

2016 No. 1025

MERCHANT SHIPPING

The Merchant Shipping (Marine Equipment) Regulations 2016

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THE SCHEDULE — Amendment of Regulations

The Secretary of State, with the consent of the Treasury, makes the following Regulations in exercise of the powers conferred by—

- (a) section 2(2) of the European Communities Act 1972(a);
- (b) sections 85(1), (3), (5) to (7), 86(1) and 302 of the Merchant Shipping Act 1995(b); and
- (c) article 3 of the Merchant Shipping (Prevention of Oil Pollution) Order 1983(c).

(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).

(b) 1995 c.21. Section 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 8 and are applied to hovercraft by the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350).

(c) S.I. 1983/1106 as amended by S.I. 1985/2002, 1991/2885 and 1993/1580. The provisions that can be made under the Order were extended by section 128 of the Merchant Shipping Act 1995 (c.21) and varied by section 7(6) and (7) of the Merchant Shipping and Maritime Security Act 1997 (c.28).

The Secretary of State is a Minister designated for the purposes of the European Communities Act 1972 in relation to measures relating to maritime transport^(a) and measures relating to the safety of ships and the health and safety of persons on them^(b).

In accordance with section 86(4) of the Merchant Shipping Act 1995 the Secretary of State has consulted the persons referred to in that section.

PART 1

Preliminary

Citation and commencement

1. The Regulations may be cited as the Merchant Shipping (Marine Equipment) Regulations 2016 and come into force on 5th December 2016.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

“applicable international standards” means the design, construction and performance requirements of the international instruments which the equipment must satisfy as set out in Annex 1 or 2 of Merchant Shipping Notice MSN 1874;

“applicable UK standards” means the requirements set out in Annex 3 of Merchant Shipping Notice MSN 1874 for equipment which is not subject to applicable international standards;

“category C waters” has the meaning given in Merchant Shipping Notice MSN 1837(M) Amendment 1;

“competent national authority” means the competent national authority in each member State responsible for ensuring compliance with the requirements of the Directive;

“conformity mark” means the mark affixed to equipment by the manufacturer in accordance with regulation 15;

“the Directive” means Directive 2014/90/EU of the European Parliament and of the Council of 23rd July 2014 on marine equipment and repealing Council Directive 96/98/EC^(c);

“domestic passenger ship” means a passenger ship which has been issued a certificate to embark on voyages in category C waters or seaward of those waters, but not for international voyages;

“economic operator” means a manufacturer, authorised representative, importer or distributor;

“EU conformity approval” means approval by a notified body under regulation 12;

“fishing vessel” means a vessel used to catch fish or other living resources of the sea with a registered length of 24 metres or more;

“international voyage” means a voyage from a port in one country to a port in another country, either of the countries being a country to which the 1974 Convention for the Safety of Life at Sea^(d) applies;

“length” means the greater of the following distances—

- (a) the distance between the fore side of the stem and the axis of the rudder stock, or
- (b) 96 per cent of the distance between the fore side of the stem and the aft side of the stern,

(a) S.I. 1994/757.

(b) S.I. 1993/595.

(c) OJ L257, 28.8.2014, p.146.

(d) Cmnd 7874.

the points and measurements being taken respectively at and along the waterline at 85 per cent of the least moulded depth of the ship; in the case of a ship with a rake of keel, the waterline must be parallel to the designated waterline;

“market surveillance authority” means the authority in each member State responsible for undertaking market surveillance in accordance with the market surveillance framework set out in Chapter III of Regulation (EC) No. 765/2008(a);

“Merchant Shipping Notice” means a notice described as such and issued by the Secretary of State 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;

“nominated body” means a person designated as a nominated body under regulation 4(2);

“notified body” means a person designated as a notified body under regulation 4(1);

“passenger” means every person on a ship other than—

- (a) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship,
- (b) a person on board the ship in pursuance of an obligation on the master to carry shipwrecked, distressed or other persons or by reason of any circumstance that neither the master nor the owner could have prevented, and
- (c) a child under one year of age;

“passenger ship” means a ship which carries more than 12 passengers;

“relevant period” means a period of at least 10 years from the date that the conformity mark was affixed to the equipment and not less than the expected life of the equipment;

“United Kingdom ship” means a ship which is—

- (a) a United Kingdom ship within the meaning of section 85(2) of the Act,
- (b) a Government ship within the meaning of section 308(4) of the Act, or
- (c) a hovercraft registered under the Hovercraft Act 1968(b).

(2) Where a word or expression is defined in the Directive and is not defined in these Regulations, it has the same meaning as in the Directive.

(3) In the application of these Regulations to a hovercraft, a reference to the master of a ship includes a reference to the captain of that hovercraft.

(4) For the purposes of these Regulations, the competent national authority and the market surveillance authority under the Directive for the United Kingdom is the Secretary of State for Transport.

(5) Where a ship is managed by a person other than the owner (whether on behalf of the owner, some other person or on his own behalf), a reference in these Regulations to the owner is construed as including a reference to that person.

(6) Any direction, prohibition or restriction given under these Regulations must be given in writing and must specify the date on which it takes effect and the conditions (if any) on which it is given.

