
STATUTORY INSTRUMENTS

2016 No. 1026

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Electromagnetic Fields) Regulations 2016

PART 1

INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Electromagnetic Fields) Regulations 2016 and come into force on 21st November 2016.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

“AL” means an action level set out in Part 2 or 3 of the Schedule;

“direct biophysical effect” means an effect on human body tissue caused by its presence in an electromagnetic field;

“electromagnetic field” means a static electric, static magnetic and time-varying electric, magnetic and electromagnetic field with a frequency up to 300 GHz;

“ELV” means an exposure limit value set out in Part 2 of the Schedule;

“employer” means a person by whom a worker is employed on a ship under a contract of employment;

“the General Duties Regulations” means the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997^{M1};

“Government ship” has the meaning given in section 308(4) of the Act;

“health and safety” includes the occupational health and safety of persons while on board a ship and while boarding or leaving a ship;

“health effect” means a direct biophysical effect which is potentially harmful to human health;

“indirect effect” means an effect, caused by the presence of an object or a substance in an electromagnetic field, which may present a safety or health hazard;

“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;

“sensory effect” means a direct biophysical effect involving a transient disturbance in sensory perception or a minor and temporary change in brain function;

“ship” includes hovercraft;

“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, or
- (c) a hovercraft registered under the Hovercraft Act 1968 ^{M2}; and

“worker at particular risk” means—

- (a) a worker who has declared to his or her employer a condition which may lead to a higher susceptibility to the potential effects of exposure to electromagnetic fields; or
- (b) a worker who works in close proximity to electro-explosive devices, explosive materials or flammable atmospheres.

(2) In these Regulations, a reference to workers is, in relation to an employer, to be treated as a reference to the workers of that employer while they are at work.

(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.

Marginal Citations

- M1** [S.I. 1997/2962](#); as amended by [S.I. 1998/2411](#) and 2001/54. There are other amendments, but none is relevant.
- M2** [1968 c. 59](#).

Meaning of “worker”

3.—(1) In these Regulations, “worker” means a person employed under a contract of employment and includes a trainee or apprentice other than a person who is training in a vessel which is being used—

- (a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship, or
- (b) to provide instruction in navigation and seamanship for yachtsmen,

and which is operating under a relevant code.

(2) In paragraph (1), “a relevant code” means—

- (a) the Large Commercial Yacht Code as set out in Merchant Shipping Notice MSN 1851(M) ^{M3},
- (b) the Code of Practice for the Safety of Small Commercial Sailing Vessels ^{M4};
- (c) the Code of Practice for the Safety of Small Commercial Motor Vessels ^{M5}; or
- (d) the Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point ^{M6}.

(3) In paragraph (2), each reference to a Code includes a reference to any document containing an amendment or replacement of that Code which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice which contains a statement to that effect.

Marginal Citations

- M3** Published by the Maritime and Coastguard Agency on www.gov.uk.

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| <p>M4 Published by the Stationery Office in 1993 (ISBN 0-11-551184-9).</p> <p>M5 Published by the Stationery Office in 1993 (ISBN 0-11-551185-7).</p> <p>M6 Published by the Stationery Office in 1999 (ISBN 0-11-551812-6).</p> |
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Application of these Regulations

4.—(1) Without prejudice to regulation 5 (general duties) of the General Duties Regulations and subject to paragraph (2), these Regulations apply in relation to activities in which workers are subject to, or are potentially subject to exposure to, electromagnetic fields on United Kingdom ships.

(2) Where—

- (a) a ship is being used in the course of public service activities or activities for the purposes of the civil protection services, and
- (b) characteristics peculiar to those activities inevitably conflict with a provision of these Regulations,

that provision does not apply in relation to activities on that ship to the extent of that conflict.

(3) To the extent that a provision of these Regulations does not apply in relation to activities on a ship because of paragraph (2), there is in relation to that ship a duty of the employer to ensure, so far as is reasonably practicable, the health and safety of the workers who are subject, or are potentially subject, to exposure on the ship.

