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STATUTORY INSTRUMENTS

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**1997 No. 2962**

**MERCHANT SHIPPING**

**The Merchant Shipping and Fishing Vessels  
(Health and Safety at Work) Regulations 1997**

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| <i>Made</i>                   | - - - - | <i>13th December 1997</i> |
| <i>Laid before Parliament</i> |         | <i>17th December 1997</i> |
| <i>Coming into force</i>      | - -     | <i>31st March 1998</i>    |

Whereas the Secretary of State is a Minister designated<sup>(1)</sup> for the purpose of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the safety of ships, and the health and safety of persons on them;

And whereas, in so far as the following Regulations are made in the exercise of powers conferred by section 85 of the Merchant Shipping Act 1995<sup>(3)</sup>, the Secretary of State has in pursuance of subsection (4) of section 86 of that Act consulted persons he considers will be affected as mentioned in that subsection:

Now, therefore, the Secretary of State, in exercise of the powers conferred by the said section 2(2) of the European Communities Act 1972, and by sections 85(1)(a) and (b), (3), (5) to (7) and 86(1) of the Merchant Shipping Act 1995 and of all other powers enabling him on that behalf, hereby makes the following Regulations:

**Part I**

**Citation, commencement and revocations**

1.—(1) These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 and shall come into force on 31 March 1998.

(2) The following Regulations are hereby revoked—

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- (1) *S.I. 1993/595.*  
(2) *1972 c. 68*; by virtue of the amendment of section 1(2) of the European Communities Act by section 1 of the European Economic Area Act 1993 (*c. 5*) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (*Cm 2073*) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (*Cm 2183*).  
(3) *1995 c. 21*; sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (*c. 28*), section 8, and are applied to hovercraft by the Hovercraft (Application and Enactments) Order 1989 (*S.I. 1989/1350*).

- (i) The Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982(4);
- (ii) The Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulations 1984(5);
- (iii) The Merchant Shipping (Health and Safety: General Duties) Regulations 1984(6);
- (iv) The Merchant Shipping (Health and Safety: General Duties) (Amendment) Regulations 1988(7);
- (v) The Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulations 1994(8);

## Interpretation

- 2.—(1) In these Regulations, except where the context otherwise requires, any reference to—
- (a) a numbered regulation is a reference to the regulation bearing that number in these Regulations; and
  - (b) a numbered paragraph or subparagraph is a reference to the paragraph or, as the case may be, subparagraph bearing that number in the regulation in which the reference appears.
- (2) In these Regulations, except where the context otherwise requires—
- “the Act” means the Merchant Shipping Act 1995;
  - “the 1996 Act” means the Employment Rights Act 1996(9);
  - “the Code” means the Code of Safe Working Practices for Merchant Seamen(10);
  - “Company”, in relation to a ship to which these Regulations apply, means the owner of the ship or any other organisation or person such as the manager, or bareboat charterer, who has assumed the responsibility for operation of the ship from the owner;
  - “competent person” means a person who has sufficient training and experience or knowledge and other qualities, to enable him properly to undertake the duty imposed under the relevant provision in these Regulations, and in the case of a safety officer, has in addition a minimum of two years consecutive sea service since attaining the age of 18, which, in the case of a safety officer on board a tanker, shall include at least six months service in such a ship;
  - “contract of employment” means a contract of employment, whether express or implied, and if express, whether oral or in writing;
  - “elected representative” means any person elected to represent a group of workers for the purposes of consultation with the employer on health and safety matters under regulation 20;
  - “employer” means a person by whom a worker is employed under a contract of employment;
  - “given birth” means delivered a living child or, after twenty-four weeks of pregnancy, a stillborn child;
  - “health and safety” includes the occupational health and safety of persons whilst on board the ship and whilst boarding or leaving the ship;
  - “master” includes the skipper of a fishing vessel;

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(4) S.I. 1982/876.

(5) S.I. 1984/93.

(6) S.I. 1984/408.

(7) S.I. 1988/1396.

(8) S.I. 1994/2014.

(9) 1996 c. 19.

(10) Published by Her Majesty’s Stationery Office in 1991; ISBN No. 0-11-551048-6.