Application

3. These Regulations apply to any United Kingdom ship wherever it may be.

(a) Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93 (OJ L281, 13.8.2008, p.30).

(b) 1968 c.59.

Designation of notified and nominated bodies

4.—(1) The Secretary of State may designate any person as a notified body to carry out the procedures specified in Annex II of the Directive, provided that the Secretary of State is satisfied that person meets the requirements specified in Annex III of the Directive.

(2) The Secretary of State may designate any person as a nominated body to carry out the procedures specified in paragraphs 11 and 12 of Part II of Merchant Shipping Notice MSN 1874.

(3) A designation must be made in writing and set out—

- (a) the functions to be performed by the notified or nominated body;
- (b) the equipment to which the designation applies; and
- (c) any time limit or condition which applies to the designation.

(4) The Secretary of State may withdraw a designation—

- (a) on request by the notified or nominated body;
- (b) where the notified body ceases to comply with the requirements in Annex III of the Directive; or
- (c) where the notified or nominated body fails to comply with any condition imposed under paragraph (3) above.

(5) The Secretary of State may vary a designation—

- (a) on request by the notified or nominated body; or
- (b) where it appears necessary or expedient to do so.

(6) The Secretary of State may inspect a notified or nominated body to ensure it is performing its functions—

- (a) under regulation 12 or 18; and
- (b) in accordance with the conditions of its designation.

(7) Where a person applies for designation under paragraph (1) or (2), the Secretary of State must inform that person in writing of the reasons for—

- (a) refusing to designate that person as a notified or nominated body;
- (b) imposing any condition more onerous than proposed by the applicant; or
- (c) withdrawing or varying a designation.

PART 2

Requirements for Equipment

Requirements for equipment

5.—(1) Subject to paragraph (2), where under international instruments equipment must be approved by the flag state administration, that equipment must comply with applicable international standards when it is placed on board a ship.

(2) When equipment is placed on board a domestic passenger ship or a fishing vessel and that equipment is listed in Annex 1 or 2 of Merchant Shipping Notice MSN 1874 it must comply with—

- (a) applicable international standards;
- (b) an alternative standard; or
- (c) (where there is no requirement to place that equipment on board a ship but it is placed on board voluntarily) the standard specified by the Secretary of State.

(3) When equipment listed in Annex 3 of Merchant Shipping Notice MSN 1874 is placed on board a ship it must comply with applicable UK standards.

(4) Equipment listed in Annex 1 of Merchant Shipping Notice MSN 1874 must be taken to comply with applicable international standards where it is—

- (a) accompanied by a declaration of conformity under regulation 14; and
- (b) affixed with a conformity mark under regulation 15.

(5) Equipment listed in Annex 2 of Merchant Shipping Notice MSN 1874 must be taken to comply with applicable international standards or an alternative standard where it is accompanied by a certificate under regulation 18.

(6) In this regulation—

“alternative standard” means a standard specified as an alternative to an applicable international standard in any instrument listed in Annex 4 of the Merchant Shipping Notice MSN 1874.

Application of exemptions

6.—(1) Subject to paragraph (2), regulations 7 to 9 apply to equipment to which regulation 5(1) applies that is listed in Annex 1 of Merchant Shipping Notice MSN 1874.

(2) Regulation 9(2) applies to equipment to which regulations 5(1) and (2) apply that is listed in Annexes 1 or 2 of Merchant Shipping Notice MSN 1874.

Exemptions for technical innovation

7.—(1) In exceptional circumstances of technical innovation, the Secretary of State may allow equipment that does not comply with applicable international standards to be placed on board a ship, provided that the Secretary of State is satisfied, by trial or otherwise, that such equipment is at least as effective as equipment which complies with those standards.

(2) The Secretary of State must issue a certificate for any equipment placed on board a ship under paragraph (1).

(3) A certificate issued under paragraph (2) must—

- (a) confirm the Secretary of State’s approval of the equipment;
- (b) specify any restrictions or conditions on the use of the equipment; and
- (c) be carried with the equipment.

(4) The Secretary of State may withdraw a certificate where—

- (a) a restriction or condition on the use of equipment is breached; or
- (b) the European Commission require the withdrawal of the certificate under article 30(5) of the Directive.

(5) Where a ship registered in a country other than the United Kingdom, with equipment on board approved by its flag state administration in accordance with article 30 of the Directive, is transferred to the United Kingdom register, the Secretary of State may take any necessary measures, which may include carrying out such tests or practical demonstrations that the Secretary of State considers necessary, to ensure the equipment is at least as effective as equipment which complies with the EU conformity assessment procedures in Annex II of the Directive.

Exemptions for testing or evaluation

8.—(1) The Secretary of State may allow equipment that does not comply with applicable international standards to be placed on board a ship to facilitate the testing or evaluation of such equipment, provided that the equipment is not relied upon in place of equipment which meets the applicable international standards or used to replace such equipment.

(2) The Secretary of State must issue a certificate for any equipment placed on board a ship under paragraph (1).

(3) A certificate issued under paragraph (2) must—

- (a) confirm the Secretary of State’s approval of the equipment;
- (b) specify any restrictions or conditions on the use of the equipment;
- (c) be limited to the shortest period of time necessary to complete the testing; and
- (d) be carried with the equipment.

