

2008 No. xxxx

MERCHANT SHIPPING

Merchant Shipping (Implementation of Ship-Source Pollution Directive) Regulations 2008

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State is a minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to maritime transport(b).

The Secretary of State therefore makes the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Merchant Shipping (Implementation of Ship-Source Pollution Directive) Regulations 2008 and come into force on [DATE].

Interpretation

2. In these Regulations—

“the Act” means the Merchant Shipping Act 1995(c); and

“the Directive” means Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements(d).

Amendment of section 131 of the Merchant Shipping Act 1995

3.—(1) In section 131(1) of the Act—

(a) for “If any oil or mixture containing oil is discharged” substitute “If there is a relevant discharge”; and

(b) delete “which are navigable by seagoing ships”.

(2) After section 131(6) insert—

“(7) In this section “relevant discharge” means—

(a) 1972 c.68.
(b) S.I. 1994/757.
(c) 1995 c.21.
(d) OJ No L 1255, 30.9.2005, p11. [Not yet applicable in the EEA]

- (a) in relation to a discharge from an offshore installation, a discharge of oil or oily mixture into United Kingdom national waters which are navigable by seagoing ships; and
- (b) in relation to a discharge from any other ship, a discharge of oil or oily mixture into United Kingdom national waters which are navigable by seagoing ships and which are not sea.

(8) In this section, “offshore installation” means any mobile or fixed drilling or production platform or any other platform used in connection with the exploration, exploitation or associated offshore processing of sea bed mineral resources.”

Amendments to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996

4.—(1) The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996(a) are amended as follows.

(2) In regulation 1(2)—

(a) before the definition of “amidships” insert—

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

(b) after the definition of “Guidelines and Specifications for oil discharge monitoring and control systems for oil tankers”, insert—

“harbour master” includes a dock master or pier master, and any person specifically appointed by a harbour authority (within the meaning of section 151(1) of the Act) for the purpose of enforcing the provisions of these Regulations or of Chapter 2 of Part 6 of the Act;”

(c) after the definition of “new ship”, insert—

““offshore installation” means any mobile or fixed drilling or production platform or any other platform used in connection with the exploration, exploitation or associated offshore processing of sea bed mineral resources;”

(d) in the definition of “ship”, after the word “but” insert “, except in relation to regulations 11 to 16,”.

(3) In regulation 10(3)—

(a) for “regulation 11” substitute “regulations 11 to 11B”;

(b) for “that regulation” substitute “those regulations”.

(4) In regulation 11(b), for “ship” substitute “ship other than an excepted ship”;

(5) After regulation 11, insert—

“Exceptions for damage to a ship or its equipment in internal or territorial waters

11A. The provisions of regulations 12, 13 and 16 shall not apply to any discharge into a part of the sea which is within the United Kingdom or its territorial waters of oil or oily mixture which results from damage to an excepted ship or its equipment if—

(a) the damage was not caused by a person acting—

(i) with intent,

(ii) recklessly, or

(iii) with serious negligence;

(b) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and

(c) neither the owner nor the master acted—

(a) S.I. 1996/2154, amended by S.I. 1997/1910, S.I. 2000/483, S.I. 2004/303 and S.I. 2005/1916.

- (i) with intent to cause damage, or
- (ii) recklessly and with knowledge that damage would probably result.

Exceptions for damage to a ship or its equipment in other waters

11B—(1) The provisions of regulations 12, 13 and 16 shall not apply to any discharge into a part of the sea other than the United Kingdom or its territorial waters of oil or oily mixture which results from damage to a European excepted ship or its equipment if—

- (a) the damage was not caused by a person acting—
 - (i) with intent,
 - (ii) recklessly, or
 - (iii) with serious negligence;
- (b) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and
- (c) neither the owner nor the master acted—
 - (i) with intent to cause damage, or
 - (ii) recklessly and with knowledge that damage would probably result.

(2) The provisions of regulations 12, 13 and 16 shall not apply to any discharge into a part of the sea other than the United Kingdom or its territorial waters of oil or oily mixture which results from damage to a non-European excepted ship or its equipment if—

- (a) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and
- (b) neither the owner nor the master acted—
 - (i) with intent to cause damage, or
 - (ii) recklessly and with knowledge that damage would probably result.

Definition of ship for the purposes of regulations 11 to 11B

11C. In regulations 11 to 11B—

- (a) “excepted ship” means a seagoing vessel, of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft but does not include a structure which is a fixed or floating platform;
- (b) “European excepted ship” means an excepted ship which is a United Kingdom ship or a ship which is registered in an EEA state;
- (c) “non-European excepted ship” means an excepted ship which is not a European excepted ship; and
- (d) [“serious negligence” means an unintentional act or omission by which the person responsible commits a patent breach of the duty of care which he should have and could have complied with in view of his attributes, knowledge, abilities and individual situation.]”.

(6) In regulations 12(1), 13(1), 16(2) and 22(2)(a), for “regulation 11” wherever it occurs, substitute “regulations 11 to 11B”.

(7) In regulation 12(6), after “United Kingdom” insert “except insofar as they are discharges into the sea”.

