
STATUTORY INSTRUMENTS

2010 No. 1228

The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010.

(2) Subject to paragraph (3), regulations 3(2), 4, 5 and 7(2), and regulation 7(1) insofar as it relates to any of those provisions, come into force on 1st April 2011.

(3) Where a harbour authority has made an application under regulation 5(1)(b) within two months starting on 1st October 2010, the provisions mentioned in paragraph (2) do not come into force in respect of the harbour authority waters regulated or managed by that harbour authority until—

- (a) 1st April 2011, or
- (b) the making of the licence decision,

whichever is the later.

(4) The other provisions of these Regulations come into force on 1st October 2010.

Interpretation

2. In these Regulations—

“application” means, except as provided otherwise by regulation 6(4) and in regulation 7(3), an application for an oil transfer licence submitted by a harbour authority to the Secretary of State under regulation 5(1);

“bunkering operation” means the transfer between ships of a substance consisting wholly or mainly of oil for consumption by the engines of the ship receiving the substance;

“cargo transfer” means the transfer between two ships of a substance consisting wholly or mainly of oil which is transported by either or both of the ships for reward, but does not include—

- (a) a bunkering operation, or
- (b) a transfer of—
 - (i) cargo residues, or
 - (ii) ship-generated waste,

as defined by regulation 2 of the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003(1);

“consolidation operation” means a cargo transfer carried out—

- (a) in harbour authority waters,

(1) [S.I. 2003/1809](#); the definition of “ship-generated waste” was amended by regulation 2(2)(b) of the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) (Amendment) Regulations 2009 ([SI 2009/1176](#)).

- (b) between two ships which normally carry out bunkering operations in the harbour authority waters in which the operation takes place,
- (c) with the prior consent of the harbour authority which regulates or manages the waters in which the operation takes place, and
- (d) for the purpose of rationalising cargo capacity;

“the consultation bodies” means—

- (a) such of—
 - (i) Natural England,
 - (ii) the Countryside Council for Wales,
 - (iii) Scottish Natural Heritage, and
 - (iv) the Council for Nature Conservation and the Countryside,
 as the Secretary of State considers likely to have an interest in an application by reason of their responsibilities, and
- (b) any authority or other body the Secretary of State considers likely to have an interest in an application (whether by virtue of having specific environmental responsibilities under any enactment or otherwise);

“European site” means a “European site” as defined in regulation 8 of the Conservation of Habitats and Species Regulations 2010(2) and a “European offshore marine site” as defined in regulation 15 of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007(3);

“general lighthouse authority” has the meaning given to it in section 193 of the Merchant Shipping Act 1995(4);

“the Habitats Directive” means Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora(5);

“harbour authority” has the meaning given to it in section 57(1) of the Harbours Act 1964(6);

“harbour authority waters” means waters regulated or managed by a harbour authority, excluding any areas outside a harbour over which a harbour authority exercises control in accordance with the Pilotage Act 1987(7) by virtue of an order of the Secretary of State made under section 1(3)(a) of that Act;

“licence decision” means the decision of the Secretary of State whether to grant an oil transfer licence or an amended oil transfer licence and, if so, as to the terms on which to do so;

“lightening operation” means a cargo transfer carried out—

- (a) in harbour authority waters,
- (b) at the direction of a harbour authority which regulates or manages the waters in which the operation takes place, and
- (c) in order to reduce the draught of a ship, enabling it to move to shallower waters regulated or managed by that harbour authority;

“Natura 2000” has the meaning given to it by regulation 2(1) of the Conservation (Natural Habitats, &c) Regulations 1994(8);

“offshore installation” means—

(2) S.I. 2010/490.

(3) S.I. 2007/1842.

(4) 1995 c.21.

(5) O.J. No. L 206, 22.7.92, p.7.

(6) 1964 c.40.

(7) 1987 c.21.

(8) S.I. 1994/2716.

- (a) an offshore installation within the meaning of section 44 of the Petroleum Act 1998⁽⁹⁾, which is not a ship, or
- (b) a renewable energy installation within the meaning of section 104 of the Energy Act 2004⁽¹⁰⁾;

“oil” has the meaning given to it by section 151 of the Merchant Shipping Act 1995; and

“oil transfer licence” means a licence granted to a harbour authority by the Secretary of State, enabling the harbour authority to authorise cargo transfers—

- (a) of a substance or substances specified in the licence,
- (b) in a specified location or locations, and
- (c) subject to any conditions specified in the licence.

Prohibited transfers

3.—(1) Subject to paragraph (3) and regulation 6, a cargo transfer or bunkering operation must not be carried out in United Kingdom waters unless the ships carrying out the cargo transfer or bunkering operation are within harbour authority waters.

(2) Subject to paragraph (3) and (4) and regulation 8, a cargo transfer must not be carried out in harbour authority waters, except in accordance with an authorisation of the harbour authority which regulates or manages the waters in which the cargo transfer is carried out.

(3) Paragraphs (1) and (2) do not apply to a cargo transfer or bunkering operation—

- (a) between a ship and an offshore installation;
- (b) to or from a warship, naval auxiliary ship or other ship owned or operated by a State and used solely, for the time being, on government non-commercial service; or
- (c) carried out by or on behalf of a general lighthouse authority.