(4) The Secretary of State may withdraw a certificate where a restriction or condition on the use of equipment is breached.

Exemptions in exceptional circumstances

9.—(1) Where equipment carried on a ship must be replaced in a port outside the European Union and it is not practicable for reasons of time, delay or cost to replace the equipment with approved equipment, equipment which is not affixed with a conformity mark may be placed on board the ship, providing—

- (a) the equipment is accompanied by documentation issued by a member state of the International Maritime Organization which is a party to the relevant international convention, certifying that the equipment complies with the requirements of the relevant international convention; and
- (b) the Secretary of State is informed immediately of the nature and characteristics of the replacement equipment.

(2) Where approved equipment is not available on the market, the Secretary of State may issue a certificate to allow other equipment to be placed on board a ship until such time as approved equipment is available.

(3) When issuing a certificate under paragraph (2), the Secretary of State must ensure that, as far as possible, the equipment complies with applicable international standards.

(4) A certificate must set out—

- (a) the approved equipment being replaced;
- (b) the reasons for which the certificate is issued;
- (c) the design, construction and performance requirements against which the equipment is approved; and
- (d) the testing standards applied, if any, when approving the equipment.

(5) The Secretary may withdraw a certificate where—

- (a) approved equipment is made available on the market; or
- (b) the European Commission requires the certificate to be withdrawn under article 32(8) of the Directive.

(6) In this regulation—

“approved equipment” means equipment approved as complying with applicable international standards and affixed with a conformity mark.

Transfer of a ship

10.—(1) Where a ship is transferred to the United Kingdom register, the Secretary of State must inspect any relevant equipment to ensure—

- (a) its condition corresponds to the safety certificates for that equipment; and
- (b) the equipment complies with applicable international standards or is equivalent to equipment that complies with those standards.

(2) Where, following inspection of equipment under paragraph (1), the Secretary of State is not satisfied that the equipment complies with the applicable international standards or is equivalent to equipment that complies with those standards, the Secretary of State must direct the owner in writing to replace the equipment.

(3) Where, following inspection under paragraph (1), the Secretary of State considers that the equipment does not comply with applicable international standards but is equivalent to equipment that complies with those standards, the Secretary of State must issue a certificate for that equipment, which must—

- (a) confirm the Secretary of State’s approval of the equipment;
- (b) specify any restrictions or conditions on the use of the equipment; and
- (c) be carried with the equipment.

(4) The Secretary of State may withdraw a certificate where a restriction or condition on the use of equipment is breached.

(5) In this regulation—

“relevant equipment” means any equipment—

- (a) to which regulation 5(1) would have applied at the time the equipment was placed on board the ship if that ship had been a United Kingdom ship at that time; and
- (b) that is specified in Annex 1 of Merchant Shipping Notice MSN 1874.

PART 3

EU Conformity Assessment Procedures

Applications for grant of EU conformity approval

11.—(1) Subject to paragraph (2), for equipment listed in Annex 1 of Merchant Shipping Notice MSN 1874, the manufacturer must apply to a notified body for EU conformity approval in accordance with the procedures set out in Annex II of the Directive.

(2) A manufacturer must not apply under paragraph (1) where an application for an EU conformity assessment has been made (whether by that manufacturer or another), in respect of that type of equipment, under these Regulations or in another member State, and that application has not been withdrawn.

(3) An application under paragraph (1) must be—

- (a) in writing; and
- (b) accompanied by the documentation required by Annex II of the Directive.

Grant of EU conformity approval: obligations of a notified body

12.—(1) A notified body must—

- (a) decide whether to grant or refuse EU conformity approval in accordance with the provisions of Annex II of the Directive; and
- (b) produce an evaluation report recording the activities undertaken to reach a decision on an application made under Module B of Annex II of the Directive.

(2) Where a notified body grants EU conformity approval, it must—

- (a) for the type approval of equipment under Module B of Annex II of the Directive, issue a certificate containing the information specified in paragraph 6 of that module;
- (b) for approval of a quality system under Module D or E of Annex II of the Directive, notify the manufacturer of its decision in writing, including the conclusions of the audit of the quality system and the reasons for its decision; or
- (c) where verifying a product under Module F or G of Annex II of the Directive, issue a certificate of conformity for that product.

(3) Where a notified body refuses EU conformity approval, it must notify the manufacturer, giving detailed reasons for its decision.

(4) A notified body must—

- (a) periodically audit a quality system that it has approved; and
 - (b) provide the manufacturer with a report containing the results of the audit.
- (5) Where a notified body knows or has reason to believe that—
- (a) equipment to which it has granted EU conformity approval no longer complies with applicable international standards; or
 - (b) a manufacturer has failed to comply with an obligation under regulation 20(1) to (6),

it must require the manufacturer to take immediate corrective measures to ensure that the equipment complies with applicable international standards; and where necessary, suspend or withdraw its approval for that equipment.

(6) Following the grant of EU conformity approval, a notified body must comply with the notification and provision of information requirements in article 24 and Annex II of the Directive.