(4) This regulation (other than paragraph (1)) and regulations 14 and 16 apply in relation to activities on ships other than United Kingdom ships, which are for the time being in United Kingdom waters, during which workers are subject, or potentially subject, to exposure to electromagnetic fields.

(5) In this regulation—

“civil protection service” includes the fire and rescue and ambulance services, and search and rescue services provided by any other person; and

“public service activities” includes the activities of the armed forces, HM Coastguard, HM Revenue and Customs, immigration officers, police, prison officers and the security and intelligence services.

PART 2

EXPOSURE AND RISK

Limitation on exposure to electromagnetic fields

5.—(1) Subject to paragraphs (2) and (3), an employer must ensure that workers are not exposed to electromagnetic field levels in excess of the ELVs.

(2) Exposure may exceed the sensory effect ELVs during work activities in respect of which the employer has taken the applicable safety measures contained in the Schedule ^{M7}.

(3) Paragraph (1) does not apply in relation to the exposure of workers to electromagnetic fields during the development, testing, installation, use and maintenance of, or research related to, magnetic resonance imaging equipment for medical use, providing—

- (a) the exposure of workers to electromagnetic fields is as low as is reasonably practicable; and
- (b) workers are protected against any health effects and safety risks related to that exposure.

(4) In this regulation—

“sensory effect ELV” means the sensory effect ELVs set out in Part 2 of the Schedule.

Marginal Citations

M7 See paragraph 6 of Part 1 of the Schedule.

Exposure assessment

6.—(1) Subject to paragraph (5), the employer must make a suitable and sufficient assessment of the levels of electromagnetic fields to which workers may be exposed.

(2) Where regulation 5(1) applies—

- (a) the assessment must demonstrate whether that regulation is complied with, if necessary through the use of calculations and measurements; and
- (b) the employer may, in accordance with the Schedule^{M8}, assess exposure against the ALs in order to determine that specific ELVs are not exceeded.

(3) An assessment may take into account—

- (a) emission information and other safety related data provided by the manufacturer or distributor of equipment;
- (b) industry standards and guidelines;
- (c) guidance produced by the European Commission; and
- (d) guidance produced by the Secretary of State.

(4) The employer must review an assessment when—

- (a) there is reason to suspect it is no longer valid, or
- (b) there has been a significant change in the matters to which it relates,

and make such changes to it as are necessary to ensure it remains suitable and sufficient.

(5) Where an employer has made an assessment before the date on which these Regulations come into force, which assessment would have complied with the requirements of this regulation, that employer is to be treated, on and after that date, as having complied with paragraph (1).

Marginal Citations

M8 See paragraphs 3 and 4 of Part 1 of the Schedule.

Application of regulations 8 to 10

7.—(1) Regulation 8 does not apply—

- (a) where the most recent exposure assessment under regulation 6 demonstrates compliance with regulation 5(1); or
- (b) in relation to activities set out in regulation 5(3).

(2) Regulations 9 and 10 do not apply where—

- (a) the most recent exposure assessment under regulation 6 demonstrates that workers are not exposed to electromagnetic field levels in excess of the ELVs;
- (b) the indirect effect ALs are not exceeded; and
- (c) there are no workers at particular risk.

(3) In this regulation—

“indirect effect ALs” means the Low ALs in Table AL1, and the ALs in Tables AL5 to AL7, in the Schedule.

Action plan

8.—(1) The employer must make and implement a suitable and sufficient action plan to ensure compliance with regulation 5(1).

(2) The action plan must include consideration of, where relevant—

- (a) other working methods that entail lower exposure to electromagnetic fields;
- (b) replacement equipment designed to reduce the level of exposure;
- (c) technical measures to reduce the emission of electromagnetic fields, including, where necessary, the use of interlocks, screening or similar health protection mechanisms;
- (d) demarcation and access control measures;
- (e) maintenance programmes for work equipment, workplaces and workstation systems;
- (f) the design and layout of workplaces and workstations;
- (g) limitations on the duration and intensity of exposure; and
- (h) the availability of suitable personal protection equipment.