“Merchant Shipping Notice” means a Notice described as such and issued by the Marine Safety Agency, an executive agency of the Department of the Environment, Transport and the Regions;

“new or expectant mother” means a worker who is either pregnant, or has given birth within the previous six months, or is breast-feeding;

“public service vessel” means any vessel operated by and on behalf of a public body while it is carrying out the authorised functions of that body;

“relevant inspector” means a person mentioned in paragraphs (a), (b) or (c) of section 258(1) of the Act;

“sail training vessel” means a sailing vessel which is being used either—

(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;

“sea-going” means operating outside Category A—D waters as defined in Merchant Shipping Notice No. M1504(11);

“trainees and apprentices” does not include persons who are training in a sail training vessel;

“United Kingdom ship” means a ship which—

(a) is a United Kingdom ship within the meaning of section 85(2) of the Act; or

(b) is a Government ship within the meaning of section 308(4) of the Act; or

(c) is a hovercraft registered under the Hovercraft Act 1968(12);

“worker” means any person employed by an employer under a contract of employment, including trainees or apprentices.

(3) Subject to paragraph (2), words and expressions used in the Regulations shall have the same meaning as in Council Directive [89/391/EEC](#) of 12 June 1989 on the introduction of measures to encourage improvements in the health and safety of workers at work(13).

## Application

3.—(1) These Regulations shall apply to all activities of workers on United Kingdom ships except when—

(a) the activity of a worker is on a public service vessel or a vessel engaged in search and rescue; and

(b) characteristics of that activity inevitably conflict with a provision of these Regulations, and in such a case there shall be a duty on the employer so far as is reasonably practicable to ensure the health and safety of the worker when performing that activity.

(2) Regulations 1, 2, 3, 28, 29 and 30 shall apply to ships other than United Kingdom ships which are in United Kingdom waters.

(3) These Regulations shall not apply to or in relation to the activities of a worker which are covered by the Management of Health and Safety at Work Regulations 1992(14).

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(11) Dd 8114144 9,150 10/92 (205757) amended by Merchant Shipping Notice No. M1569 Dd 8114144 9,150 6/96 Ed (032195).

(12) 1968 c. 59.

(13) O.J. L183, 29.6.89, p. 1.

(14) S.I. 1992/2051 as amended by S.I. 1994/2865.

## Part II

### General duties

#### Persons on whom duties are imposed

4.—(1) It shall be the duty of every—

- (a) employer; and
- (b) any other natural or legal person upon whom a duty is imposed by these Regulations,

to comply with the provisions of these Regulations.

(2) Where a person in paragraph (1) does not have control of the matter to which the regulation relates because he does not have responsibility for the operation of the ship, then any duty imposed by that regulation shall also extend to any natural or legal person who has control of that matter.

#### General duties

5.—(1) The employer shall ensure the health and safety of workers and other persons so far as is reasonably practicable, which duty shall be met by the application of the following principles—

- (a) the avoidance of risks, which among other things include the combating of risks at source and the replacement of dangerous practices, substances or equipment by non-dangerous or less dangerous practices, substances or equipment;
- (b) the evaluation of unavoidable risks and the taking of action to reduce them;
- (c) adoption of work patterns and procedures which take account of the capacity of the individual, especially in respect of the design of the workplace and the choice of work equipment, with a view in particular to alleviating monotonous work and to reducing any consequent adverse effect on workers' health and safety;
- (d) adaptation of procedures to take account of new technology and other changes in working practices, equipment, the working environment and any other factors which may affect health and safety;
- (e) adoption of a coherent approach to management of the vessel or undertaking, taking account of health and safety at every level of the organisation;
- (f) giving collective protective measures priority over individual protective measures; and
- (g) the provision of appropriate and relevant information and instruction for workers.

(2) Without prejudice to the generality of the duties under paragraph (1), the matters to which those duties extend shall include in particular—

- (a) provision and maintenance of plant, machinery and equipment and systems of work that are, so far as is reasonably practicable, safe and without risk to health;
- (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risk to health in connection with the use, handling, stowage and transport of articles and substances;
- (c) such arrangements as are appropriate, having regard to the nature of, and the substances used in, the activities and size of the operation, for the effective planning, organisation, control, monitoring and review of preventive and protective measures;
- (d) provision of such information, instruction, training and supervision as is necessary to ensure the health and safety of workers and that of other persons aboard ship who may be affected by their acts or omissions;

- (e) maintenance of all places of work in the ship in a condition that is, so far as is reasonably practicable, safe and without risk to health;
- (f) arrangements to ensure, so far as is reasonably practicable, that no person has access to any area of the ship to which it is necessary to restrict access on grounds of health and safety unless the individual concerned has received adequate and appropriate health and safety instruction;
- (g) provision and maintenance of an environment for persons aboard ship that is, so far as is reasonably practicable, safe and without risk to health;
- (h) collaboration with any other persons covered by regulation 4 to protect, so far as is reasonably practicable, the health and safety of all authorised persons aboard the ship or engaged in loading or unloading activities in relation to that ship.