Amendments to EU conformity approval

13.—(1) The manufacturer of equipment granted an EU type approval certificate by a notified body must notify that body of any changes that may affect the conformity of the equipment with applicable international standards or the conditions for validity of the certificate.

(2) The manufacturer must notify the notified body that approved a quality system under regulation 12(2)(b) of any intended changes to that system.

(3) Following receipt of a notification under paragraph (1) or (2), the notified body must determine whether an amendment to the conformity approval certificate or to the approval of the quality system is required and notify the manufacturer accordingly.

(4) Where an amendment to the conformity approval certificate or to the approval of the quality system is required, the manufacturer must apply in writing for the approval to be amended and provide such documents as requested by the notified body.

Declarations of conformity

14.—(1) A manufacturer must provide a declaration of conformity with all equipment for which EU conformity approval has been granted.

(2) The declaration of conformity must be in the form specified in Annex III of Decision 768/2008/EC(a).

(3) The manufacturer must provide a copy of the declaration of conformity, in one or more languages required by the flag state administration of a member State, with the equipment and send a copy of that declaration to the notified body which granted the conformity approval certificate.

(4) The owner and master of a ship must each ensure that the declaration of conformity is kept with the equipment on board the ship.

Affixing the conformity mark

15.—(1) The manufacturer must, at the end of the production stage, affix the conformity mark to—

- (a) each item of equipment for which a declaration of conformity is required, or
- (b) a data plate attached to that equipment, and

where relevant, embed the conformity mark in the equipment's software.

(2) Where it is not possible or warranted due to the nature of the item of equipment to affix the conformity mark in accordance with paragraph (1), it must be affixed to—

(a) Decision No.768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EC (OJ L218, 13.8.2008, p.82).

- (a) the packaging of the item of equipment;
 - (b) a label on the item of equipment or its packaging; or
 - (c) a document distributed with the item of equipment.
- (3) The conformity mark must be—
- (a) in the form specified in Annex I of the Directive;
 - (b) affixed so that it is visible, legible and indelible; and
 - (c) followed by—
 - (i) the identification number of the notified body which approved the equipment, where that body is involved in the production control phase; and
 - (ii) the year in which the mark was affixed.
- (4) Where the number of the notified body is to be affixed under paragraph (3)(c)(i), it must be affixed by—
- (a) the notified body itself; or
 - (b) the manufacturer on instruction of the notified body.
- (5) No person may affix a mark or inscription which is likely to mislead any person with regard to the meaning or the graphics of the mark.
- (6) In this regulation—
- “production control phase” means the phase of production during which the manufacturer ensures that each item of equipment complies with its EU conformity approval in accordance with modules D, E, F or G of Annex II of the Directive.

Authorised Representatives

- 16.—**(1) Where a manufacturer is not located in the territory of at least one member State, that manufacturer must appoint in writing an authorised representative situated in the European Union.
- (2) Where a manufacturer appoints an authorised representative, that representative must carry out the manufacturer’s obligations under regulation 20(1)(c) and 22(2).

PART 4

Other Conformity Assessment Procedures

Application for grant of conformity approval

- 17.—**(1) For equipment listed in Annex 2 of Merchant Shipping Notice MSN 1874, the manufacturer must apply to a nominated body for conformity approval in accordance with the procedures set out in paragraph 10 of Merchant Shipping Notice MSN 1874.
- (2) An application under paragraph (1) must be—
- (a) in writing; and
 - (b) accompanied by the documentation required by paragraph 10 of Merchant Shipping Notice MSN 1874.

Grant of conformity approval: obligations of nominated bodies

- 18.—**(1) A nominated body must decide whether to grant or refuse conformity approval for equipment in accordance with the requirements of paragraph 11 of Merchant Shipping Notice MSN 1874.
- (2) Where a nominated body grants conformity approval for equipment, it must issue a certificate containing the information specified in paragraph 12 of Merchant Shipping Notice MSN 1874.

(3) Where a nominated body refuses conformity approval, it must notify the manufacturer, giving detailed reasons for its decision in writing.

PART 5

Obligations of Economic Operators

Application of Part 5

19. This Part applies only to equipment to which regulation 5(1) applies that is listed in Annex 1 of Merchant Shipping Notice MSN 1874.

Obligations of a Manufacturer

20.—(1) A manufacturer must—

- (a) ensure an EU conformity assessment is carried out using one of the procedures referred to in article 15(2)(a) or (b) of the Directive;
- (b) ensure equipment is marked in accordance with regulation 15; and
- (c) keep the technical documentation specified in Annex II of the Directive and the EU declaration of conformity for the relevant period.

(2) A manufacturer must undertake to fulfil any obligation arising from a quality system approved under regulation 12(2)(b) and must ensure that quality system is maintained.

(3) A manufacturer must ensure—

- (a) its name,
- (b) a type, batch or serial number or other element allowing identification of its product,
- (c) its registered trade name or trade mark, and
- (d) the address at which it can be contacted,

is on any equipment or, where that is not possible, on the packaging of that equipment or in a document accompanying that equipment or both, as appropriate.

(4) A manufacturer must provide with any equipment—

- (a) clear instructions and all necessary information for that equipment to be installed and operated safely; and
- (b) any other documentation required by international instruments.

