
STATUTORY INSTRUMENTS

2020 No. 94

The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020 and come into force on 26th February 2020.

Revocation

2. The regulations listed in column 1 of the Table in Schedule 4 (Revocations) are revoked to the extent specified in column 3 of that Table.

Interpretation

3. In these Regulations—

“appropriate authority” means the European Commission before IP completion day and the Secretary of State after IP completion day;

“bunkering operation” means the transfer between ships of a substance consisting wholly or mainly of oil for consumption by the engines of the ship receiving the substance;

“cargo transfer” means the transfer between two ships of a substance consisting wholly or mainly of oil which is transported by either or both of the ships for reward, but does not include—

- (a) a bunkering operation, or
- (b) a transfer of—
 - (i) the remnants of any cargo material on board in cargo holds or tanks which remain after unloading procedures and cleaning operations are completed;
 - (ii) excesses or spillages from loading or unloading, or
 - (iii) ship-generated waste; and for this purpose, “ship generated waste” has the meaning given to it in regulation 2 (interpretation, etc.) of the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003(1).

“the consultation bodies” means—

- (a) such of—
 - (i) Natural England,
 - (ii) the Natural Resources Body for Wales,
 - (iii) Scottish Natural Heritage, and
 - (iv) the Council for Nature Conservation and the Countryside,

as the Secretary of State considers likely to have an interest in an OTL application by reason of their responsibilities, and

- (b) any authority or other body the Secretary of State considers likely to have an interest in an OTL application, whether by virtue of having specific environmental responsibilities under any enactment or otherwise;

“European site” has the meaning given in regulation 8(1) (European sites and European marine sites) of the Conservation of Habitats and Species Regulations 2017(2), with the omission of the words “Subject to paragraph (2),”;

“European offshore marine site” has the meaning given in regulation 18 (meaning of “European offshore marine site”) of the Conservation of Offshore Marine Habitats and Species Regulations 2017(3);

“environmental statement” means the environmental statement provided in accordance with paragraph 1(1)(c) of Schedule 2 (procedure for grant of an oil transfer licence);

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

“general lighthouse authority” has the meaning given in section 193 (general and local lighthouse authorities) of the Merchant Shipping Act 1995(4);

“the Habitats Directive” has the meaning given in regulation 2 (interpretation) of the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“harbour authority” has the meaning given in section 57(1) (interpretation) of the Harbours Act 1964(5);

“harbour authority waters” means waters regulated or managed by a harbour authority, excluding any areas outside a harbour over which a harbour authority exercises control in accordance with the Pilotage Act 1987(6) by virtue of an order of the Secretary of State made under section 1(3)(a) (pilotage function orders for areas outside harbour authority waters) of that Act;

“IP completion day” has the meaning given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(7);

“licence decision” means the decision of the Secretary of State whether to grant an oil transfer licence or an amended oil transfer licence and, if so, as to the terms on which to do so;

“Merchant Shipping Notice” means a notice described as such and issued by the Maritime and Coastguard Agency (an executive agency of the Department for Transport), and includes a reference to that Merchant Shipping Notice as revised or re-issued from time to time;

“Natura 2000” has the meaning given by regulation 3(1) (interpretation) of the Conservation of Habitats and Species Regulations 2017;

“offshore installation” means—

- (a) an offshore installation within the meaning of section 44 (meaning of “offshore installation”) of the Petroleum Act 1998(8), which is not a ship, or
- (b) a renewable energy installation within the meaning of section 104 (interpretation of Chapter 2 of Part 2) of the Energy Act 2004(9);

(2) S.I. 2017/1012, amended by S.I. 2019/579.

(3) S.I. 2017/1013, amended by S.I. 2019/579.

(4) Section 193 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 6, paragraph 6 and by the Marine Navigation Act 2013 (c. 23), section 8(1).

(5) 1964 c. 40.

(6) 1987 c. 21.

(7) 2020 c. 1.

(8) 1998 c. 17; section 44 was amended by the Energy Act 2008 (c. 32), Schedule 1, paragraph 11.

(9) 1994 c. 20; section 104 was amended by the Wales Act 2017 (c. 4), section 41(6).

“oil” means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;

“oil transfer licence” means a licence granted to a harbour authority by the Secretary of State, enabling the harbour authority to authorise cargo transfers—

- (a) of a substance or substances specified in the licence,
- (b) in a specified location or locations, and
- (c) subject to any conditions specified in the licence;

“OTL application” means, except as provided otherwise in regulation 8(4) (oil transfer licences), an application for an oil transfer licence submitted by a harbour authority to the Secretary of State under regulation 8(1).