### **Health and safety policy**

6.—(1) Subject to paragraph (2), a written statement shall be prepared and, as often as may be appropriate, revised, of the employer's general policy with respect to health and safety and the organisation and arrangements for the time being in force for carrying out that policy, and this and any revisions to it shall be brought to the notice of the workers.

(2) The written statement referred to in paragraph (1) shall not apply where five or less workers in aggregate are employed by the same employer, or by associated employers, in a United Kingdom ship.

(3) For the purposes of this regulation associated employers shall be interpreted in accordance with section 231 of the 1996 Act.

### **Risk assessment**

7.—(1) A suitable and sufficient assessment shall be made of the risks of the health and safety of workers arising in the normal course of their activities or duties, for the purpose of identifying—

- (a) groups of workers at particular risk in the performance of their duties; and
- (b) the measures to be taken to comply with the employer's duties under these Regulations,

and any significant findings of the assessment and any revision of it shall be brought to the notice of workers.

(2) This assessment shall extend to the risks to the health and safety of other persons on board ship in so far as they may be affected by the acts and omissions of the employer.

(3) The assessment referred to in paragraphs (1) and (2) shall be reviewed if—

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

and where such a review identifies a need for any changes to procedures or practices, those changes shall be made.

(4) Every employer and every self-employed person on board ship shall inform the Company of any relevant risks to health and safety arising out of or in connection with the conduct of his own undertaking.

(5) Measures shall be taken, and if necessary protective equipment supplied, to ensure an improvement in the health and safety of workers and other persons in respect of those risks identified.

(6) Workers shall be informed of the measures taken for their protection.

### **New or expectant mothers**

#### **8.—(1) Where—**

- (a) the workers include women with potential for child-bearing; and
- (b) the work is of a kind which could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any process or working conditions, or physical, biological or chemical agents, including those specified in Annexes I and II of Council Directive [92/85/EEC](#) on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers who have recently given birth or are breast-feeding<sup>(15)</sup>,

the assessment required by regulation 7(1) shall include the assessment of such risk.

(2) Where, in the case of an individual worker, any other action required to be taken by the employer under these Regulations would not avoid the risk referred to in paragraph (1), if it is reasonable to do so, and would avoid such risk, her working conditions or hours of work shall be altered.

(3) If it is not reasonable to alter the working conditions or hours of work, or if it would not avoid such risk, the employer shall, without prejudice to the rights of an employee under sections 66 to 68 of the 1996 Act, suspend the worker from work for so long as is necessary to avoid such risk.

(4) In paragraphs (1) to (3) references to risk, in relation to risk from any infectious or contagious disease are references to a level of risk at work which is in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace.

### **Night work**

#### **9.—(1) Where—**

- (a) a new or expectant mother works at night; and
- (b) a certificate from a registered medical practitioner or registered midwife shows that it is necessary for her health or safety that she should not be at work for any period of such work identified in the certificate,

the worker shall be offered suitable alternative daytime work, if any is available.

(2) Subject to paragraph (1), where no such alternative daytime work is available the worker shall, without prejudice to the rights of an employee under sections 66 to 68 of the 1996 Act, be suspended from her work for so long as is necessary for her health or safety.

### **Notification of pregnancy**

**10.—(1)** Nothing in paragraphs (2) or (3) of regulation 8 shall require any action to be taken in relation to a worker until she has notified the employer or the Company, as the case may be, in writing that she is pregnant, has given birth within the previous six months or is breast-feeding.

(2) Nothing in paragraph (2) or (3) of regulation 8 or in regulation 9 shall require action to be maintained in relation to a worker—

#### (a) in a case—

- (i) to which regulation 8(2) or (3) relates, and
- (ii) where the worker has notified her employer that she is pregnant,

where she has failed, within a reasonable time of being requested to do so in writing by her employer, to produce for the employer's inspection a certificate from a registered medical practitioner or a registered midwife showing that she is pregnant;

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(15) OJ No. L348, 28.11.92, p. 1.

