

2012 No. 2267

MERCHANT SHIPPING

**The Merchant Shipping (Compulsory Insurance of Shipowners
for Maritime Claims) Regulations 2012**

Made - - - - *3rd September 2012*

Laid before Parliament *6th September 2012*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and section 192A of the Merchant Shipping Act 1995(b).

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

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Compulsory Insurance of Shipowners for Maritime Claims) Regulations 2012.

(2) These Regulations come into force on 5th October 2012 except for regulation 3(3)(b) which comes into force on the date of commencement of Part 9A and Schedule 11ZA(d) of the Merchant Shipping Act 1995.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

“the Directive” means Directive 2009/20/EC of the European Parliament and of the Council of 23rd April 2009 on the insurance of shipowners for maritime claims(e);

“United Kingdom ship” means a ship registered in the United Kingdom under Part 2 of the Act.

(a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by 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).

(b) 1995 c.21; section 192A was inserted by section 16 of the Merchant Shipping and Maritime Security Act 1997 (c.28).

(c) S.I. 1994/757.

(d) Part 9A and Schedule 11 were inserted by the Wreck Removal Convention Act 2011 (c.8).

(e) O.J. L. 131, 28.5.2009, p.128.

(2) Expressions used in these Regulations and in the Directive have the same meaning as in the Directive.

Application

3.—(1) These Regulations apply to seagoing ships of 300 gross tonnes or more.

(2) These Regulations do not apply to warships, auxiliary warships or other State owned or operated ships used for a non commercial public service.

(3) Regulation 4 is without prejudice to the provisions of—

- (a) sections 163 and 163A of the Act^(a);
- (b) Part 9A of, and Schedule 11ZA to, the Act;
- (c) Regulation (EC) No 392/2009 of the European Union and of the Council of 23rd April 2009 on the liability of carriers of passengers by sea in the event of accidents^(b); and
- (d) the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998^(c).

Insurance

4.—(1) A United Kingdom ship may not enter or leave a port in the United Kingdom or elsewhere unless the shipowner has insurance in respect of that ship.

(2) A ship which is not a United Kingdom ship may not enter or leave a port in the United Kingdom unless the shipowner has insurance in respect of that ship.

(3) Subject to paragraphs (5) and (6) the insurance must cover at least maritime claims subject to limitation under the 1996 Convention.

(4) The amount of insurance for each and every ship per incident must be at least equal to the relevant maximum amount for the limitation of liability as laid down in the 1996 Convention.

(5) The amount of the insurance must cover maritime claims in respect of loss resulting from delay in the carriage by sea of cargo, but only where—

- (a) the provisions of the Hague Visby Rules are incorporated into the contract for the carriage of goods, and
- (b) that contract imposes liability for loss resulting from delay in the carriage by sea of cargo.

(6) The insurance must cover maritime claims in respect of loss resulting from delay in the carriage by sea of passengers or their luggage, but only where the delay is consequent upon—

- (a) an incident involving a collision, stranding, explosion, fire or other cause affecting the physical condition of the ship so as to render it incapable of safe navigation to the intended destination of the passengers and their luggage; or
- (b) any other incident involving a threat to the life, health or safety of passengers.

(7) In this regulation the “Hague Visby Rules” means the International Convention for the Unification of certain rules of law relating to bills of lading signed at Brussels on 25th August 1924^(d), as amended by the Protocol signed at Brussels on 23rd February 1968^(e) and by the Protocol signed at Brussels on 21st December 1979^(f).

(a) S.I. 1997/1820 defines “oil” for the purposes of section 163 of the Act; section 163(5) was amended by S.I. 2006/1244. Section 163A was inserted by S.I. 2006/1244 and sub-section (8) was amended by S.I. 2009/1941.
(b) O.J. L. 131. 28.5.2009, p.24. The Regulation comes into effect on 31st December 2012.
(c) S.I. 1998/209.
(d) Cmnd 3806. The Hague Visby Rules are given effect by the Carriage of Goods by Sea Act 1971 (c.19), as amended by the Merchant Shipping Act 1995 (c.21), section 314(2) and Schedule 13.
(e) Cmnd 6944.
(f) Cmnd 9197.

