

*This Statutory Instrument has been made partly in consequence of defects in S.I. 2008/3257 and is being issued free of charge to all known recipients of that Statutory Instrument.*

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STATUTORY INSTRUMENTS

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**2010 No. 897**

**MARINE POLLUTION**

**The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships)(Amendment) Regulations 2010**

<i>Made</i>	- - - -	<i>21st March 2010</i>
<i>Laid before Parliament</i>		<i>24th March 2010</i>
<i>Coming into force</i>	- -	<i>1st May 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by articles 3, 4 and 5 of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006(a) and section 128(5) and (6) of the Merchant Shipping Act 1995(b):

**Citation and commencement**

1.—(1) These Regulations may be cited as the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships)(Amendment) Regulations 2010.

(2) These Regulations come into force on 1st May 2010.

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

2.—(1) The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008(c) are amended as follows.

(2) In paragraph (1) of regulation 2 (interpretation), in the definition of “short international voyage”—

(a) omit paragraph (a), and

(b) for “600 nautical miles” in both places substitute “1,000 nautical miles”.

(3) In regulation 2(2)(c)(iv), for “sub-subparagraph” substitute “paragraph”.

(4) In paragraph (1) of regulation 6 (application), for “(16)” substitute “(17)”.

(5) For paragraph (4) of regulation 6, substitute—

“(4) Regulation 16(1) and (2) also applies to a ship which—

(a) is not a United Kingdom ship,

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(a) S.I. 2006/2950.

(b) 1995 c.21; there are amendments to section 128 which are not relevant to these Regulations. In relation to section 128(6), these Regulations are “Regulations made by virtue of paragraph (f) of subsection (4)” of section 128, since they are made under S.I. 2006/2950 which, pursuant to section 128(4)(f), authorises the making of regulations.

(c) S.I. 2008/3257.

- (b) is engaged in international voyages,
- (c) is of 400 GT or above, or certified to carry more than 15 persons, and
- (d) is—
  - (i) in a port in the United Kingdom,
  - (ii) at an offshore terminal in United Kingdom waters or controlled waters, or
  - (iii) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit;

and regulation 16(6) has effect in relation to the application of regulation 16(1) and (2) to such a ship.”

(6) For paragraph (1) of regulation 16 (procedure to be adopted when a ship is deficient), substitute—

“(1) This regulation applies where a surveyor determines that—

- (a) the condition of a ship 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 is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.”

(7) For paragraph (6) of regulation 16, substitute—

“(6) In the application of paragraphs (1) and (2) to a ship of the kind specified in regulation 6(4)—

- (a) “the Certifying Authority” means 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) “surveyor” includes a person authorised by that Government to survey the ship.”

(8) In regulation 17 (arbitration)—

- (a) at the beginning of paragraph (2), insert “Subject to paragraph (2A),”,
- (b) after paragraph (2), insert—

“(2A) In default of agreement between the applicant and the responsible person, the arbitrator is such person as may be appointed by the President or Vice President of the Chartered Institute of Arbitrators following a request made by—

- (a) one party, after giving written notice to the other party, or
- (b) the parties jointly;

but this paragraph does not apply in relation to Scotland.”, and

(c) in paragraph (7)(b), for paragraphs (i) to (iii) substitute—

- “(i) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis<sup>(a)</sup>;
- (ii) a person who is an advocate or solicitor in Scotland of at least 7 years’ standing; or
- (iii) a person who is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland of at least 7 years’ standing;”.

(9) In paragraph (1) of regulation 31 (placards on ships), for “the regulation” substitute “this regulation”.

(10) In paragraph (3) of regulation 36 (inspection of ships)—

- (a) at the end of the full out part, omit “is in”,
- (b) at the beginning of sub-paragraph (a), insert “is in”, and
- (c) for sub-paragraph (b), substitute—

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(a) The meaning of “a person who satisfies the judicial-appointment eligibility condition on an N-year basis” (where N is the number stated in the provision) is defined in section 50 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

“(b) in any other case, is—

- (i) in a port in the United Kingdom,
- (ii) at an offshore terminal in United Kingdom waters or controlled waters,
- (iii) a fixed platform in United Kingdom waters or controlled waters, or
- (iv) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.”.

(11) In paragraph (1) of regulation 38 (general provisions on detention), for “regulation 16(1) has effect” substitute “a determination is made of the kind mentioned in regulation 16(1)”.

(12) In paragraph (4) of regulation 38—

- (a) at the end of the full out part, omit “is in”,
- (b) at the beginning of sub-paragraph (a), insert “is in”, and
- (c) for sub-paragraph (b), substitute—

“(b) in any other case, is—

- (i) in a port in the United Kingdom,
- (ii) at an offshore terminal in United Kingdom waters or controlled waters,
- (iii) a fixed platform in United Kingdom waters or controlled waters, or
- (iv) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.”.

