regulation 16 other than paragraph (6), and
- (f) regulation 18.



## PART 3

### Sewage: Equipment of Ships

#### Sewage systems

**21.**—(1) A ship to which this paragraph applies, other than an old ship, must be equipped with at least one of the following—

- (a) a sewage treatment plant which complies with such requirements of the Merchant Shipping (Marine Equipment) Regulations 1999(15) as apply to the plant,
- (b) a sewage comminuting and disinfecting system which complies with the requirements set out in paragraph (3) in the case of a United Kingdom ship, or paragraph (4) in the case of a ship which is not a United Kingdom ship, or
- (c) a holding tank which complies with the requirements set out in paragraph (5) in the case of a United Kingdom ship, or paragraph (6) in the case of a ship which is not a United Kingdom ship.

(2) The owner of an old ship must ensure that the ship is equipped, so far as is practicable, to discharge sewage in accordance with regulation 24 or 25.

(3) In the case of a United Kingdom ship, the requirements for a sewage comminuting and disinfecting system are that it is approved by the MCA as meeting the standards for such systems which are set out in Merchant Shipping Notice MSN No. 1807 and is fitted with appropriate facilities for the temporary storage of sewage when the ship is less than three nautical miles from the nearest land; and “appropriate facilities” means facilities which meet the standards for such facilities which are set out in that Merchant Shipping Notice.

(4) In the case of a ship which is not a United Kingdom ship, the requirement for a sewage comminuting and disinfecting system is that it is approved by the Government of the ship’s flag State.

(5) In the case of a United Kingdom ship, the requirements for a holding tank are that—

- (a) the construction of the holding tank meets the standard for holding tanks which is set out in Merchant Shipping Notice MSN No. 1807,
- (b) the capacity of the holding tank is sufficient, having regard to the operation of the ship, the number of persons the ship is certified to carry and any other relevant factors, and
- (c) the holding tank is capable of indicating visually the amount of its contents.

(6) In the case of a ship which is not a United Kingdom ship, the requirements for a holding tank are that—

- (a) the construction of the holding tank is approved by the Government of the ship’s flag State,
- (b) the capacity of the holding tank is sufficient, having regard to the operation of the ship, the number of persons the ship is certified to carry and any other relevant factors, and
- (c) the holding tank is capable of indicating visually the amount of its contents.

#### Discharge connections

**22.**—(1) Subject to paragraph (2), the sewage discharge pipeline of a ship to which this regulation applies must be fitted with a standard discharge connection in accordance with Schedule 1 to Merchant Shipping Notice MSN No. 1807 to enable that pipeline to be connected to a pipe of a facility for the reception of sewage.

(2) In the case of a ship in dedicated trades, the sewage discharge pipeline may alternatively be fitted with a quick-connection coupling or other discharge connection, if the MCA is satisfied that that discharge connection is at least as effective as the standard discharge connection.

## PART 4

### Discharge of Sewage

#### **Prohibition against discharging sewage from a ship into the sea**

**23.**—(1) Subject to paragraph (3) and regulations 24 and 25, the discharge of sewage from a ship to which this regulation applies into the sea is prohibited.

(2) Where the sewage is mixed with wastes or waste water covered by an Annex to the Convention other than Annex IV, paragraph (1) applies in addition to any statutory prohibition or requirement which relates to those wastes or waste waters and which implements that other Annex.

(3) This regulation does not apply to an old ship if it complies with regulation 21(2).

#### **Exception for a ship equipped with a sewage treatment plant**

**24.** Sewage may be discharged from a ship into the sea if—

- (a) the sewage is discharged through and treated by a sewage treatment plant operating on the ship, which plant complies with regulation 21(1)(a),
- (b) the Sewage Certificate in respect of that ship contains the test results of the sewage treatment plant, and
- (c) as a result of the discharge—
  - (i) there are no visible floating solids, and
  - (ii) there is no discoloration of the water into which the sewage is discharged.

#### **Exception for other ships**

**25.**—(1) Subject to paragraph (3), treated sewage may be discharged from a ship into the sea if—

- (a) the system used complies with regulation 21(1)(b); and
- (b) the sewage is discharged at a distance of more than three nautical miles from the nearest land.

(2) Subject to paragraph (3), sewage which is not treated may be discharged from a ship into the sea if the sewage is discharged at a distance of more than 12 nautical miles from the nearest land.