- (b) once the employer knows that she is no longer a new or expectant mother; or
- (c) if the employer cannot establish whether she remains a new or expectant mother.

### **Health surveillance**

**11.** Workers shall be provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the assessment undertaken in accordance with regulation 7.

### **Capabilities and training**

**12.—(1)** In entrusting tasks to workers, account shall be taken of their capabilities as regards health and safety.

(2) Workers shall be provided with adequate and appropriate health and safety training and instruction—

- (a) before being assigned to shipboard duties;
- (b) on their being exposed to new or increased risks because of—
  - (i) being transferred or given a change of responsibilities,
  - (ii) the introduction of new equipment or a change to equipment already in use,
  - (iii) the introduction of new technology, or
  - (iv) the introduction of new shipboard practices, a new system of work or a change to a system of work already in use.
- (3) The training referred to in paragraph (2) shall—
  - (a) be repeated periodically where appropriate;
  - (b) be adapted to take account of any new or changed risks to the health or safety of the workers concerned; and
  - (c) take place during the working hours of the worker concerned.

(4) Every person carrying on the activity of an employment agency whose employee is to carry out work aboard a ship to which these Regulations apply shall be provided by the Company with information on—

- (a) any special occupational qualifications required by workers to carry out their work safely;
- (b) the specific features of the jobs to be filled by those workers (in so far as those features are likely to affect their health and safety); and
- (c) any health surveillance required to be provided to workers under these or other relevant regulations,

and the employment agency concerned shall ensure that the information so provided is given to the said workers.

## **Part III**

### **Duties of the Company**

#### **Co-ordination**

**13.** Where there are workers on board a United Kingdom ship not employed by the Company, the Company shall—

- (a) consult every other employer of those workers regarding the arrangements for health and safety required under regulation 5(2)(c);
- (b) co-ordinate arrangements for the protection of all workers and the prevention of risk to their health and safety; and
- (c) ensure that all workers are informed of the significant and relevant findings of the risk assessment carried out under regulation 7, and of the arrangements for their protection referred to in sub-paragraph (b).

## Part IV

### Special responsibility for health and safety and consultation with workers

#### Protective and preventive services

**14.—**(1) One or more competent persons shall be appointed by the employer in order to provide such protective and preventive services for the undertaking as are necessary to enable him to comply with the requirements of these Regulations.

(2) Where there is no competent person available within the undertaking, the employer shall employ an external person who is a competent person.

(3) If he is a competent person, the employer may appoint himself to undertake the responsibilities specified in paragraph (1).

(4) The number of persons appointed under paragraph (1) shall be sufficient in number to carry out the requirements of these Regulations, and the appropriate persons shall have the necessary time, resources and means, to carry out their duties.

#### Appointment of safety officers

**15.—**(1) This regulation and regulations 16 to 18 below apply to sea-going ships in which more than five workers are employed, other than fishing vessels.

(2) In every ship to which this regulation applies, the Company shall appoint a competent person as safety officer.

(3) The Secretary of State may grant exemptions from the provisions in paragraphs (1) and (2) for classes of cases or individual cases on such terms (if any) as he may specify in the exemption and may, subject to giving reasonable notice, alter or cancel any such exemption.

#### Duties of safety officers

**16.—**(1) Subject to paragraph (2), it shall be the duty of the safety officer to use his best endeavours to—

- (a) improve the standard of safety consciousness among the crew and ensure that the provisions of the Code and safety instructions, rules and guidance for the ship relating to health and safety are complied with;
- (b) investigate, so far as is reasonably practicable,
  - (i) every accident involving death, major or serious injury and every dangerous occurrence as defined in the Merchant Shipping (Accident Investigation and Reporting) Regulations 1994(16),
  - (ii) all potential hazards to health and safety, and



- (iii) all reasonable complaints by workers about health and safety, and making recommendations to the master to prevent the recurrence of such an accident or to remove any hazard, provided that the duty to investigate shall not extend to accidents arising from a casualty to the ship;
  - (c) ensure that health and safety inspections of each accessible part of the ship are carried out at least once every three months and more frequently if there have been substantial changes in the conditions of work;
  - (d) make representations and, where appropriate, recommendations to the master, about any deficiency in the ship in respect of—
    - (i) any legislative requirement relating to health and safety,
    - (ii) any relevant Merchant Shipping Notice, or
    - (iii) any provision of the Code,and also suggest whether those representations and recommendations should be passed by the master on to the employer or other person who has control of the matter;
  - (e) maintain a record of every accident involving death, major or serious injury and every dangerous occurrence, and make it available on request to any elected representative, to the master and to any person duly authorised by the Secretary of State;
  - (f) stop any work which he observes in progress and reasonably believes may cause a serious accident, and immediately inform the master or the master's deputy who shall decide when work can safely be resumed.
- (2) Nothing in this regulation shall require a safety officer to take any action at a time when emergency action to safeguard life or the ship is being taken.