(8) For regulation 12(7) substitute—

“(7) In relation to offshore installations, this regulation does not apply to discharges other than discharges prohibited by paragraph (4) which occur landward of the line which for the time being is the baseline for measuring the breadth of the territorial waters of the United Kingdom irrespective of whether they are discharges into the sea.”

(9) In regulation 13(6), after “United Kingdom” insert “except insofar as they are discharges into the sea”.

(10) Delete regulation 13(7).

(11) Delete regulation 32(3)(a).

(12) After regulation 35, insert—

“Powers of harbour masters

35A.—(1) In any case where a ship is liable to be detained pursuant to regulation 35(2)(a)(i)(a), in relation to a suspected contravention occurring in the waters over which a harbour master exercises jurisdiction, that harbour master may also detain that ship.

(2) In such a case section 284(2) to (5) and (8) of the Act shall have effect in relation to that ship but as if for the words “this Act”, wherever they appear, there were substituted the words “the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996”.

(3) Where a ship other than a United Kingdom ship is detained pursuant to paragraph (1), the harbour master shall immediately notify the Secretary of State, who shall immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly, or the appropriate maritime authorities of that State.

(4) Paragraphs (3) to (10) of regulation 37(b) apply in relation to a detention pursuant to paragraph (1) as if for “the Secretary of State”, wherever it occurs, there were substituted “the harbour master”.

(13) Delete regulation 36(2).

(14) After regulation 36 insert—

“Penalties for contravening regulations 12, 13 and 16

36A.—(1) Subject to paragraph (3), if any ship fails to comply with any requirement of regulation 12, 13 or 16, the owner and the master shall each be guilty of an offence and section 131(3) of the Merchant Shipping Act 1995 shall apply as it applies to an offence under that section, so that each of the owner and the master shall be liable on summary conviction to a fine not exceeding £250,000 or on conviction on indictment to a fine.

(2) Subject to paragraph (3), if any oil or oily mixture is discharged from a ship in contravention of any requirement of regulation 12, 13 or 16, any person who causes or contributes to that discharge is guilty of an offence and punishable on summary conviction by a fine not exceeding £250,000 and on conviction on indictment by a fine.

(3) Where a European excepted ship fails to comply with any requirement of regulation 12, 13 or 16 because of a discharge into a part of the sea other than the United Kingdom or its territorial waters of oil or oily mixture which results from damage to the ship or its equipment, neither the owner nor the master nor a crew member acting under the master’s responsibility shall be guilty of an offence under this regulation in respect of that failure to comply if—

(a) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and

(b) neither the owner nor the master acted—

(i) with intent to cause damage, or

(ii) recklessly and with knowledge that damage would probably result.

(4) In this regulation, “European excepted ship” has the same meaning as in regulation 11C.”.

(a) Paragraph 2 of regulation 35 was substituted by S.I. 2004/303.

(b) Paragraph 3(c) of regulation 37 was amended by S.I. 1997/1910.

(15) In regulation 37, for “master or owner”, or “owner or master”, except in paragraph (3)(b) and (c)(ii) wherever they occur, substitute “defendant”.

(16) In regulation 37(3)(c)(ii), delete “by or on behalf of the master or owner”.

Amendment of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996

5. In regulation 14 of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996(a)—

(a) before paragraph (1A)(b) insert—

“(1ZA) If any noxious liquid substance is discharged from a ship in contravention of regulation 5(a), then any person who causes or contributes to that discharge is guilty of an offence and punishable on summary conviction by a fine not exceeding £25,000 and on conviction on indictment by a fine.”;

(b) in paragraph (1A), for “regulation 5” substitute “regulation 5(b)”;

(c) in paragraph (2) after “these Regulations” insert “(other than a contravention of regulation 5(a))”.

Signed by authority of the Secretary of State for Transport

Name
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (O.J. No L 1255, 30.9.2005, p 11). That Directive incorporates certain provisions of Annexes I and II to the International Convention for the Prevention of Pollution from Ships 1973 as amended by its Protocol of 1978 (“MARPOL 73/78”) into Community law. The Regulations are made under section 2(2) of the European Communities Act 1972.

Regulation 1 provides for citation and commencement, and certain terms used in the regulations are defined in *regulation 2*.

Regulation 3 amends the Merchant Shipping Act 1995 (“the Act”) to limit the provisions of section 131 of the Act regarding discharges of oil or oily mixture into certain types of water that are not sea.

Regulation 4 makes amendments to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996. The principal change is to insert new regulations 11A to 11C excepting from the prohibitions in regulations 12, 13 and 16 discharges of oil into the sea arising from damage to a ship or its equipment in certain circumstances. This removes existing defences in relation to certain discharges in those waters and introduces new defences for those discharges which have a more limited range.

Regulation 5 amends the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996 to provide that penalties may be imposed on any person who causes or contributes to a prohibited discharge under certain circumstances.

(a) S.I. 1996/3010, amended by S.I. 1997/2971, S.I. 1998/1153 and S.I. 2004/930.

(b) Paragraph 1A of regulation 14 was inserted by SI 1998/1153.

A regulatory impact assessment and a Transposition Note have been prepared and a copy has been placed in the library of each House of Parliament. Copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG (telephone number 02380 329100) or from www.opsi.gov.uk.