(3) Where—

- (a) treated sewage; or
- (b) sewage which is not treated,

has been stored in a holding tank, or originates from spaces containing living animals, the sewage must not be discharged instantaneously but must be discharged at a rate which is no greater than the rate specified for these purposes in Schedule 2 to Merchant Shipping Notice MSN No. 1807 whilst the ship is en route and proceeding at not less than four knots.

(4) For the purposes of this regulation—

- (a) a ship is en route if it is under way at sea on a course which so far as practicable for navigational purposes will cause any discharge to be spread over as great an area of the sea as is reasonably practicable; and

- (b) “treated sewage” means sewage which is both comminuted and disinfected, and “sewage which is not treated” is to be construed accordingly.

## PART 5

### Disposal of Garbage

#### **Prohibition on disposal of plastics or mixtures of garbage from a ship**

**26.**—(1) The disposal into the sea of any plastics from a ship to which this regulation applies is prohibited.

(2) Where plastics are mixed with garbage of one or more kinds referred to in regulation 27, 28 or 29, the disposal of that mixed garbage into the sea from such a ship is prohibited.

(3) Subject to paragraph (4), where—

- (a) garbage of a kind referred to in regulation 27, 28 or 29 is mixed with garbage of a different kind referred to in any of those regulations, and
- (b) the disposal into the sea of one or more of those kinds of garbage is prohibited under any of those regulations,

the disposal into the sea of that mixed garbage is prohibited.

(4) Where—

- (a) garbage of a kind referred to in regulation 27, 28 or 29 is mixed with garbage of a different kind referred to in any of those regulations,
- (b) the disposal into the sea of those kinds of garbage is prohibited by those regulations unless certain requirements are complied with, and
- (c) those requirements differ according to the kind of garbage,

the disposal into the sea of that mixed garbage is prohibited unless the more stringent requirements are complied with.

#### **Prohibition on disposal of garbage other than plastics from a ship outside a Special Area**

**27.**—(1) This regulation is subject to regulation 29.

(2) The disposal of dunnage, lining and packing materials which will float, from a ship to which this regulation applies into the sea outside a Special Area is prohibited unless—

- (a) the distance from the ship to the nearest land is 25 nautical miles or more, and
- (b) the disposal is made as far from the nearest land as is practicable.

(3) The disposal of general garbage, which has been ground or comminuted to the required standard, from such a ship into the sea outside a Special Area is prohibited unless—

- (a) the distance from the ship to the nearest land is three nautical miles or more, and
- (b) the disposal is made as far from the nearest land as is practicable.

(4) The disposal of general garbage, other than that referred to in paragraph (3), from such a ship into the sea outside a Special Area is prohibited unless—

- (a) the distance from the ship to the nearest land is 12 nautical miles or more, and
- (b) the disposal is made as far from the nearest land as is practicable.

(5) In this regulation, “general garbage” means garbage other than—

- (a) plastics, and

- (b) dunnage, lining and packing materials which will float.

#### **Prohibition on disposal of garbage from a ship within a Special Area**

**28.**—(1) The disposal of garbage, other than food wastes, from a ship to which this regulation applies into the sea within a Special Area is prohibited.

(2) Subject to paragraph (3), the disposal of food wastes from such a ship into the sea within a Special Area is prohibited unless—

- (a) the distance from the ship to the nearest land is 12 nautical miles or more, and
- (b) the disposal is made as far from the nearest land as is practicable.

(3) If the Wider Caribbean Region is a Special Area, the disposal of food wastes, which have been ground or comminuted to the required standard, from a ship into the sea within that Region is prohibited unless—

- (a) the distance from the ship to the nearest land is three nautical miles or more, and
- (b) the disposal is made as far from the nearest land as is practicable.

#### **Prohibition on disposal of garbage from a relevant platform or from a ship alongside a relevant platform**

**29.**—(1) The disposal of garbage, other than the food wastes referred to in paragraph (2), into the sea from a ship to which this regulation applies is prohibited.

(2) The disposal of food wastes, which have been ground or comminuted to the required standard, into the sea from a ship to which this regulation applies is prohibited, if the distance from the relevant platform in question to the nearest land is 12 nautical miles or less.