### **Election of safety representatives and safety committees**

**17.—**(1) In every ship to which this regulation applies, and where there is no existing arrangement under the Safety Representatives and Safety Committee Regulations 1977(17) the Company shall make rules for the election and appointment of safety representatives.

(2) In every election for a safety representative the candidate receiving most votes shall be elected, provided that no safety representative shall be appointed who has less than two years' consecutive sea service since attaining the age of 18, which in the case of a safety representative on board a tanker shall include at least six months' service in such a ship.

(3) The appointment of a safety representative shall terminate—

- (a) on that person ceasing to be employed in the ship; or
- (b) from the date on which that person resigns from that position or on which another duly elected person is elected in his place.

(4) In all ships where a safety representative is elected, the Company shall appoint a safety committee which shall include the master as chairman, the safety officer and every safety representative, and may also include any other person appointed under regulation 14(1).

(5) The appointment of every person under regulations 14(1), 15(2) and 17(1) and the appointment of any of those persons onto a safety committee shall be recorded in writing.

### **Powers of safety representatives and safety committees**

**18.** Safety representatives and safety committees may—

- (a) participate, subject to the concurrence of the safety officer, in any of the investigations or inspections carried out by the safety officer under regulation 16, or after notification to the master or his deputy, undertake similar investigations or inspections themselves, whether or not such investigations or inspections have already been carried out by the safety officer;
- (b) make representations to the employer on potential hazards and dangerous occurrences at the workplace which affect, or could affect, workers on the ship;
- (c) make representations to the master and the employer on general matters affecting the health and safety of workers on the ship and, in particular, on such matters as those on which the employer carries out consultation under regulation 20;
- (d) request the safety officer to carry out any occupational health and safety inspection they consider necessary and to report the findings to them.

### **Duties of the Company and master**

**19.**—(1) It shall be the duty of the Company and master, in co-ordination with the employer, to facilitate the work of any person appointed under regulations 14(1), 15(2) and 17(1) in carrying out their health and safety functions, and in particular to—

- (a) provide for use by them a copy of the Code (where appropriate), and access to any necessary information, documents and similar material including relevant legislation and Merchant Shipping Notices;
- (b) provide them with relevant information about—
  - (i) the risks and measures for protection identified under regulation 7,
  - (ii) factors known, or suspected, by them to affect the health and safety of the workers on board the ship, and
  - (iii) arrangements for fire-fighting, first aid and other emergency procedures;
- (c) ensure that those persons have the necessary resources and means to carry out their functions and duties;
- (d) allow any of those persons such absence from ship duties without loss of pay as may be necessary to enable them to fulfil their functions, or to undertake any necessary training in health and safety matters;
- (e) receive at any reasonable time, representations about health and safety from the safety officer, safety representatives or the safety committee, discuss their representations with them and implement any agreed measures as soon as may be reasonable and practicable.

(2) Where no safety officer is appointed under regulation 15, the Company shall maintain a record of every accident involving death, major or serious injury, and every dangerous occurrence and make it available on request to any worker and any person duly authorised by the Secretary of State.

### **Consultation with workers**

**20.**—(1) Workers or their elected representatives shall be consulted in advance and in good time by the employer, and in the case of sub-paragraphs (c) and (d) where applicable by the Company, on all matters relating to their health and safety, and in particular on—

- (a) the arrangements for appointing a competent person under regulation 14 to provide protective and preventive services for the undertaking;
- (b) the findings of the risk assessment;
- (c) arrangements for health and safety training under regulation 12;
- (d) the introduction of new technology.

(2) Employers shall allow workers or their elected representatives to make representations about health and safety, and shall implement any agreed measures as soon as may be reasonable and practicable.