(3) Where, despite the measures taken in accordance with paragraph (1), the exposure of workers exceeds any ELV the employer must, as soon as is reasonably practicable, identify and implement any changes to the action plan which are necessary to ensure compliance with regulation 5(1).

Risk assessment

9.—(1) Subject to paragraph (5), the employer must make a suitable and sufficient assessment of the risks to workers arising from their exposure to electromagnetic fields.

(2) The risk assessment must include consideration of, where relevant—

- (a) the ALs and ELVs;
- (b) the frequency range, level, duration and type of exposure, including its distribution over the worker's body and the workplace;
- (c) direct biophysical effects;
- (d) replacement equipment designed to reduce the level of exposure;
- (e) information obtained from any health surveillance or medical examinations provided under regulation 20;
- (f) information provided by the manufacturer or distributor of equipment;
- (g) multiple sources of exposure;
- (h) simultaneous exposure to multiple frequency fields;
- (i) indirect effects;
- (j) any effects on workers at particular risk; and
- (k) other health and safety related information.

(3) The risks referred to in paragraph (1) do not include the risk of effects—

- (a) caused by contact with live conductors;
- (b) caused by multiple and separate instances of exposure; or
- (c) which continue to develop when exposure has ceased.

(4) The employer must review the assessment when—

(a) there is reason to suspect it is no longer valid, or
(b) there has been a significant change in the matters to which it relates,
and make such changes to it as are necessary to ensure it remains suitable and sufficient.

(5) Where an employer has made an assessment before the date on which these Regulations come into force, which assessment would have complied with the requirements of this regulation, that employer is to be treated, on and after that date, as having complied with paragraph (1).

Obligation to eliminate or reduce risks

10.—(1) The employer must ensure that, so far as is reasonably practicable, the risks identified in the most recent risk assessment under regulation 9 are eliminated or reduced to a minimum.

(2) Measures taken under paragraph (1) must—

- (a) be based on the general principles of prevention set out in regulation 5(1) of the General Duties Regulations; and
- (b) take into account technical progress, the potential to restrict access to parts of the workplace, and the availability of measures to control the production of electromagnetic fields at source.

PART 3

ENFORCEMENT

Offences and Penalties

11.—(1) Any person who fails to comply with regulations 5, 6, 8, 9, 10 or 20 is guilty of an offence and is liable—

- (a) on summary conviction—
 - (i) in England and Wales to a fine; or
 - (ii) in Scotland or 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 to a fine or both.

(2) Any person who fails to comply with regulation 18 or 19 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Section 146(1) of the Act (enforcement of fines) applies to any fine imposed for an offence under paragraphs (1) and (2), as if the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 were a reference to proceedings against any person for an offence under those paragraphs.

(4) Where a body corporate is guilty of an offence under these Regulations 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 that offence and is liable to be proceeded against and punished accordingly.

(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 these Regulations 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 and is liable to be proceeded against and punished accordingly.

Burden of proving what is reasonably practicable

12. In any proceedings under these Regulations consisting of a failure to comply with a duty or a requirement to do something so far as is reasonably practicable, it is for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy that duty or requirement.

Detention of a United Kingdom ship

13.—(1) Where a surveyor of ships is satisfied that there is or has been a failure to comply in relation to any ship with the requirements of these Regulations, that ship is liable to be detained until a surveyor of ships is satisfied that those requirements are complied with.

(2) A surveyor of ships may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard.

(3) A ship must not be delayed or detained unreasonably under this regulation.

(4) Where a ship is detained because in relation to it there has been a failure to comply with the requirements of these Regulations, and that failure has ceased, a person having the power to detain the ship must, at the request of the owner or master, immediately release the ship—

(a) if no proceedings for an offence arising from the failure in question are instituted within the period of seven days beginning with the day on which the ship is detained;

(b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the employer or other person having control of the matter in question being convicted;

(c) if either—

(i) the sum of £30,000 is paid to the Secretary of State by way of security, or

(ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,

by or on behalf of the employer or other person having control of the matter in question;

(d) where the employer or other person having control of the matter in question is convicted of an offence arising from the failure in question, if any costs or expenses, ordered to be paid by that person, and any fine imposed on that person, have been paid; or

(e) the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982^{M9}, and any bond or other financial security ordered by such court or tribunal is posted.

