

2022 No. 1334

MARINE POLLUTION

**The Merchant Shipping (Control of Harmful Anti-Fouling
Systems on Ships) Order 2022**

Made - - - - *14th December 2022*

Coming into force *15th December 2022*

At the Court at Buckingham Palace, the 14th day of December 2022

Present,

The King's Most Excellent Majesty in Council

By section 128(1)(e) of the Merchant Shipping Act 1995(a), His Majesty may by Order in Council make such provision as He considers appropriate for the purpose of giving effect to any international agreement not mentioned in paragraphs (a) to (da) of section 128(1) which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships.

The International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001(b), contains provision relating to such matters and has been ratified by the United Kingdom.

A draft of this Order has, in accordance with section 128(8)(a) of the Merchant Shipping Act 1995, been laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, His Majesty, in exercise of the powers conferred by section 128(1)(e), (3) and (4) of the Merchant Shipping Act 1995, is pleased, by and with the advice of His Privy Council, to order as follows.

Citation, commencement and extent

1.—(1) This Order may be cited as the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Order 2022 and comes into force on the day after the day on which it is made.

(a) 1995 c. 21. Section 128(1)(e) was amended by the Merchant Shipping (Pollution) Act 2006, section 2(1) and (3). Section 128, subsections (3) and (4) were amended by the Merchant Shipping and Maritime Security Act 1997, section 29(1), Schedule 6, paragraph 3. There are other amendments but none is relevant.

(b) Cmnd 8284. The Convention was adopted on 18th October 2001 and came into force on 17th September 2008. The Convention may be obtained in copy from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR or found on the Foreign, Commonwealth and Development Office treaties database (<https://treaties.fcdo.gov.uk/awweb/pdfopener?md=1&did=70021>). The Convention has been amended by International Maritime Organization (IMO) Resolution MEPC.331(76) which was adopted by the IMO on 17th June 2021 and comes into force on 1st January 2023. The IMO Resolution is available from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR or found on the Foreign, Commonwealth and Development Office treaties database (<https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/>).

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In this Order—

“the 1995 Act” means the Merchant Shipping Act 1995;

“the Convention” means the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001, including its Annexes and Appendices.

Regulations to give effect to the Convention

3. The Secretary of State may make regulations for the purpose of giving effect to the Convention.

Provisions supplementary to article 3

4. Without prejudice to the generality of article 3, the regulations referred to in that article may in particular include provision—

- (a) with respect to the carrying out of surveys and inspections and the issue, duration and recognition of certificates;
- (b) with respect to—
 - (i) the application of the regulations to the Crown;
 - (ii) the extraterritorial operation of the regulations; and
 - (iii) the extension of the provisions of the regulations, with or without modification, to any relevant British possession;
- (c) that a specified contravention of the regulations is to be an offence punishable—
 - (i) on summary conviction—
 - (aa) in England and Wales by a fine;
 - (bb) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or
 - (ii) on conviction on indictment by imprisonment for a term not exceeding two years, or a fine, or both;
- (d) that a specified contravention of the regulations is to be an offence punishable only on summary conviction—
 - (i) in England and Wales by a fine;
 - (ii) in Scotland or Northern Ireland by a fine not exceeding level 5 on the standard scale;
- (e) in connection with offences created by the regulations, corresponding to the provision made in connection with offences under section 131 (discharge of oil from ships into certain United Kingdom waters) of the 1995 Act by sections—
 - (i) 143(6) (prosecutions and enforcement of fines);
 - (ii) 144 (power to detain ships for section 131 offences); and
 - (iii) 146 (enforcement and application of fines),of the 1995 Act, whether by applying, or making provision for the application of, any of those sections, subject to such modifications as may be specified in the regulations; and
- (f) for detaining a ship in respect of which a contravention of the regulations is suspected to have occurred and, in relation to that ship, for applying section 284 (enforcing detention of ship) of the 1995 Act with such modifications as may be specified in the regulations.

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision, and enables regulations to be made, to give effect to the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (“the Convention”).

The Convention may be obtained in copy from the International Maritime Organization (IMO), 4 Albert Embankment, London, SE1 7SR, and is available on the Foreign, Commonwealth and Development Office (FCDO) treaties database (<https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/>). The text of the IMO Resolutions amending the Convention and Protocol may be obtained from the IMO, or on the FCDO treaties database (<https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/>).

An impact assessment has not been prepared for this instrument because there is no impact on the cost of business.

An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

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