#### **Restriction on United Kingdom ships entering the Antarctic area**

**30.** A ship to which this regulation applies must not enter the Antarctic area unless—

- (a) it has sufficient capacity for the retention on board of all garbage while operating in that area, and
- (b) it has concluded arrangements for the discharge of retained garbage at a reception facility after it has left that area.

#### **Placards on ships**

**31.**—(1) A ship to which the regulation applies must display placards which notify the crew and any passengers of the requirements for the disposal of garbage contained in regulations 26 to 28 and 30.

(2) Those placards must be written—

- (a) in the working language of the ship's personnel, and
- (b) if the ship is engaged on voyages to ports or offshore terminals under the jurisdiction of a Party to the Convention other than its flag State, also in English, French or Spanish.

## PART 6

### Garbage Management Plans and Record books

#### Garbage management plan

**32.**—(1) Every ship to which this regulation applies must carry a garbage management plan which complies with paragraph (2).

(2) The garbage management plan must—

- (a) be written in the working language of the crew;
- (b) provide procedures for the collection, storage, processing and disposal of garbage, including procedures for the use of equipment on board;
- (c) designate the person in charge of carrying out the plan; and
- (d) be in accordance with the guidelines developed by the IMO and set out in Schedule 3 to Merchant Shipping Notice MSN No. 1807.

(3) The master of a ship must ensure that the crew of the ship follow the garbage management plan relating to the ship.

#### Garbage record books

**33.**—(1) Every ship to which this regulation applies must keep on board a garbage record book which complies with paragraph (2).

(2) The garbage record book must be in the form specified in Schedule 4 to Merchant Shipping Notice MSN No. 1807 and may form part of the official logbook (if any) of the ship.

(3) The garbage record book must be kept in a place where it is available for inspection at any reasonable time.

(4) The owner of a ship must preserve the garbage record book for that ship for a period of two years from the date of the final entry made in it.

#### Entries in garbage record books

**34.**—(1) In relation to a ship to which this regulation applies, the officer in charge of a discharge operation or an incineration must make and sign an entry in the garbage record book in respect of that discharge or incineration, as the case may be, on the date of the discharge or on the date on which the incineration is completed.

(2) An entry in the garbage record book must include—

- (a) the date and time at which the discharge or incineration occurred;
- (b) the position of the ship at the time at which the discharge or incineration occurred;
- (c) a description of, and the estimated amount of, the garbage discharged or incinerated; and
- (d) the signature of the officer in charge of the discharge or incineration.

(3) In the event of a disposal, an escape, or an accidental loss referred to in regulation 6(20), an entry must be made in the garbage record book recording the circumstances of, and the reasons for, the disposal, escape or accidental loss, as the case may be.

(4) In the case of a United Kingdom ship or a relevant platform which is in United Kingdom waters or controlled waters, the entry in the garbage record book must be in English.

(5) In the case of a ship which is neither a United Kingdom ship nor a relevant platform in United Kingdom waters or controlled waters, the entry in the garbage record book must be written in English, French or Spanish.

(6) Where the entries are also made in an official language of the flag State, then if there is a discrepancy in, or a dispute concerning, the different language entries in the garbage record book, the official language of the flag State prevails.

(7) The master of a ship must sign each completed page of the garbage record book relating to the ship.

#### **Exemptions from regulations 33 and 34**

**35.** The Secretary of State may grant an exemption in writing from one or more of the requirements of regulations 33 and 34 in respect of a ship to which this regulation applies.

## **PART 7**

### **Inspections, Detentions and Offences**

#### **Inspection of ships**

**36.—**(1) In so far as sections 258 and 259 of the 1995 Act<sup>(16)</sup> (powers to inspect ships and their equipment, and powers of inspectors in relation to premises and ships) apply in relation to a ship to which any of these Regulations apply, for the purposes of checking compliance with these Regulations those sections have effect subject to the following modifications.

(2) The power in those sections to inspect a ship and its equipment, any part of the ship, any articles on board and any document carried in the ship, is limited to—

- (a) verifying whether a Sewage Certificate has been issued in respect of the ship and is still valid,
- (b) verifying whether documentation referred to in regulation 19(2) (“appropriate documentation”) has been issued in respect of the ship and is still valid,
- (c) investigating any operation regulated by these Regulations, if there are clear grounds for believing that the master or the crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage or garbage, as the case may be,
- (d) verifying whether the ship has discharged any sewage or disposed of any garbage in violation of these Regulations, or
- (e) inspecting the garbage record book kept aboard the ship,

except where there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the Sewage Certificate or other appropriate documentation referred to in sub-paragraph (a) or (b).