(5) The Secretary of State must repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—

(a) if no proceedings for an offence arising from the failure in question are instituted within the period of seven days beginning with the day on which the sum is paid; or

(b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the employer or other person having control of the matter in question being convicted.

(6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the employer or other person having control of the matter in question is convicted of an offence arising from the failure in question, the sum so paid or the amount made available under the security must be applied as follows—

- (a) first in payment of any costs or expenses ordered by the court to be paid by the employer or other person having control of the matter in question, and
 - (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.

(7) Section 145 of the Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if—

- (a) references to the master or owner of the ship were references to the employer or other person having control of the matter in question; and
- (b) references to an offence under section 131 were references to an offence arising from the failure in question.

Marginal Citations

M9 Cmnd. 8941.

Inspection and other measures in respect of ships registered outside the United Kingdom

14.—(1) When a ship which is not a United Kingdom ship is in United Kingdom waters, a relevant inspector may inspect that ship to ascertain whether the standards required in relation to United Kingdom ships by these Regulations are met in relation to that ship.

(2) Where a surveyor of ships is satisfied that the standards required in relation to United Kingdom ships by these Regulations are not met in relation to a ship which is not a United Kingdom ship but is in United Kingdom waters, that surveyor may—

- (a) send a report to the government of the State whose flag the ship is entitled to fly, and a copy of that report to the Director General of the International Labour Office^{M10}; and
- (b) where conditions on board are clearly hazardous to health and safety, take such measures as are necessary to ensure those conditions are rectified.

(3) A ship to which paragraph (2)(b) applies is liable to be detained until a surveyor of ships is satisfied that those conditions are rectified.

(4) A surveyor of ships may permit a ship which is liable to be detained under paragraph (3) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard.

(5) If any of the measures specified in paragraph (2)(b) or (3) are taken, the surveyor of ships must immediately notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(6) A ship must not, in the exercise of the power under this regulation, be delayed or detained unreasonably.

(7) In paragraph (1)—
“relevant inspector” means a person mentioned in paragraph (a), (b) or (c) of section 258(1) of the Act (powers to inspect ships and their equipment, etc)^{M11}.

Marginal Citations

M10 The International Labour Office is the permanent secretariat of the International Labour Organisation, which is an agency of the United Nations.

M11 Section 258(1) was amended by the [Merchant Shipping and Maritime Security Act 1997 \(c.28\)](#), [Schedule 1, paragraph 4](#) and Schedule 7, Part I, and modified in relation to a ship in a port in the United Kingdom by [S.I. 1995/3158](#).

Application of powers of inspectors in relation to Government ships

15. Sections 258 to 266 of the Act ^{M12} 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.

Marginal Citations

M12 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.

Enforcement of detention

16.—(1) Section 284 of the Act (enforcing detention of ship) ^{M13} applies where a ship is liable to be detained under these Regulations as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under these Regulations; and
- (b) subsection (7) were omitted.

(2) Where a ship is liable to be detained under these Regulations 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 these Regulations;
- (b) specifies the matters which, in the opinion of the surveyor of ships, have the effect that in relation to that ship those requirements are not met; and
- (c) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the Act.

Marginal Citations

M13 [Section 284](#) was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 1, paragraph 5.

Right of appeal and compensation

17. Regulations 14, 15 and 16 (right of appeal and compensation, arbitration and compensation for unjustified detention) of the Merchant Shipping (Port State Control) Regulations 2011 ^{M14} apply to a detention notice served under these Regulations as they apply to a detention order under those Regulations.

Marginal Citations

M14 [S.I. 2011/2601](#).