(13) In paragraph (1) of regulation 42 (offences)—

- (a) in sub-paragraph (a), after “10(2),” insert “15(5),”; and
- (b) in sub-paragraphs (g) and (h), for “34(1), (2), (3),” substitute “34(3),”.

(14) In paragraph (a) of regulation 44 (enforcement and application of fines), for “or manager” substitute “, manager or officer in charge of the discharge operation or incineration”.

(15) At the beginning of paragraph (3)(a) of regulation 47 (defences), omit “that”.

Signed by authority of the Secretary of State for Transport

*Paul Clark*  
Parliamentary Under Secretary of State  
Department for Transport

21st March 2010

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 (“the 2008 Regulations”) by correcting some minor errors, and making some other minor adjustments.

*Regulation 2(2)* amends the definition of “short international voyage”. This expression occurs only in regulation 15(6), which provides for a Certifying Authority to be able to extend the period of validity of a Sewage Certificate in respect of a ship engaged solely on short international voyages.

*Regulation 2(3), (4), (9) and (15)* corrects a number of minor errors.

*Regulation 2(5)* amends regulation 6(4), so as to make clear that the procedure relating to deficient ships applies not only to ships in United Kingdom ports, but also to ships which are at offshore terminals situated in United Kingdom waters (i.e. the United Kingdom’s territorial sea) or in controlled waters (i.e. the defined zone beyond the territorial sea over which the United Kingdom has jurisdiction). This amendment also makes clear that the procedure can apply to a ship which is a floating platform in United Kingdom waters or controlled waters. Similarly *paragraphs (10) and (12) of regulation 2* amend regulations 36 and 38, so that it is clear that inspection and detention may take place in relation to ships which are at offshore terminals situated in United Kingdom waters or in controlled waters, and in relation to ships which are fixed or floating platforms in such waters.

*Regulation 2(6) and (7)* clarifies the wording, but does not change any of the substance, of the provision relating to the procedure to be adopted when a ship is deficient. *Regulation 2(11)* makes a consequential amendment to regulation 38(1).

*Regulation 2(8)(a) and (b)* provides for the appointment of an arbitrator in cases where an applicant for a survey is dissatisfied with the outcome of the survey, and the parties cannot reach agreement between themselves on the appointment of an arbitrator. However, this does not apply in relation to Scotland, for which regulation 17(5)(b) of the 2008 Regulations already makes provision.

*Regulation 2(8)(c)* amends the definition of a “qualified person”, for the purposes of who can be an arbitrator. This amended definition now accords with sections 96(7) and 264(6) of the Merchant Shipping Act 1995 (c.21), as amended by paragraph 26 of Part 1 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c.15), and paragraph 5 of Part 3 of Schedule 11 to the Constitutional Reform Act 2005 (c.4).

*Regulation 2(13)(a)* provides a sanction for contravention of regulation 15(5). Regulation 15(5) prohibits a ship from leaving its port of survey before a new Sewage Certificate has been issued, where the period of validity of the previous Certificate has been extended.

*Regulation 2(13)(b)* deletes the references in regulation 42(1)(g) and (h) to paragraphs (1) and (2) of regulation 34. Those references overlapped with the references to those paragraphs in regulation 42(1)(l) and (m).

Regulation 44(a) of the 2008 Regulations relates to the application of section 146(1) of the Merchant Shipping Act 1995 to any fine for an offence under regulation 42(1)(e) to (m). In relation to England, Wales or Northern Ireland, section 146(1) enables a court to direct that in proceedings against the owner or master of a ship, the unpaid amount of a fine or costs or expenses may be levied by distress of the ship and its equipment. In relation to Scotland, a court may grant a warrant authorising the arrestment and sale of the ship and its equipment. Regulation 44(a) of the 2008 Regulations (as unamended) provides that the reference in section 146(1) to the owner or master is to apply as if it were to the owner, master, demise charterer or manager. As regulation 42(1)(l) and (m) creates offences which may be committed by an officer in charge of a

discharge operation or incineration, *regulation 2(14)* inserts a reference in regulation 44(a) to such an officer, in addition to the owner, master, demise charterer or manager.

An impact assessment was prepared for the 2008 Regulations, and a further impact assessment has been prepared for these amending Regulations. Copies of the further Impact Assessment may be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG. A copy has also been placed in the library of each House of Parliament. The further Impact Assessment is also annexed to the Explanatory Memorandum which is available alongside these Regulations on the OPSI website [www.opsi.gov.uk](http://www.opsi.gov.uk).

As this Statutory Instrument has been made partly in consequence of defects in the 2008 Regulations, it is being issued free of charge to all known recipients of those Regulations.

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£4.00