(3) The power in those sections to go on board a ship may only be exercised if the ship in question is in—

- (a) a port in the United Kingdom, in so far as the power is exercised to investigate an operation relating to garbage, or
- (b) a port or offshore terminal in the United Kingdom in any other case.

(4) Where the ship is inspected for the purposes of paragraph (2)(d) and is not a United Kingdom ship, the person exercising the powers of inspection must ensure that the report of the inspection is sent to—

- (a) the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State, and

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<sup>(16)</sup> Section 258 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1, paragraph 4.

- (b) any other Party to the Convention who requested the inspection.
- (5) Where the garbage record book is inspected under paragraph (2)(e), the person exercising the power of inspection may—
  - (a) make a copy of an entry in that book, and
  - (b) require the master of the ship to certify that the copy is a true copy of such an entry.
- (6) That certified copy is to be admissible in any judicial proceedings as evidence of the facts stated in it.

### **Investigation of alleged violations by United Kingdom ships**

- 37.** Upon receiving evidence that a United Kingdom ship has discharged any sewage or disposed of any garbage in violation of these Regulations the Secretary of State must—
- (a) cause the matter to be investigated,
  - (b) inform the IMO of the action taken, and
  - (c) where another State has reported the violation, inform that State of the action taken.

### **General provisions on detention**

- 38.—**(1) Subject to paragraph (2), where regulation 16(1) has effect in relation to a ship, or a surveyor of ships has clear grounds for believing that—
- (a) a Sewage Certificate is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid,
  - (b) documentation referred to in regulation 19(2) (“appropriate documentation”) is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid,
  - (c) the condition of a ship or its equipment does not correspond substantially with the particulars of that Certificate or other appropriate documentation,
  - (d) the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage,
  - (e) the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by garbage, or
  - (f) an offence under regulation 42(1) is being committed in respect of a ship,

the ship is liable to be detained until a surveyor of ships is satisfied that it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) A person having powers to detain a ship may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) Where a surveyor of ships has clear grounds for believing that an offence under regulation 42(1)(e) or (f) has been committed in respect of a ship, the ship is liable to be detained.

(4) The power under this regulation to detain a ship may only be exercised if the ship in question is in—

- (a) a port in the United Kingdom, in the case of paragraph (1)(e), or
- (b) a port or offshore terminal in the United Kingdom, in any other case.

(5) Section 284 of the 1995 Act<sup>(17)</sup> (enforcing detention of a ship) applies where a ship is liable to be detained under the preceding provisions of this regulation as if—

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<sup>(17)</sup> Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1.

- (a) references to detention of a ship under the Act were references to detention of the ship in question under the preceding provisions of this regulation, and
  - (b) subsection (7) were omitted.
- (6) Where a ship is liable to be detained under the preceding provisions of this regulation, the person detaining the ship must serve on the master of the ship a detention notice which—
- (a) states the grounds for the detention, and
  - (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the 1995 Act.
- (7) Where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.
- (8) Where a ship is detained under paragraph (3), a person having power to detain the ship must, at the request of the owner, master, demise charterer or manager, immediately release the ship—
- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the ship is detained;
  - (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
  - (c) if either—
    - (i) the sum of £30,000 is paid to the Secretary of State by way of security, or
    - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,by or on behalf of the owner, manager, demise charterer or master;
  - (d) where the owner, manager, demise charterer or master is convicted of an offence under that regulation, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
  - (e) the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982(18), and any bond or other financial security ordered by such court or tribunal is posted.
- (9) The Secretary of State must repay any sum paid in pursuance of paragraph (8)(c) or release any security so given—
- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the sum is paid; or
  - (b) if proceedings for that offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (10) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (8)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 42(1)(e) or (f), the sum so paid or the amount made available under the security must be applied as follows—
- (a) first in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
  - (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.



(11) Section 145 of the 1995 Act<sup>(19)</sup> (interpretation of section 144) applies for the purposes of paragraphs (8) to (10), but as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
- (b) references to an offence under section 131 were references to an offence under regulation 42(1)(e) or (f).