(5) Where a manufacturer knows or has reason to believe that its equipment does not comply with applicable international standards, that manufacturer must—

- (a) take immediate corrective measures to ensure that the equipment complies with applicable international standards;
- (b) withdraw the equipment from the market; or
- (c) issue a recall of the equipment.

(6) Where a manufacturer considers that equipment presents a risk, that manufacturer must immediately inform the competent national authority of the risk and provide details of any non-compliance with applicable international standards and any action taken in accordance with paragraph (5).

(7) On request by a competent national authority, a manufacturer must provide to that competent national authority—

- (a) samples of equipment approved by a notified body at the manufacturer's own cost; or
- (b) access to such samples.

(8) This regulation applies to an importer or a distributor as if that person were a manufacturer where the importer or distributor—

- (a) places equipment on the market or on board a ship under the importer or distributor's own name or trademark; or
 - (b) modifies equipment already placed on the market or on board a ship in such a way that compliance with applicable international standards may be affected.
- (9) In this regulation—
- “clear instructions” means instructions in a form and language which the user easily understands.

Obligations of an importer

21. An importer which places on the market or on board a ship any equipment accompanied by a declaration of conformity under regulation 14 must ensure that—

- (a) its name,
- (b) registered trade name or trade mark, and
- (c) the address at which it can be contacted,

is on the equipment or, where that is not possible, on the packaging of the equipment or in a document accompanying the equipment or both, as appropriate.

Obligations of an economic operator

22.—(1) On receipt of a request from a market surveillance authority, an economic operator must identify any other economic operator—

- (a) who has supplied it with equipment, or
- (b) to whom it has supplied equipment,

during the relevant period.

(2) On receipt of a written request from a competent national authority, which includes the reasons for making the request, an economic operator must—

- (a) provide that authority with all information and documents necessary to show that the equipment meets applicable international standards; and
- (b) cooperate with that authority in any action it takes to eliminate risks posed by that equipment.

(3) Information and documents provided to a competent national authority must be in a language easily understood by, or acceptable to, that authority.

PART 6

Enforcement

Restricting, suspending or withdrawing EU conformity approval

23.—(1) A notified body may by giving notice to the manufacturer restrict, suspend or withdraw EU conformity approval of equipment or a quality system where a manufacturer fails—

- (a) to take corrective measures required under regulation 12(5); or
- (b) to comply with regulation 16 or 20(1) to (6).

(2) Before issuing a notice under paragraph (1), a notified body must give the manufacturer an opportunity to make written representations.

(3) A notice under paragraph (1) must—

- (a) be in writing;
- (b) specify the date on which it is to take effect; and

(c) specify the grounds for the decision.

(4) The notified body must send a copy of any notice given under paragraph (1) to the Secretary of State.

Sample checks

24. Where equipment approved by a notified body under regulation 12 is placed on the market or supplied for use in the United Kingdom but not yet placed on board a ship, the Secretary of State may carry out sample checks of that equipment to ensure it complies with the applicable international standards.

Defective Equipment

25.—(1) The Secretary of State may—

- (a) direct an economic operator to withdraw or recall defective equipment from the market;
- (b) prohibit or restrict the extent to which an economic operator may place defective equipment on the market; or
- (c) prohibit or restrict the use of defective equipment on ships.

(2) Before issuing a direction, prohibition or restriction, the Secretary of State must notify any economic operator in writing and give the economic operator, not less than 10 days, to make written representations.

(3) The Secretary of State may withdraw or vary a direction, prohibition or restriction.

(4) In this regulation—

“defective equipment” means equipment to which regulation 5(1) applies that is specified in Annex 1 of Merchant Shipping Notice MSN 1874 and complies with applicable international standards, but which, in the opinion of the Secretary of State—

- (a) may compromise the health and safety of the ship’s crew, passengers or other persons; or
- (b) adversely affect the marine environment.

Offences and penalties

26.—(1) The owner and master of a ship are each guilty of an offence, where—

- (a) equipment is placed on a ship otherwise than in compliance with regulation 5; or
- (b) any of the restrictions or conditions imposed by a certificate issued under regulations 7(3), 8(3) or 10(3) are not complied with.

(2) It is an offence for a person—

- (a) to affix a conformity mark to equipment which has not been granted EU conformity approval;
- (b) to fail to comply with regulation 14, 15, 20, 21 or 22;
- (c) to forge, counterfeit or otherwise alter, deface or remove any conformity mark or identification number affixed to equipment under these Regulations; or
- (d) to fail to comply with a direction, prohibition or restriction given under regulation 25.

(3) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction—
 - (i) in England and Wales to a fine, and
 - (ii) in Scotland and Northern Ireland to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(4) Where a body corporate is guilty of an offence under this regulation and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any

neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence.

(5) Where the affairs of the body corporate are managed by its members, paragraph (4) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

(6) Where an offence under this regulation is committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of that offence.

(7) In any proceedings for an offence under these Regulations, it is a defence for the person charged to show that all reasonable steps had been taken by that person to ensure compliance with the provision concerned.