Insurance other than contracts of insurance

5. Where, to comply with regulation 4, a shipowner relies on insurance consisting of proved self insurance or financial security offering similar conditions of cover in respect of a ship—

- (a) the shipowner must provide documentary evidence of the existence of that insurance to the Secretary of State, and
- (b) that ship must not enter or leave a port in the United Kingdom unless the Secretary of State has confirmed in writing that the arrangements for self insurance or financial security offering similar conditions of cover are adequate.

Insurance certificates and documentation

6.—(1) The existence of the insurance referred to in regulation 4 is to be proved by—

- (a) one or more certificates issued by the insurance provider; or
- (b) where regulation 5, applies written confirmation given by the Secretary of State.

(2) The documentation referred to in paragraph (1)(a) must include the following information—

- (a) name of ship, its International Maritime Organisation number and port of registry;
- (b) shipowner's name and principal place of business;
- (c) type and duration of the insurance;
- (d) name and principal place of business of the provider of the insurance and, where appropriate, the place of business where the insurance is established.

(3) If the language used in the certificates is neither English nor French nor Spanish, the text must include a translation into one of those languages.

(4) The documentation referred to in paragraph (1) must be—

- (a) carried on board the ship; and
- (b) produced on demand by the master to—
 - (i) the Secretary of State or any proper officer^(a) where the ship is a United Kingdom ship; or
 - (ii) the Secretary of State in the case of any other ship.

Penalties

7.—(1) A shipowner is guilty of an offence if—

- (a) a ship belonging to the shipowner enters or leaves a port in contravention of regulation 4, or
- (b) anyone attempts to navigate that ship into or out of a port in contravention of that regulation.

(2) A shipowner guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment to a fine.

(3) A master who fails to comply with regulation 6(4) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Any document required or authorised by virtue of any statutory provision to be served on a foreign company for the purposes of the institution of (or otherwise in connection with the institution of) proceedings for an offence under regulation 4 against the company as shipowner is to be treated as served on the company if the document is served on the master of the ship.

(a) Proper officer is defined in section 313 of the Act.

(5) In this regulation “foreign company” means a company or body which is not one to which section 1139 of the Companies Act 2006(a) applies so as to authorise the service of the document in question.

Expulsion order

8. Where an EEA state has informed the Secretary of State that it has issued an expulsion order in respect of a ship in accordance with article 5.2 of the Directive, the Secretary of State must refuse that ship entry to any port in the United Kingdom until the shipowner produces to the Secretary of State the documentation referred to in regulation 6(1).

Power to detain

9.—(1) A ship may be detained if anyone attempts to navigate it out of a port in contravention of regulation 4.

(2) Section 284 of the Act (b) (which relates to the detention of a ship) has effect in relation to the ship, subject to the modification that for—

- (a) “this Act”, substitute “the Merchant Shipping (Compulsory Insurance of Shipowners for Maritime Claims) Regulations 2012”; and
- (b) “owner of a ship” substitute “shipowner”.

(3) An officer detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the reason for the detention; and
- (b) requires the ship to comply with the terms of the detention notice until it is released by a competent authority.

(4) Where a ship is detained which is not a United Kingdom ship the Secretary of State must immediately inform, in writing—

- (a) the ship’s flag state administration; or, if this is not possible,
- (b) the Consul of the State of the flag administration; or, in the Consul’s absence,
- (c) the nearest diplomatic representative of the State of the flag administration.

(5) The written information referred to in paragraph (4) must set out all the circumstances of the decision to detain the ship.

(6) Where paragraph (4) applies the Secretary of State must also notify all relevant—

- (a) nominated surveyors; or
- (b) recognised organisations;

responsible for the issue of classification certificates.

(7) In this regulation “competent authority” means any officer mentioned in section 284(1) of the Act.

Arbitration

10.—(1) Any question as to whether any of the matters specified in relation to a ship in a detention notice constituted a valid basis for the officer’s opinion must, if the master or shipowner so requires by a notice given to the officer within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by the arbitrator.

(2) Where a notice is given by the master or shipowner in accordance with paragraph (1), the giving of the notice does not suspend the operation of the detention notice.

(a) 2006 c.46.

(b) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1.

(3) The arbitrator may have regard to any matter not specified in the detention notice which appears to the arbitrator to be relevant as to whether the ship was or was not liable to be detained.