(4) Paragraph (2) does not apply to a cargo transfer which is—

- (a) a lightening operation; or
- (b) a consolidation operation.

Authorisation of cargo transfers

4.—(1) A harbour authority may only authorise a cargo transfer which is within the scope permitted by an oil transfer licence.

(2) The authorisation of a cargo transfer by a harbour authority is valid only if given—

- (a) on receipt of a written application for authorisation,
- (b) in advance of the cargo transfer, and
- (c) in writing.

Oil transfer licences

5.—(1) Before a harbour authority may obtain an oil transfer licence the harbour authority must—

- (a) determine, in accordance with the procedure in Schedule 1, whether the cargo transfers to be authorised pursuant to the licence would be likely to have a significant effect on any European site; and

⁽⁹⁾ 1998 c.17.

⁽¹⁰⁾ 2004 c.20.

- (b) apply for the licence to the Secretary of State in accordance with the procedure in Schedule 2.
- (2) In harbour authority waters where—
 - (a) an oil transfer licence has effect, and
 - (b) the harbour authority which regulates or manages those harbour authority waters becomes aware of circumstances which render the information provided in the application inaccurate to what is or may be a material extent,the harbour authority must apply to the Secretary of State for an amended oil transfer licence.
- (3) The harbour authority must make the application under paragraph (2) within 3 months of becoming aware of the circumstances referred to in that paragraph.
- (4) A harbour authority applying for an amended oil transfer licence must use the procedure in Schedules 1 and 2, and for this purpose—
 - (a) references in Schedules 1 and 2 to the oil transfer licence are to be taken as references to the amended oil transfer licence;
 - (b) references in Schedules 1 and 2 to the application are to be taken as references to the application for the amended oil transfer licence; and
 - (c) references in Schedules 1 and 2 to the licence decision are to be taken as references to the decision whether to issue an amended oil transfer licence.
- (5) Where a harbour authority applies for an amended oil transfer licence under paragraph (2) the Secretary of State may—
 - (a) issue an amended oil transfer licence in such terms as the Secretary of State considers appropriate;
 - (b) decline to issue an amended oil transfer licence, leaving the existing oil transfer licence to continue in effect; or
 - (c) decline to issue an amended oil transfer licence and revoke the existing oil transfer licence.

Exemptions

- 6.—**(1) Subject to paragraph (3), the Secretary of State may exempt a cargo transfer or bunkering operation from the provisions of regulation 3(1).
- (2) The Secretary of State may make any such exemption subject to such conditions as the Secretary of State considers appropriate.
- (3) Where the Secretary of State considers that a cargo transfer or bunkering operation is likely to have a significant effect on a European site, the Secretary of State must, before granting an exemption under paragraph (1), require the person applying for the exemption to provide sufficient information to enable the Secretary of State to carry out an appropriate assessment of the implications of the cargo transfer or bunkering operation for the European site, in view of the conservation objectives of the site.
- (4) The procedure for the assessment referred to in paragraph (3) is the procedure for assessment of an application for an oil transfer licence in Schedules 1 and 2, and for this purpose—
 - (a) references in Schedules 1 and 2 to the harbour authority are to be taken as references to the person who applied for the exemption;
 - (b) references in Schedules 1 and 2 to the application are to be taken as references to the application for the exemption;
 - (c) references in Schedules 1 and 2 to the oil transfer licence are to be taken as references to the proposed exempt cargo transfer or bunkering operation; and

- (d) references in Schedules 1 and 2 to the licence decision are to be taken as references to the decision whether to grant the exemption.

Offences

7.—(1) If a cargo transfer or bunkering operation is carried out in contravention of these Regulations, the owner, the manager and the master of each ship carrying out the cargo transfer or bunkering operation is guilty of an offence.

(2) A harbour authority which—

- (a) authorises a cargo transfer without an oil transfer licence;
- (b) fails to take all reasonable steps to prevent a cargo transfer which is neither—
 - (i) authorised under an oil transfer licence, nor
 - (ii) exempted under regulation 3(3) or (4); or
- (c) knowingly or recklessly provides false information in an application,

is guilty of an offence.

(3) A person who knowingly or recklessly provides false information to the Secretary of State in relation to an application for an exemption under regulation 6 is guilty of an offence.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding £25,000 and on conviction on indictment to a fine.

(5) Where a person is charged with an offence under paragraph (1), (2)(a) or (2)(b), it is a defence for the person charged to prove that the cargo transfer or bunkering operation was for one or more of the following purposes—

- (a) securing the safety of any ship;
- (b) preventing damage to any ship or cargo;
- (c) saving life;
- (d) preventing pollution,

unless the court is satisfied that the cargo transfer or bunkering operation was not necessary for any of those purposes and was not a reasonable step to take in the circumstances.

Transitional provision

8. Where at least six cargo transfers have been carried out within the same harbour authority waters during the twelve months prior to 1st October 2010, regulation 3(2) does not apply in respect of cargo transfers in those harbour authority waters until either—

- (a) a licence decision has been made in respect of that harbour authority's application; or
- (b) the expiry of two years starting on 1st October 2010,

whichever is sooner.

Signed by authority of the Secretary of State for Transport

8th April 2010

Paul Clark
Parliamentary Under Secretary of State
Department for Transport