Powers to detain

27.—(1) A ship is liable to be detained where a surveyor of ships is satisfied that there is or has been a failure—

- (a) to comply with regulation 5(1); or
- (b) by the owner of a ship to comply with a direction issued under regulation 10(2).

(2) Section 284(1) to (6) and (8) of the Act (enforcing detention of ship)(a) applies to a ship which is liable to be detained under this regulation as if references to detention of a ship under the Act were references to detention of the ship in question under this regulation.

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

- (a) states that a surveyor of ships is of the opinion that, in relation to that ship, there is a failure to comply with the requirements of regulation 5(1) or a direction issued under regulation 10(2);
- (b) details the reasons that the surveyor is of the opinion those requirements of regulation 5(1) or a direction issued under regulation 10(2) are not met; and
- (c) requires the terms of the notice to be complied with until the ship is released.

(4) Sections 96 and 97 of the Act (which relate to arbitration and compensation in connection with detention of a ship) apply in relation to a detention notice under this regulation as those sections apply to a detention notice under section 95 of the Act with the following modifications—

- (a) the arbitrator must have regard in coming to a decision to any other matters not specified in the detention notice which appear to be relevant to whether or not the ship was liable to be detained under paragraph (1); and
- (b) the arbitrator must state in the decision whether or not there was a valid basis for detention of the ship.

Application of powers of inspectors in relation to Government ships

28. Sections 258 to 266 of the Act(b) apply to these Regulations as if they were for all purposes made under section 85 of the Act and accordingly those sections apply in relation to Government ships.

(a) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1, paragraph 5.
(b) These sections provide powers to inspect ships and their equipment, powers of inspectors in relation to premises and ships, for the service of improvement and prohibition notices and their reference to arbitration, compensation for invalid prohibition notices and offences for failing to comply with improvement and prohibition notices.

PART 7

Miscellaneous

Market Surveillance

29.—(1) The Secretary of State must carry out market surveillance of equipment listed in Annex 1 of Merchant Shipping Notice MSN 1874.

(2) In this regulation—

“market surveillance” means the measures required under the EU market surveillance framework set out in Chapter III of Regulation (EC) No 765/2008 to ensure equipment placed on the market in the United Kingdom complies with applicable international standards.

Review

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

- (a) carry out a review of these Regulations;
- (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 reasonably practicable, 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 the Directive and by these 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 must afterwards be published at intervals not exceeding five years.

Amendment of Regulations

31. The Regulations specified in the Schedule are amended in accordance with the Schedule.

Revocations

32.—(1) The following instruments are revoked—

- (a) The Merchant Shipping (Delegation of Type Approval) Regulations 1996**(a)**;
- (b) The Merchant Shipping (Marine Equipment) Regulations 1999**(b)**; and
- (c) The Merchant Shipping (Marine Equipment) (Amendment) Regulations 2009**(c)**.

(2) Any certificate or declaration of conformity issued or mark of conformity affixed under Part III of the Merchant Shipping (Marine Equipment) Regulations 1999 which is valid immediately before the day on which these Regulations come into force has effect on and after that date as if that certificate or declaration were issued or that mark were affixed under these Regulations.

(a) S.I. 1996/147 as amended by S.I. 1997/2971.

(b) S.I. 1999/1957 as amended by S.I. 2001/1638, 2004/302, 2004/1266, 2009/2021 and 2011/1043.

(c) S.I. 2009/2021.

Signed by authority of the Secretary of State for Transport

27th October 2016
We consent

John Hayes
Minister of State
Department for Transport

31st October 2016

Guto Bebb
Stephen Barclay
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 31

Amendment of Regulations

The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996

1. In regulation 1 of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 (interpretation)(a), for the definition of “approved”, substitute—

““approved” means, in relation to any equipment or arrangement, approved under the Merchant Shipping (Marine Equipment) Regulations 2016;”.

The Merchant Shipping (Crew Accommodation) Regulations 1997

2. In regulation 36 of the Merchant Shipping (Crew Accommodation) Regulations 1997 (equipment to be of an approved type)(b), for paragraph (2), substitute—

“(2) In this regulation—

“approved” means, in relation to an item of equipment, approved under the Merchant Shipping (Marine Equipment) Regulations 2016.”.

The Merchant Shipping (Fire Protection: Small Ships) Regulations 1998

3. In regulation 1 of the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998 (Interpretation)(c), for the definition of “approved”, substitute—

““approved” means, in relation to any equipment or arrangement, approved under the Merchant Shipping (Marine Equipment) Regulations 2016;”.

The Merchant Shipping (Fire Protection: Large Ships) Regulations 1998

4. In regulation 1 of the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998 (Interpretation)(d), for the definition of “approved”, substitute—

““approved” means, in relation to any equipment or arrangement, approved under the Merchant Shipping (Marine Equipment) Regulations 2016;”.

The Merchant Shipping (Radio Installations) Regulations 1998

5. In regulation 6(4) of the Merchant Shipping (Radio Installations) Regulation 1998 (performance standards)(e), for “the Merchant Shipping (Marine Equipment) Regulations 1999” substitute “the Merchant Shipping (Marine Equipment) Regulations 2016”.