Cargo transfers in United Kingdom waters or controlled waters

4.—(1) Subject to regulations 6 (exceptions) and 11 (exemptions), a cargo transfer must not be carried out in United Kingdom waters unless the ships carrying out the cargo transfer are—

- (a) within harbour authority waters; or
- (b) within the permit area, and a permit has been obtained from the Secretary of State in accordance with the procedure set out in Merchant Shipping Notice 1829(10).

(2) A cargo transfer to or from a ship of 150 GT or more must not be carried out in the permit area unless the requirements of paragraph (4) have been met.

(3) A cargo transfer to or from a ship of 150 GT or more must not be carried out in controlled waters unless—

- (a) the Secretary of State has been notified in accordance with the procedure specified in Merchant Shipping Notice 1829; and
- (b) the requirements of paragraph (4) have been met.

(4) The requirements are that—

- (a) a ship-to-ship transfer operations plan has been approved by the ship’s flag State;
- (b) a copy of that ship-to-ship transfer operations plan is on board the ship; and
- (c) the cargo transfer is carried out in compliance with that ship-to-ship transfer operations plan.

(5) In this regulation—

“controlled waters” means the areas of sea specified by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2014(11) as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea (protection and preservation of the marine environment)(12);

“GT” means gross tonnage and the gross tonnage of a ship is to be determined, for the purposes of these Regulations, in accordance with Schedule 3 (gross tonnage);

(10) Merchant Shipping Notices are published by the Maritime and Coastguard Agency (“MCA”). Copies of MSN 1829 may be obtained free of charge at <https://www.gov.uk/government/collections/merchant-shipping-notices-msns#contents> or in hard copy from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG. MSN 1829 has been revised and updated as a result of the introduction of these Regulations.

(11) [S.I. 2014/3306](https://www.gov.uk/government/consultations/si-2014-3306).

(12) This Convention (“UNCLOS”) was originally published in Cmnd. 8941, and subsequently in Cm. 4524. A hard copy of Cm. 4524 is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW (catalogue number: HL/PO/JO/10/11/3186/287). An electronic copy of Cm. 4524 can be found at <https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=69421>. A copy of UNCLOS may be obtained from the United Nations (email doalos@un.org), and at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

“permit area” means the area of sea off Southwold in Suffolk defined by a circle of radius 1.5 nautical miles centred on position 52° 16’N. 01° 57.3’E; and

“ship-to-ship transfer operations plan” means a document which—

- (a) is in the working language of the ship to which it relates; and
- (b) sets out how cargo transfer operations should be conducted, based on best practice guidelines identified by the International Maritime Organization⁽¹³⁾.

Cargo transfers within harbour authority waters

5.—(1) Subject to regulations 6 (exceptions) and 11 (exemptions), a cargo transfer must not be carried out in harbour authority waters unless it is—

- (a) carried out in accordance with an authorisation of the harbour authority that regulates or manages the waters in which the cargo transfer is carried out;
- (b) a lightening operation; or
- (c) a consolidation operation.

(2) In this regulation—

- (a) “lightening operation” means a cargo transfer carried out—
 - (i) with the prior consent of the harbour authority that regulates or manages the waters in which the operation takes place, and
 - (ii) in order to reduce the draught of the ship transferring the cargo, to enable it to move to shallower waters in the harbour authority waters of that harbour authority; and
- (b) “consolidation operation” means a cargo transfer carried out—
 - (i) between two ships which normally carry out bunkering operations in the harbour authority waters in which the operation takes place,
 - (ii) with the prior consent of the harbour authority that regulates or manages the waters in which the operation takes place, and
 - (iii) for the purpose of rationalising cargo capacity.

Exceptions

6. Regulations 4 (cargo transfers within United Kingdom waters or controlled waters) and 5 (cargo transfers within harbour authority waters) do not apply to a cargo transfer—

- (a) between a ship and an offshore installation;
- (b) to or from a warship or naval auxiliary ship;
- (c) to or from any other ship owned or operated by a State and used solely, for the time being, on government non-commercial service; or
- (d) carried out by or on behalf of a general lighthouse authority.

Authorisation of cargo transfers

7.—(1) A harbour authority may only authorise a cargo transfer which is within the scope permitted by the harbour authority’s oil transfer licence.

(2) The authorisation of a cargo transfer by a harbour authority is valid only if given—

(13) The current best practice guidelines identified by the IMO are contained in the Manual on Oil Pollution, Section I – Prevention, 2011 edition (ISBN: 978-92-801-4244-0) which can be obtained from or viewed at the International Maritime Organization (“the IMO”) at IMO Publishing, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications; email: sales@imo.org; telephone: 0207 735 7611.

- (a) on receipt of a written application for authorisation,
- (b) in advance of a cargo transfer, and
- (c) in writing.