Prohibition on charging of workers

18. No charging in respect of anything done or provided in accordance with any requirement of these Regulations may be levied or permitted to be levied on any worker.

PART 4

MISCELLANEOUS

Information and training

19. The employer must provide relevant information and training to any workers who are likely to be subjected to the risks identified in the most recent risk assessment under regulation 9, including in relation to—

- (a) the measures taken under regulation 10;
- (b) the concepts and values of the ALs and ELVs and the possible risks associated with them;
- (c) the possible indirect effects of exposure;
- (d) the results of the most recent exposure assessment under regulation 6;
- (e) how to detect and report sensory and health effects;
- (f) the circumstances in which workers are entitled to health surveillance and medical examinations under regulation 20;
- (g) safe working practices; and
- (h) any additional measures taken in respect of workers at particular risk.

Health surveillance and medical examinations

20.—(1) The employer must ensure that health surveillance and medical examinations are provided as appropriate to any worker who—

- (a) is exposed to electromagnetic field levels in excess of the health effect ELVs; and
- (b) reports experiencing a health effect to that employer.

(2) Any health surveillance or medical examination must be provided during any reasonable hours chosen by the worker.

(3) The employer must keep a record of any health surveillance and medical examination provided.

(4) In this regulation—
“health effect ELVs” means the health effect ELVs set out in Part 2 of the Schedule.

Records

21. An employer who employs five or more workers must—

- (a) record the significant findings of the most recent exposure assessment under regulation 6; and
- (b) where required to make them, record—
 - (i) the most recent action plan under regulation 8; and
 - (ii) the significant findings of the most recent risk assessment under regulation 9.

Duties of other persons

22.—(1) Where a person on whom a duty is imposed by any of the preceding provisions of these Regulations does not have control of the matter to which that provision relates because responsibility for the operation of the ship falls upon another person, that duty also extends to any other person who has control of that matter.

- (2) It is the duty of every worker performing activities to which these Regulations apply to—
 - (a) make full and proper use of all clothing and equipment provided by the employer to that worker in pursuance of these Regulations; and
 - (b) give effect to all information and training provided to that worker under regulation 19.

Exemptions

23.—(1) The Secretary of State may exempt an employer from the requirements of regulations 5(1) and 8 in relation to one or more work activities.

- (2) An exemption under paragraph (1) must be subject to the following conditions—
 - (a) the exposure of workers to electromagnetic fields must be reduced to the lowest level reasonably practicable; and
 - (b) workers must be protected against the health effects and safety risks arising from that exposure.
- (3) An exemption granted under this regulation must be—
 - (a) in writing;
 - (b) valid for a maximum period of five years; and
 - (c) withdrawn as soon as the Secretary of State is satisfied that it is no longer justified.
- (4) The Secretary of State may amend or revoke an exemption at any time.

Amendment to Regulations

24.—(1) The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 ^{M15} are amended as follows.

(2) In the Schedule (merchant shipping health and safety regulations containing duties in respect of workers which regulation 13A extends to all seafarers) ^{M16}, at the appropriate place, insert “The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Electromagnetic Fields) Regulations 2016”.

Marginal Citations

M15 [S.I. 1997/2962](#).

M16 The Schedule was inserted by [S.I. 2014/1616](#), [regulation 2](#).

Review

- 25.**—(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 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 the Directive and by these Regulations,
 - (b) assess the extent to which those objectives are achieved; and

Changes to legislation: There are currently no known outstanding effects for the The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Electromagnetic Fields) Regulations 2016. (See end of Document for details)

- (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.
- (6) In this regulation—
“the Directive” means Directive 2013/35/EU ^{M17} of the European Parliament and of the Council of 26th June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC.

Marginal Citations

M17 OJ L 179, 29.6.2013, p.1.

Signed by authority of the Secretary of State for Transport

Department for Transport
24th October 2016

John Hayes
Minister of State

Changes to legislation:

There are currently no known outstanding effects for the The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Electromagnetic Fields) Regulations 2016.