The Merchant Shipping (Life-Saving Appliances for Passenger Ships other than Ships of Classes III to VI(A)) Regulations 1999

6. In regulation 83 of the Merchant Shipping (Life-Saving Appliances for Passenger Ships other than Ships of Classes III to VI(A)) Regulations 1999(f), for paragraph (1), substitute—

-
- (a) S.I. 1996/2154. The definition of “approved” was substituted by S.I. 1999/1957, regulation 3, Schedule 1, paragraph 5.
(b) S.I. 1997/1508.
(c) S.I. 1998/1011. The definition of “approved” was substituted by S.I. 1999/1957, regulation 3, Schedule 1, paragraph 3.
(d) S.I. 1998/1012. The definition of “approved” was substituted by S.I. 1999/1957, regulation 3, Schedule 1, paragraph 2.
(e) S.I. 1998/2070. Regulation 6(4) was inserted by S.I. 1999/1957, regulation 3, Schedule 1, paragraph 1.
(f) S.I. 1999/2721.

“(1) Life-saving appliances and arrangements required by these Regulations shall be of a type which has been approved under the Merchant Shipping (Marine Equipment) Regulations 2016.”.

The Merchant Shipping (Life-Saving Appliances for Passenger Ships of Classes III to VI(A)) Regulations 1999

7. In regulation 10 of the Merchant Shipping (Life-Saving Appliances for Passenger Ships of Classes III to VI(A)) Regulations 1999 (approval and replacement of appliances and arrangements)(a), for paragraph (1), substitute—

“(1) Life-saving appliances and arrangements required by these Regulations shall be of a type which has been approved under the Merchant Shipping (Marine Equipment) Regulations 2016.”.

The Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999

8. In Schedule 4 to the Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999(b)—

- (a) in paragraph 39, for “the Merchant Shipping (Marine Equipment) Regulations 1999” substitute “the Merchant Shipping (Marine Equipment) Regulations 2016”; and
- (b) in paragraph 59, for “Council Directive 96/98/EC on marine equipment, as amended by Commission Directives 98/35/EC, 2001/53/EC and 2002/75/EC”, substitute “Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC(c)”.

The Merchant Shipping (Radio) (Fishing Vessels) Regulations 1999

9. In regulation 7(1) of the Merchant Shipping (Radio) (Fishing Vessels) Regulations 1999 (performance standards)(d), for paragraph (c), substitute—

“(c) in either case, be of a type approved under the Merchant Shipping (Marine Equipment) Regulations 2016;”.

The Merchant Shipping (Fire Protection) Regulations 2003

10. In regulation 7 of the Merchant Shipping (Fire Protection) Regulations 2003 (approvals)(e), after paragraph (4), add—

“(5) For equipment, approval must be granted by a notified or nominated body under the Merchant Shipping (Marine Equipment) Regulations 2016.”.

The Merchant Shipping (High Speed Craft) Regulations 2004

11. In regulation 6(4) of the Merchant Shipping (High Speed Craft) Regulations 2004 (high speed craft code)(f), for “the Merchant Shipping (Marine Equipment) Regulations 1999” substitute “the Merchant Shipping (Marine Equipment) Regulations 2016”.

(a) S.I. 1999/2723.
(b) S.I. 1999/2998.
(c) O.J. L 257, 28.8.2014, p.146.
(d) S.I. 1999/3210.
(e) S.I. 2003/2950.
(f) S.I. 2004/302.

The Merchant Shipping (Fees) Regulations 2006

12. In the Table in Schedule 1 to the Merchant Shipping (Fees) Regulations 2006 (fees under the Merchant Shipping Act 1995)(a), for the entry relating to the Merchant Shipping (Marine Equipment) Regulations 1999, substitute—

- (a) in column 1, “the Merchant Shipping (Marine Equipment) Regulations 2016”; and
- (b) in column 2, “S.I. 2016/1025”.

The Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006

13. In the Table in Schedule 1 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 (instruments which give effect to Community Directives concerning the safety of products)(b), omit the entry for the Merchant Shipping (Marine Equipment) Regulations 1999 and, in the appropriate place, add—

- (a) in column 1, “The Merchant Shipping (Marine Equipment) Regulations 2016”, and
- (b) in column 2, “S.I. 2016/1025”.

The Legislation and Regulatory Reform (Regulatory Functions) Order 2007

14. In Part 2 of the Schedule to the Legislation and Regulatory Reform (Regulatory Functions) Order 2007 (regulatory functions)(c), under the heading “Marine Transport”, omit “Merchant Shipping (Marine Equipment) Regulations 1999 and, in the appropriate place, add “Merchant Shipping (Marine Equipment) Regulations 2016”.

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

15. In regulation 21(1)(a) of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 (sewage systems)(d), for “the Merchant Shipping (Marine Equipment) Regulations 1999” substitute “the Merchant Shipping (Marine Equipment) Regulations 2016”.

The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

16.—(1) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008(e) are amended as follows.

(2) In regulation 21(7) (nitrogen oxides), for “Merchant Shipping Notice 1734(M + F) or Merchant Shipping Notice 1735 (M + F) as appropriate”, substitute “the Merchant Shipping (Marine Equipment) Regulations 2016”.