(3) Workers or their elected representatives shall be given access by the employer and, where applicable by the Company, to any relevant information about—

- (a) health and safety matters from inspection agencies and health and safety authorities; and
- (b) every accident involving death, major or serious injury, and every dangerous occurrence.

(4) Elected representatives shall be given adequate time off work without loss of pay in order to exercise their rights and functions under this regulation, and shall be provided with appropriate training.

(5) Workers or their elected representatives shall not be placed at a disadvantage (whether economic or otherwise) because of their activities under this regulation.

## Part V

### General duties of workers

#### General duties of workers

21.—(1) It shall be the duty of every worker aboard a ship to which these Regulations apply—

- (a) to take reasonable care for the health and safety of himself and of any other person aboard ship who may be affected by his acts or omissions; and
- (b) as regards any duty or requirement imposed on the Company, his employer or any other person by these Regulations and the Act or any regulation or rule made thereunder, with regard to health and safety, to co-operate with that person so far as is necessary to enable that duty or requirement to be performed or complied with.

(2) No worker shall—

- (a) use any machinery, equipment, dangerous substance, transport equipment, means of production or safety device provided by his employer or the Company other than in accordance with any relevant training or instructions which have been received or provided by the employer or the Company in compliance with these Regulations; or
- (b) disconnect, change or remove or otherwise interfere with any safety device provided by the employer or the Company.

(3) Every worker shall immediately inform the master or the safety officer or another competent person appointed under regulation 14(1) of any matter which may reasonably be considered to represent a deficiency in the Company's protection arrangements for the health and safety of persons on board the ship.

(4) Every worker shall immediately inform his employer, the safety officer or other competent person—

- (a) of any work situation which he reasonably considers to represent a serious and immediate danger to health and safety; and
- (b) of any matter which he reasonably considers to represent a deficiency in the employer's protection arrangements for health and safety.

## Part VI

### Prohibitions, penalties, inspections and detentions

#### Prohibition on levy

22. No charge in respect of anything done or provided in pursuance of any specific requirement of these Regulations shall be levied or permitted to be levied on any worker.

#### Duty not to interfere with or misuse certain things

23. No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health and safety aboard a United Kingdom ship in pursuance of these Regulations or the Act or any regulation or rule made thereunder.

#### Penalties

24.—(1) Any contravention of regulation 5 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum or, on conviction on indictment, by imprisonment for a term not exceeding two years or a fine, or both.

(2) Any contravention of regulation 14 shall be guilty of an offence punishable on summary conviction of a fine not exceeding level 5 on the standard scale.

(3) Any contravention of regulation 6, 7, 16, 17, 20 or 21 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale.

(4) Any contravention of regulation 8, 9, 11, 12, 13, 22 or 23 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

(a) (5) (a) Any Company which—

(i) fails to appoint a safety officer in accordance with regulation 15, or

(ii) fails to carry out any of the duties specified in regulation 19,

shall be guilty of an offence punishable on summary conviction of a fine not exceeding level 5 on the standard scale.

(b) Any master who fails to carry out any of the duties specified in regulation 19 shall be guilty of an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

#### Offences by body corporate

25.—(1) Where a body corporate is guilty of an offence under any of these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been 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, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### Onus of proving what is reasonably practicable

26. In any proceedings for an offence under any of these Regulations consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be

for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

### **Inspection and detention of a United Kingdom Ship**

27. A relevant inspector may inspect any United Kingdom ship and if he is satisfied that there has been a failure to comply in relation to that ship with the requirements of these Regulations may detain the ship until the health and safety of all workers and other persons aboard ship is secured, but shall not in the exercise of these powers detain or delay the ship unreasonably.

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

28.—(1) A relevant inspector may inspect any ship which is not a United Kingdom ship when the ship is in a United Kingdom port, and if satisfied that the ship does not conform to the standards required of United Kingdom ships by these Regulations, may—

- (a) send a report to the government of the country in which the ship is registered, and a copy thereof to the Director General of the International Labour Office; and
- (b) where conditions on board are clearly hazardous to health and safety—
  - (i) take such measures as are necessary to rectify those conditions, or
  - (ii) detain the ship,

provided that the measures specified in sub-paragraph (a) and (b) may be taken only when the ship has called at a United Kingdom port in the normal course of business for operational reasons.

(2) If either of the measures specified in paragraphs (1)(b) are taken, the relevant inspector shall forthwith notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(3) The relevant inspector shall not in exercise of his power under this regulation detain or delay the ship unreasonably.

