

2011 No. 2667

MERCHANT SHIPPING

The Merchant Shipping (Flag State Directive) Regulations 2011

Made - - - - *3rd November 2011*

Laid before Parliament *8th November 2011*

Coming into force - - *10th December 2011*

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to maritime transport.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Flag State Directive) Regulations 2011.

(2) These Regulations come into force on 10th December 2011.

Interpretation

2.—(1) In these Regulations—

“the 2004 Regulation” means Regulation (EC) No 789/2004 of the European Parliament and of the Council of 21st April 2004 on the transfer of cargo and passenger ships between registers within the Community and repealing Council Regulation (EEC) No 613/91(c);

“the Directive” means Directive 2009/21/EC of the European Parliament and of the Council of 23rd April 2009 on compliance with flag State requirements(d);

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

“United Kingdom ship” means a ship registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995(e).

(a) S.I. 1994/757.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) OJ No L 138, 30.4.2004, p19. This Regulation was amended by Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11th March 2009 (OJ No L 87, 31.3.2009, p109).

(d) OJ No L 131, 28.5.2009, p132.

(e) 1995 c.21.

(2) Subject to paragraph (1), expressions used in these Regulations and in the Directive have the same meaning as in the Directive.

Duty to ensure information is retained

3.—(1) The Secretary of State must ensure that the information referred to in Article 6 of the Directive concerning each United Kingdom ship—

- (a) is kept; and
- (b) can be readily accessed by the Secretary of State.

(2) The duty in paragraph (1) ends—

- (a) 12 months after the date on which the ship ceases to be a United Kingdom ship; or
- (b) if sooner, on the date on which the information is provided to a flag State under regulation 4(2) or under Article 4(3) of the 2004 Regulation.

Duty to provide information

4.—(1) This regulation applies to a ship which was a United Kingdom ship but which is now entitled to fly the flag of another State.

(2) If the flag State requests it, the Secretary of State must promptly provide details of outstanding deficiencies and any other relevant safety-related information concerning the ship.

(3) Paragraph (2) does not apply to—

- (a) information which is not readily accessible by the Secretary of State;
- (b) information which the Secretary of State is required to disclose to that State under Article 4(3) of the 2004 Regulation;
- (c) information within regulation 12(1) or (2) of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005(a); or
- (d) information the disclosure of which would be injurious to the public interest.

Review

5.—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulations 3 and 4;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by those regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

(a) S.I. 2005/881.

Signed by authority of the Secretary of State for Transport

Mike Penning
Parliamentary Under Secretary of State
Department for Transport

3rd November 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement provisions in Directive 2009/21/EC of the European Parliament and of the Council of 23rd April 2009 on compliance with flag State requirements (OJ No L 131, 28.5.2009, p 132).

Regulation 3 implements Article 6 of the Directive and requires the Secretary of State to ensure that certain information in respect of United Kingdom ships is kept and remains readily accessible.

Regulation 4 implements Article 4(2) of the Directive and requires the Secretary of State to provide information relating to a former United Kingdom ship upon request from the State whose flag the ship is now entitled to fly.

Regulation 5 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An impact assessment has not been produced for this instrument as no impact on the private, voluntary or public sector is foreseen.

An Explanatory Memorandum and a Transposition Note are available alongside the instrument on the website www.legislation.gov.uk.

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STATUTORY INSTRUMENTS

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£4.00

E1740 11/2011 111740T 19585

ISBN 978-0-11-151666-9



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