(3) In regulation 24 (shipboard incineration), for “Merchant Shipping Notice 1734 (M + F)”, wherever occurring, substitute “the Merchant Shipping (Marine Equipment) Regulations 2016”.

(a) S.I. 2006/2055. There are amendments to these Regulations, but none is relevant.
(b) S.I. 2006/2183.
(c) S.I. 2007/3544. There are amendments to his Order, but none is relevant.
(d) S.I. 2008/3257.
(e) S.I. 2008/2924.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L257, 28.8.2014, p. 146) (“the Directive”).

Part 1 (regulations 1 to 4) contains introductory provisions and a power to designate notified and nominated bodies. *Regulation 2* contains interpretation provisions. *Regulation 3* applies the Regulations to all United Kingdom ships wherever they may be. *Regulation 4* gives the Secretary of State a power to designate notified and nominated bodies to carry out conformity assessment procedures. These procedures assess and confirm that equipment complies with the relevant design, construction and performance standards, ensuring uniform levels of safety and environmental protection are achieved.

Part 2 (regulations 5 to 10) provides for requirements to apply to equipment placed on board a ship and for exemptions from those requirements.

Regulation 5 requires equipment placed on board a ship to meet the design, construction and performance standards specified in Annexes 1 to 3 of Merchant Shipping Notice MSN 1874 and to be approved in accordance with the conformity assessment procedures in Parts 3 and 4 of the Regulations. *Regulation 6* sets out the manner in which regulations 7 to 9 apply. *Regulations 7 to 9* enable the Secretary of State to allow equipment that does not meet applicable international standards to be placed on board a ship in certain specified circumstances, subject to any restrictions or conditions imposed. *Regulation 10* requires the Secretary of State to inspect equipment on a ship that transfers to the UK Register to ensure the equipment complies with its safety certificates and with applicable international standards or is equivalent to equipment that complies with those standards.

Part 3 (regulations 11 to 17) makes provision for EU conformity procedures and related matters.

Regulation 11 provides for applications to notified bodies for EU conformity approval of equipment following the conformity procedures set out in Annex II of the Directive. *Regulation 12* sets out the approval procedure for notified bodies and prescribes (also by reference to Annex II of the Directive) the requirements that must be fulfilled for granting EU conformity approval. *Regulation 13* provides for the amendment of conformity approvals. *Regulations 14 and 15* require manufacturers of equipment to issue declarations of conformity and affix conformity marks as prescribed. *Regulation 16* requires a manufacturer located outside the EU to appoint an authorised representative situated in the EU.

Part 4 (regulations 17 and 18) makes provision for conformity approval of equipment on UK ships to which EU conformity approval procedures do not apply and for related matters.

Regulation 17 requires a manufacturer to apply to a nominated body for conformity approval of equipment to be placed on board a domestic passenger ship or fishing vessel in accordance with the procedures set out in Part II of Merchant Shipping Notice 1874. *Regulation 18* sets out the approval procedures for a nominated body and the requirements that must be fulfilled for conformity approval to be granted by reference to Merchant Shipping Notice 1874.

Part 5 (regulations 19 to 22) sets out obligations on economic operators.

Regulation 19 sets out the manner in which regulations 20 to 22 apply. *Regulation 20* imposes obligations on manufacturers during and after the EU conformity approval process and applies these obligations to distributors and importers in specified circumstances. *Regulation 21* imposes an obligation on importers which place equipment on the market. *Regulation 22* imposes obligations on economic operators generally to comply with certain requests from market surveillance authorities and competent national authorities.

Part 6 (regulations 23 to 28) makes provision for enforcement.

Regulation 23 enables notified bodies to suspend or withdraw their EU conformity approvals in certain circumstances. *Regulations 24* allows the Secretary of State to carry out sample checks of equipment for market surveillance purposes. *Regulation 25* enables the Secretary of State to take action where equipment complies with applicable international standards, but is nonetheless considered a threat to the safety of persons on board a ship or to the marine environment. *Regulation 26* creates offences and provides penalties for breach of these Regulations, and provides a “reasonable steps” defence for those offences. *Regulation 27* provides for the detention of ships in certain circumstances. *Regulation 28* enables the enforcement powers in sections 258 to 266 of the Merchant Shipping Act 1995 to be used in relation to Government ships.

Part 7 (regulations 29 to 32) contains miscellaneous provisions.

Regulation 29 requires the Secretary of State to carry out market surveillance in accordance with the EU market surveillance framework. *Regulation 30* requires the Secretary of State to review the operation and effect of the Regulations and publish a report within 5 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 continue in force with or without amendment. A further instrument would be needed to revoke the Regulations. *Regulation 31* introduces the Schedule which makes consequential amendments to other legislation. *Regulation 32* revokes the Merchant Shipping (Delegation of Type Approval) Regulations 1996, the Merchant Shipping (Marine Equipment) Regulations 1999 and the Merchant Shipping (Marine Equipment) (Amendment) Regulations 2009; and makes a savings provision in respect of the revoked Regulations for equipment placed on board a ship before these Regulations come into force.

An impact assessment of the effect of these Regulations on the cost to business is published with the Explanatory Memorandum and Transposition Note alongside this instrument on www.legislation.gov.uk.

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