

This Statutory Instrument corrects a defect in S.I. 2011/2601 and is being issued free of charge to all known recipients of that Statutory Instrument.

S T A T U T O R Y I N S T R U M E N T S

2017 No. 825

MERCHANT SHIPPING

The Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) and the Port State Control (Amendment) Regulations 2017

<i>Made</i> - - - -	<i>4th August 2017</i>
<i>Laid before Parliament</i>	<i>9th August 2017</i>
<i>Coming into force</i> - -	<i>1st October 2017</i>

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to merchant shipping (b) and the environment (c).

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act, makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) and the Port State Control (Amendment) Regulations 2017 and come into force on 1st October 2017.

Interpretation

2.—(1) In these Regulations—

“2015 Regulation” means Regulation (EU) 2015/757(d) of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport and amending Directive 2009/16/EC; and

“the Act” means the Merchant Shipping Act 1995(e).

(2) Expressions used in these Regulations have the same meaning as in the 2015 Regulation.

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union Amendment Act 2008 (c. 7).
(b) S.I. 1994/757.
(c) S.I. 2008/301.
(d) O.J. L 123, 19.5.2015, p.55.
(e) 1995 c. 21.

Application

3.—(1) These Regulations apply to ships above 5,000 gross tonnage to which the 2015 Regulation applies.

(2) These Regulations do not apply to warships, naval auxiliaries, fish catching or fish processing ships, wooden ships of primitive build, ships not propelled by mechanical means or government ships used for non-commercial purposes.

Requirement to carry a document of compliance

4.—(1) Subject to paragraph (4), a ship may not enter or leave a port in the United Kingdom unless there is in force, in respect of that ship, a valid document of compliance.

(2) The valid document of compliance must be carried on board the ship.

(3) The valid document of compliance must be produced on demand by the master to the Secretary of State.

(4) Paragraph (1) does not apply to a ship which has not carried out a voyage arriving at or departing from a port under the jurisdiction of an EEA State during the relevant reporting period.

Penalties

5.—(1) A company(a) is guilty of an offence if—

- (a) a ship enters or leaves a port in contravention of regulation 4(1); or
- (b) anyone attempts to navigate that ship into or out of a port in contravention of that regulation; or
- (c) the document of compliance is not carried on board the ship in contravention of regulation 4(2).

(2) The company guilty of an offence under paragraph (1) 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 a fine.

(3) A master who fails to comply with regulation 4(3) is guilty of an offence and is liable on summary conviction—

- (a) in England and Wales to a fine; or
- (b) in Scotland or Northern Ireland to a fine not exceeding the statutory maximum.

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

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

Power to detain

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

(a) A company is defined in article 3(d) of the 2015 Regulation as the shipowner or any other organisation or person such as the manager or the bareboat charterer which has assumed responsibility for the operation of the ship from the shipowner.
(b) 2006 c. 46.

(2) Section 284 of the Act^(a) (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 (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) and Port State Control (Amendment) Regulations 2017”; and
- (b) “owner of a ship” substitute “company”.

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

Expulsion order

7. 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 20.3 of the 2015 Regulation, the Secretary of State must refuse that ship entry to any port in the United Kingdom until the company fulfils its monitoring and reporting obligations under Articles 11 and 18 of the 2015 Regulation.

Power to permit prohibited ships to enter port

8.—(1) Notwithstanding regulation 7, if this regulation applies, the Secretary of State may allow a ship access to a specific port or anchorage in the United Kingdom.

(2) This regulation applies if the Secretary of State—

- (a) considers that a circumstance in paragraph (3) applies in relation to the ship; and
- (b) is satisfied that adequate measures to ensure safe entry have been implemented by the company or master of the ship.

(3) The circumstances are—

- (a) force majeure;
- (b) overriding safety considerations;
- (c) the need to reduce or minimise the risk of pollution; or
- (d) the need to have deficiencies rectified.

Arbitration

9.—(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 company 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.

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

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

(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.

Compensation for unjustified detention

10.—(1) If on a reference under regulation 9 relating to a detention notice the arbitrator decides that the company has proved—

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

the arbitrator must award the company 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.

Amendment of the Merchant Shipping (Port State Control) Regulations 2011

11. The Merchant Shipping (Port State Control) Regulations 2011(b) are amended as follows—

- (a) in regulation 2 (interpretation) for the definition of initial inspection substitute—

““initial inspection” means a visit on board a ship by an inspector in order to check compliance with the relevant Conventions including at least the checks set out in

(a) 2007 c.15.
(b) S.I. 2011/2601.

Article 13.1 of the Directive and on and after 30th June 2019 compliance with Article 18 of Regulation (EU) 2015/757”.

- (b) in regulation 3 (application of Part 1)—
 - (i) in paragraph (2) omit “These Regulations do” and substitute “Part 1 of these Regulations does”; and
 - (ii) in paragraph (4) before “these Regulations” insert “Part 1 of”.

Review

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

- (a) carry out a review of the regulatory provision contained in regulations 3 to 10, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 1st October 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015^(a) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how Article 20 of the 2015 Regulation is implemented in other EEA States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Signed by authority of the Secretary of State for Transport

Callanan of Low Fell
Parliamentary Under Secretary of State
Department for Transport

4th August 2017

^(a) 2015 c.26. Section 30(3) was amended by the Enterprise Act 2016 (c.12), section 19.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made to support the operation of Regulation (EU) No. 2015/757 of the European Parliament and of the Council on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport and amending Directive 2009/16/EC (O.J. L123, 19.5.2015, p. 55.) (“the 2015 Regulation”).

The 2015 Regulation creates a mechanism for monitoring and reporting carbon dioxide emissions from ships and for reporting other information at national and European Union level. Compliance with the 2015 Regulation is to be demonstrated by a document of compliance which must be carried on board the ship.

The Regulations create a requirement for a ship entering or leaving a UK port to carry a valid document of compliance (regulation 4), the failure to produce the document of compliance is a criminal offence (regulation 5) and the ship may be detained (regulation 6).

A ship which is the subject of an expulsion order issued by another EEA State may not enter a port in the United Kingdom (regulation 7), but the Secretary of State has a discretion to permit a ship which is the subject of an expulsion order to enter a specific port or anchorage (regulation 8).

Where the validity of a detention is questioned the matter may be referred to arbitration (regulation 9) and compensation awarded (regulation 10).

The Regulations also amend the Merchant Shipping (Port State Control Regulations) 2011 (S.I.2011/2601) to make it a requirement for an inspection under those regulations to include a check that the ship is carrying a document of compliance; this will apply to inspections carried out on and after 30th June 2019. The Regulations also correct an error in the drafting in regulations 2 and 3 of those regulations (regulation 11).

The Secretary of State is required to review the operation and effect of regulations 3 to 10 of these Regulations and publish a report before 1st October 2022 and within every five years after that (regulation 12). Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

A full Impact Assessment has not been produced for this instrument as it is not expected to have significant impact on the public or voluntary sectors and only minimal impact on the private sector is foreseen. A Regulatory Triage Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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