### **Power for harbour master to detain**

**39.**—(1) Where the harbour master of a harbour in the United Kingdom has clear grounds for believing that an offence has been committed—

- (a) under regulation 42(1)(e) or (f) by the discharge from a ship of sewage into the waters of the harbour, or
- (b) under regulation 42(1)(e) or (f) by the disposal from a ship of garbage into the waters of the harbour,

the harbour master may detain the ship.

(2) Section 144(2) and (3) of the 1995 Act (harbour master's power of detention of ships for certain offences) applies to a detention under paragraph (1) as it applies to a detention under section 144(1) of the 1995 Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention, and
- (b) requires the terms of the notice to be complied with until the ship is released by the harbour authority.

(4) Where a ship is detained under paragraph (2), the harbour master must immediately release the ship—

- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
- (c) if either—
  - (i) the sum of £30,000 is paid to the harbour authority by way of security, or
  - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than £30,000 is given to the harbour authority,by or on behalf of the owner, manager, demise charterer or master;
- (d) where the owner, manager, demise charterer or master is convicted of an offence under that regulation, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982<sup>(20)</sup>, and any bond or other financial security ordered by such court or tribunal is posted.

(5) The harbour authority must repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—

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<sup>(19)</sup> Section 145 was amended by the Criminal Justice Act 2003 (c.44), Schedule 36.

<sup>(20)</sup> Cmnd. 8941.

- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the sum is paid; or
  - (b) if proceedings for that offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 42(1)(e) or (f), the sum so paid or the amount made available under the security must be applied as follows—
- (a) first in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
  - (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.
- (7) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if—
- (a) references to the master or owner or the ship were references to the owner, manager, demise charterer or master; and
  - (b) references to an offence under section 131 were references to an offence under regulation 42(1)(e) or (f).

#### **Duty of harbour master to report deficient ships**

**40.** If the harbour master of a harbour in the United Kingdom has reason to believe that a ship is about to enter or leave the harbour and does not comply with the requirements of these Regulations, the harbour master must immediately report the matter to the Secretary of State.

#### **Right of appeal and compensation**

**41.**—(1) Regulations 11 and 12 of the 1995 Regulations (right of appeal and compensation) apply in relation to the exercise of the power of detention under these Regulations as they apply in relation to the exercise of those powers under Part 1 of those Regulations, subject to the modifications referred to in paragraph (2).

- (2) The modifications are—
- (a) references to “inspector” are to be taken as references to the authority detaining the ship, or the harbour master, as the case may be,
  - (b) references to “access refusal notice”, “service of an access refusal notice” and “refusal of access” are omitted, and
  - (c) in regulation 12(2) after “State” there is added “, except where the ship is detained by a harbour master, in which case any compensation awarded under this section shall be payable by the harbour authority.”.

#### **Offences**

- 42.**—(1) Any contravention of—
- (a) regulation 7(1), 8(1), 9(1), (2) or (3), 10(2), 18(4) or 19(1) or (2) is an offence by the owner and the master of the ship,
  - (b) regulation 16(5) is an offence by the owner of the ship,
  - (c) regulation 18(3) is an offence by the person in question,
  - (d) regulation 21(1) or (2) or 22 is an offence by the owner of the ship,

- (e) regulation 23(1), 26, 27, 28, or 29, in the case of a relevant platform, is an offence by the owner and manager of the platform,
  - (f) regulation 23(1), 26, 27, 28, or 29 in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship,
  - (g) regulation 30, 31, 32(1), 33(1) or (3), or 34(1), (2), (3), (4) or (5), in the case of a relevant platform, is an offence by the owner and manager of the platform,
  - (h) regulation 30, 31, 32(1), 33(1) or (3), or 34(1), (2), (3), (4) or (5), in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship,
  - (i) regulation 32(3) or 34(7) in the case of a relevant platform, is an offence by the manager of the platform,
  - (j) regulation 32(3) or 34(7) in the case of a ship other than a relevant platform, by the master of the ship,
  - (k) regulation 33(4) is an offence by the owner of the ship,
  - (l) regulation 34(1) or (2) in the case of a relevant platform, is an offence by the owner and manager of the platform, and the officer in charge of the discharge operation or incineration,
  - (m) regulation 34(1) or (2) in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship, and the officer in charge of the discharge operation or incineration.
- (2) Subject to paragraph (3), an offence under paragraph (1) is punishable—
- (a) on summary conviction by a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment by a fine.