(4) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the officer's opinion, the arbitrator must—

- (a) cancel the detention notice; or
- (b) affirm it with such modifications as the arbitrator may in the circumstances think fit.

(5) In any case other than one described in paragraph (4) the arbitrator must affirm the detention notice in its original form.

(6) The decision of the arbitrator must include a finding whether there was or was not a valid basis for the detention of the ship.

(7) To be qualified for appointment as an arbitrator under this regulation a person must be—

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a person falling within paragraph (8); or
- (d) a person with special experience of shipping matters or of activities carried on in ports.

(8) For the purposes of paragraph (7)(c) a person falls within this subsection if that person—

- (a) satisfies the judicial appointment eligibility condition on a 7 year basis within the meaning of section 50 of the Tribunals, Courts and Enforcement Act 2007(a);
- (b) is an advocate or solicitor in Scotland of at least 7 years' standing; or
- (c) is a member of the bar of Northern Ireland or solicitor of the Court of Judicature of Northern Ireland of at least 7 years' standing.

(9) In the application of this regulation to Scotland any reference to an arbitrator is to be construed as a reference to an arbiter, and the reference in paragraph (1) to a single arbitrator appointed by agreement between the parties is to be construed as a reference to a single arbiter so appointed or, in default of agreement, appointed by the sheriff.

Compensation for unjustified detention

11.—(1) If on a reference under regulation 10 relating to a detention notice, the arbitrator decides that the shipowner has proved—

- (a) that the matter complained of did not constitute a valid basis for the officer's opinion; and
- (b) that there were no reasonable grounds for the issue of the detention notice;

the arbitrator must award the shipowner such compensation in respect of any loss suffered in consequence of the detention of the ship as the arbitrator thinks fit.

(2) Any compensation awarded under this regulation is payable by the Secretary of State.

(3) In the application of this regulation to Scotland any reference to an arbitrator is to be construed as a reference to an arbiter.

Review

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

- (a) carry out a review of regulations 2 to 11,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(a) 2007 c.15.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive (which is implemented by means of regulations 2 to 11) is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established 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, other than regulation 3(3)(b), come into force.

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

Signed by authority of the Secretary of State for Transport

Mike Penning
Parliamentary Under Secretary of State
Department for Transport

3rd September 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose Directive 2009/20/EC of the European Parliament and of the Council of 23rd April 2009 on the insurance of shipowners for maritime claims (O.J. L.131, 28.5.2009, p.128).

The effect of these Regulations is to require shipowners to insure their seagoing ships of 300 gross tonnes or more (*regulation 3*). The insurance must cover maritime claims of the type described as subject to limitation under the 1976 Convention on Limitation of Liability for Maritime Claims, adopted by the International Maritime Organisation, as amended by the 1996 Protocol (*regulation 4*). Special provision is made regarding the liability for delay.

Where a shipowner relies on insurance other than insurance by way of a contract of insurance, the shipowner must obtain the written approval of the Secretary of State before a ship of that shipowner relying on that form of insurance enters United Kingdom waters (*regulation 5*). The documentation proving the existence of the insurance must be carried on board the ship and be produced on demand (*regulation 6*). It is an offence to fail to comply with the regulations (*regulation 7*) and the ship may be detained (*regulation 9*). Where the validity of a detention is questioned the matter may be referred to arbitration (*regulation 10*) and compensation awarded (*regulation 11*). Where an EEA state has issued an expulsion order in accordance with the Directive the Secretary of State must refuse that ship entry to any port in the United Kingdom (*regulation 8*).

These Regulations require the Secretary of State to review the operation and effect of these Regulations and publish a report setting out the conclusions of that review within five years after they come into force and 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 will be needed to revoke these Regulations or to amend them.

A full impact assessment of the effect these Regulations will have on the costs of the business and the voluntary sector is available from the Maritime Trade and Liability Branch at the Department for Transport, 33 Horseferry Road, London SW1P 4DR. A copy has also been placed in the library of each House of Parliament. The impact assessment and a transposition note are also annexed to the Explanatory Memorandum which is available alongside these Regulations at www.legislation.gov.uk. A copy has been placed in the library of both Houses.

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STATUTORY INSTRUMENTS

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