Oil transfer licences

8.—(1) Before a harbour authority may obtain an oil transfer licence, the harbour authority must—

- (a) determine, in accordance with the procedure in Schedule 1 (initial determination of likely effects on European sites), whether the cargo transfers to be authorised pursuant to the licence would be likely to have a significant effect on any European site; and
 - (b) apply for the licence to the Secretary of State in accordance with the procedure in Schedule 2 (procedure for grant of an oil transfer licence).
- (2) Subject to regulation 9(2) (transitional provisions), in harbour authority waters where—
- (a) an oil transfer licence has effect, and
 - (b) the harbour authority which regulates or manages those harbour authority waters becomes aware of circumstances which render the information provided in the OTL application inaccurate to what is or may be a material extent,

the harbour authority must apply to the Secretary of State for an amended oil transfer licence.

(3) The harbour authority must make the application under paragraph (2) within 3 months of becoming aware of the circumstances referred to in that paragraph.

(4) A harbour authority applying for an amended oil transfer licence must use the procedure in Schedules 1 (initial determination of likely effects on European sites) and 2 (procedure for grant of an oil transfer licence), and for this purpose references in Schedules 1 and 2—

- (a) to the oil transfer licence are to be taken as references to the amended oil transfer licence;
- (b) to the OTL application are to be taken as references to the application for the amended oil transfer licence; and
- (c) to the licence decision are to be taken as references to the decision whether to issue an amended oil transfer licence.

(5) Where a harbour authority applies for an amended oil transfer licence under paragraph (2) the Secretary of State may—

- (a) issue an amended oil transfer licence in such terms as the Secretary of State considers appropriate;
 - (b) decline to issue an amended oil transfer licence, leaving the existing oil transfer licence to continue in effect; or
 - (c) decline to issue an amended oil transfer licence and revoke the existing oil transfer licence.
- (6) If the Secretary of State is satisfied that—
- (a) a harbour authority should have made an application under paragraph (2); and
 - (b) that harbour authority has not made the application within the time period specified in paragraph (3),

the Secretary of State may suspend an oil transfer licence until the application has been made and a decision has been made regarding the action to take as a result of the application.

(7) Where the Secretary of State suspends an oil transfer licence in accordance with paragraph (6), the Secretary of State must immediately give notice of the suspension in writing to the harbour authority.

Transitional provisions

9.—(1) If a harbour authority was granted an oil transfer licence under regulation 5 (oil transfer licences) of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010⁽¹⁴⁾ then, for the purposes of these Regulations, that harbour authority shall be treated as though that oil transfer licence was granted under regulation 8 (oil transfer licences).

(2) In harbour authority waters where—

- (a) an oil transfer licence has effect by virtue of paragraph (1) at the time at which these Regulations come into force, and
- (b) the harbour authority which regulates or manages those harbour authority waters is aware, at that time, of circumstances which render the information provided in the original application for an oil transfer licence under regulation 5(1) (oil transfer licences) of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 inaccurate to what is or might be a material extent,

the harbour authority must apply to the Secretary of State for an amended oil transfer licence.

(3) The harbour authority must make the application under paragraph (2) within three months of the date on which these Regulations come into force.

(4) Regulation 8(4) to (7) (oil transfer licences) apply to an application under paragraph (2) as they would to an application under regulation 8(2).

(5) If, prior to the coming into force of these Regulations, a harbour authority authorised a cargo transfer that is scheduled to take place after the Regulations come into force, that authorisation is to be treated as an authorisation for the purposes of these Regulations and remains valid provided that—

- (a) when carried out, the cargo transfer is within the scope permitted by the harbour authority's oil transfer licence; and
- (b) the requirements of regulation 7(2) (authorisation of cargo transfers) were satisfied in relation to the authorisation.

Prohibited bunkering operations

10.—(1) Subject to paragraph (2) and regulation 11 (exemptions), a bunkering operation must not be carried out in United Kingdom waters unless the ships carrying out the operation are within harbour authority waters.

(2) Paragraph (1) does not apply to a bunkering operation—

- (a) between a ship and an offshore installation;
- (b) between a ship and its rescue boat or tender;
- (c) to or from a warship or naval auxiliary ship;
- (d) to or from any other ship owned or operated by a State and used solely, for the time being, on government non-commercial service; or
- (e) carried out by or on behalf of a general lighthouse authority.

(3) In this regulation, “rescue boat” means a ship designed or used to rescue persons in distress and to marshal life rafts.

Exemptions

11.—(1) Subject to paragraph (3), the Secretary of State may exempt—

⁽¹⁴⁾ S.I. 2010/1228. These regulations have now ceased to have effect as a result of the sunset clause in regulation 1.