(3) A contravention referred to in paragraph (1)(e) or (f) is specified for the purposes of article 6 of the (Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006<sup>(21)</sup> (which applies section 131(3) of the 1995 Act<sup>(22)</sup> (penalties for certain pollution offences) subject to a modification).

(4) Where an offence under this regulation is committed, or would be committed save for the operation of regulation 47(1), by any person due to the act or default of some other person, that other person is also guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first mentioned person.

### **Service of documents on foreign companies**

**43.** Section 143(6) of the 1995 Act (service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 131 of the 1995 Act) applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under section 131, as if—

- (a) the reference to section 131 were to these Regulations,
- (b) in the case of an offence in respect of a ship other than a relevant platform, the reference to the owner were to the owner, manager or demise charterer, and
- (c) in the case of an offence in respect of a relevant platform, the reference to—
  - (i) the owner of the ship were to the owner of the platform,
  - (ii) the master of the ship were to the manager of the platform.

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<sup>(21)</sup> S.I. 2006/2950.

<sup>(22)</sup> 1995 c.21; section 131 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 7(1).

### **Enforcement and application of fines**

**44.** Section 146 of the 1995 Act (enforcement and application of fines) applies to any fine for an offence under regulation 42(1)(e) to (m), as if—

- (a) in subsection (1) of that section the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 were a reference to proceedings against the owner, master, demise charterer or manager for an offence under regulation 42(1)(e) to (m); and
- (b) in subsection (2) of that section, the reference to an offence under section 131 were a reference to an offence under regulation 42(1)(e) or (f).

### **Restriction on jurisdiction over offences outside United Kingdom limits**

**45.—**(1) Where there has been an offence under regulation 42(1)(e) or (f) in respect of a ship which is not a United Kingdom ship in the internal waters, territorial sea or exclusive economic zone of a foreign State, proceedings in respect of that offence must not be instituted in the United Kingdom unless—

- (a) that foreign State, the flag State of the ship in question or a State polluted or threatened with pollution as a result of the offence requests that such proceeding be taken; or
- (b) the offence has caused or is likely to cause pollution in controlled waters or United Kingdom waters.

(2) Where such proceedings have been instituted but not concluded, they must be suspended upon the request of the foreign State in question and the Secretary of State must send all the evidence, court records and documents relating to the case, together with any sum paid or security given, to the foreign State.

(3) In this regulation, “foreign State” means a State other than the United Kingdom.

### **Suspension of proceedings at flag state request**

**46.—**(1) This regulation applies to proceedings instituted but not concluded in the United Kingdom in respect of a contravention of a provision in Part 4, 5 or 6 committed outside United Kingdom waters by a ship other than a United Kingdom ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the court is satisfied that the flag State of the ship in question has instituted proceedings corresponding to the proceedings in the United Kingdom in respect of the contravention of that provision within six months of the institution of the proceedings by the United Kingdom.

(3) Paragraph (2) does not apply—

- (a) where the contravention of these Regulations resulted in serious pollution of the United Kingdom; or
- (b) the Secretary of State certifies that the flag State in question has repeatedly disregarded its obligations to enforce effectively the requirements of the Convention in respect of its ships.

(4) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings must be terminated.

### **Defences**

**47.—**(1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that that person took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings in respect of a ship for an offence under regulation 42(1)(e) or (f), it is a defence for the person charged to prove that—

- (a) the ship was not a United Kingdom ship;
  - (b) the discharge or disposal took place in waters which were neither controlled waters nor United Kingdom waters; and
  - (c) the ship was in a port in the United Kingdom at the time of the institution of the proceedings by reason only of stress of weather or any other reason beyond the control of the master or owner or any charterer or manager of the ship.
- (3) Without prejudice to paragraph (1), in any proceedings for an offence under regulation 42(1) (e) or (f) in relation to a discharge of sewage, it is a defence for the person charged to prove that—
- (a) that the discharge took place in waters under the jurisdiction of a State other than the United Kingdom; and
  - (b) the discharge was in accordance with such less stringent requirements as were imposed by that State.

Signed by authority of the Secretary of State

18th December 2008

*Jim Fitzpatrick*  
Parliamentary Under Secretary of State  
Department for Transport