- (a) a cargo transfer from the provisions of regulation 4(1) (cargo transfers in United Kingdom waters or controlled waters);
 - (b) a cargo transfer from the provisions of regulation 5(1) (cargo transfers within harbour authority waters); and
 - (c) a bunkering operation from the provisions of regulation 10(1) (prohibited bunkering operations).
- (2) The Secretary of State may make any such exemption subject to such conditions as the Secretary of State considers appropriate.
- (3) Where the Secretary of State considers that a cargo transfer or bunkering operation is likely to have a significant effect on a European site, the Secretary of State must, before granting an exemption under paragraph (1), require the person applying for the exemption to provide sufficient information to enable the Secretary of State to carry out an appropriate assessment of the implications of the cargo transfer or bunkering operation for the European site, in view of the conservation objectives of the site.
- (4) The procedure for the assessment referred to in paragraph (3) is the procedure for assessment of an OTL application in Schedules 1 (initial determination of likely effects on European sites) and 2 (procedure for grant of an oil transfer licence), and for this purpose references in Schedules 1 and 2—
- (a) to the harbour authority are to be taken as references to the person who applied for the exemption;
 - (b) to the OTL application are to be taken as references to the application for the exemption;
 - (c) to the oil transfer licence are to be taken as references to the proposed exempt cargo transfer or bunkering operation; and
 - (d) to the licence decision are to be taken as references to the decision whether to grant the exemption.
- (5) When considering an application for an exemption under paragraph (1)(b), the Secretary of State must—
- (a) seek the views of the harbour authority that regulates or manages the harbour authority waters in which the transfer is intended to take place;
 - (b) provide that harbour authority with a reasonable time to respond; and
 - (c) take into account any response received from the harbour authority when deciding whether to grant the exemption.

Offences

12.—(1) If a cargo transfer or bunkering operation is carried out in contravention of these Regulations, the owner, the manager and the master of each ship carrying out the cargo transfer or bunkering operation is guilty of an offence.

- (2) A harbour authority which—
- (a) authorises a cargo transfer without an oil transfer licence;
 - (b) fails to take all reasonable steps to prevent a cargo transfer, in the harbour authority waters of that harbour authority, which is prohibited under regulation 5 (cargo transfers within harbour authority waters); or
 - (c) knowingly or recklessly provides false information in—
 - (i) an OTL application;
 - (ii) an application for an amended oil transfer licence under regulation 8(2) (oil transfer licences); or

(iii) an application for an amended oil transfer licence under regulation 9(2) (transitional provisions),
is guilty of an offence.

(3) A person who knowingly or recklessly provides false information to the Secretary of State in relation to an application for an exemption under regulation 11 (exemptions) is guilty of an offence.

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

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Scotland, to a fine not exceeding £25,000;
- (c) on summary conviction in Northern Ireland, to a fine not exceeding £25,000;
- (d) on conviction on indictment, to a fine.

(5) Where a person is charged with an offence under paragraph (1), (2)(a) or (2)(b), it is a defence for the person charged to prove that the cargo transfer or bunkering operation was for one or more of the following purposes—

- (a) securing the safety of any ship;
- (b) saving life at sea; or
- (c) combating specific pollution incidents in order to minimise the damage from pollution,

unless the court is satisfied that the cargo transfer or bunkering operation was not necessary for any of those purposes and was not a reasonable step to take in the circumstances.

Consequential amendment

13. In regulation 63(7)(c)(iv) (assessment of implications for European sites and European offshore marine sites) of the Conservation of Habitats and Species Regulations 2017(**15**) for “the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010(**16**)” substitute “the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020”.

Review

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

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 26th February 2025.

(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(**17**) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under Chapter 8 of Annex I to the International Convention for the Prevention of Pollution from Ships 1973(**18**) are implemented in other countries which are subject to the obligations.

(15) [S.I. 2017/1012](#), amended by [S.I. 2019/579](#).

(16) [S.I. 2010/1228](#). These Regulations ceased to have effect on 1st April 2019 as a result of a sunset clause.

(17) [2015 c. 26](#). Section 30(3) was amended by section 19 of the Enterprise Act [2016 \(c. 12\)](#) and Schedule 8, Part 2, paragraph 36 of the European Union (Withdrawal) Act [2018 \(c. 16\)](#).

(18) The Convention (“MARPOL”) was published in Cmnd. 5748, and amended by the Protocols of 1978 (Cmnd. 7347) and 1997 (Cm. 4427). Hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW. The Parliamentary Archives catalogue numbers are as follows: HL/PO/JO/10/11/1853/505 (Cmnd. 5748), HL/PO/JO/10/11/1959/2033 (Cmnd. 7347) and HL/PO/JO/10/11/3156/2285 (Cm. 4427). Annex I of MARPOL has been amended by a number of IMO Resolutions, most recently by MEPC.314(74). The text of IMO Resolutions may be obtained from or viewed at the IMO Library at 4 Albert Embankment, London SE1 7SR.

(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

31st January 2020

Nusrat Ghani
Parliamentary Under Secretary of State
Department for Transport