### **Enforcement of detention**

29. Where a ship is liable to be detained under these Regulations, section 284(1) to (5) and (8) of the Act (which relates to the detention of the ship) shall apply as if for the words “this Act”, wherever they appear, there were substituted “the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997”.

### **Compensation**

30. Sections 96 and 97 of the Act (Arbitration and Compensation) shall apply in relation to a detention notice or order under these Regulations as they apply to a detention notice under section 95(3) of the Act, and in such application, “relevant inspector” means a person making an inspection under these Regulations.

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Signed by authority of the Secretary of State for Transport

*Glenda Jackson*  
Parliamentary Under-Secretary of State,  
Department of the Environment, Transport and  
the Regions

13th December 1997

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations (“the Regulations”) give effect as respects shipping activities in the United Kingdom to—

- (a) Council Directive [89/391/EEC](#) on the introduction of measures to encourage improvements in the safety and health of workers at work (*OJ No. L 183, 29.6.89, p. 1*);
- (b) Council Directive [91/383/EEC](#) supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (*OJ No. L206 29.7.91 p. 19*), and
- (c) Council Directive [92/85/EEC](#) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (*OJ No. L 348 28.11.92, p. 1*).

2. The Regulations revoke and replace The Merchant Shipping (Health and Safety: General Duties) Regulations 1984 (*SI 1984/408*), and The Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982 (*SI 1982/987*), which gave effect in part to The Merchant Shipping (Minimum Standards) Convention 1976 (*International Labour Organisation Convention 147*) (*Cmnd. 7183*) (*regulation 1(2)*).

3. The Regulations apply to all United Kingdom ships (other than a public service vessel or ship involved in search and rescue) (*regulation 3(1)*). Ships which are not United Kingdom ships but are in United Kingdom waters are subject to the regulations covering inspection and detention (*regulations 3(2), and 28–30*). The Regulations do not apply if The Management of Health and Safety at Work Regulations 1992 (*SI 1992/2051*) cover the matter (*regulation 3(3)*).

4. An obligation is placed on the employer to comply with the requirements of the Regulations as well as on any person specifically named in the provision. There is facility to extend the employer’s duty to another person if the employer is not in control of the particular matter because he does not have responsibility for the operation of the ship (*regulation 4(1) and (2)*).

5. A general duty to ensure the health and safety of workers, which includes provision and maintenance of safe plant and equipment, safe arrangements for handling, storage, and transportation of articles, provision of safety information, training and supervision, restriction on access and collaboration between duty-holders, is imposed (*regulation 5*).

6. An up to date health and safety policy statement must be written down and supplied to workers (*regulation 6*); risk assessments must be made and drawn to the notice of workers (*regulation 7*); health surveillance appropriate to the risk must be provided (*regulation 11*).

7. The particular risks of a new or expectant mother must be included in the risk assessment, and her working conditions or hours must be altered if necessary. If that is impossible she shall be suspended subject to her overriding statutory rights regarding the offer of alternative work and remuneration (*regulations 8 and 9*). Notification that the worker is a new or expectant mother is necessary for her rights under these Regulations to accrue (*regulation 10*).

8. The capability and training of a worker shall be ascertained and taken into account before a task is assigned to him, and adequate and appropriate training supplied to him (*regulation 12*).

9. Competent persons are to be appointed to enable the employer to provide protective and preventative services (*regulation 14*). On sea-going ships (other than fishing vessels) safety officers

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are to be appointed (*regulation 15*) and their duties are set down (*regulation 16*). Companies which are not the employers are required to consult the employers and to co-ordinate health and safety arrangements (*regulation 13*).

**10.** Rules for the election of safety representatives and safety committees and their powers as well as the duties of the Company and master in this regard are also provided for (*regulations 17 to 19*).

**11.** Workers or their elected representatives shall be consulted by employers, given access to specific information, allowed facility time and not placed at a career disadvantage; employers must implement health and safety measures agreed with representatives as soon as is reasonably practicable (*regulation 20*).

**12.** Workers are required to take care of themselves and other workers, and to inform the employer, master, safety officer or other competent person of any deficiency or danger (*regulation 21*).

**13.** No charge arising from the requirements of these Regulations may be levied on a worker (*regulation 22*) and no person shall recklessly interfere or misuse anything provided in the interests of health and safety (*regulation 23*).

**14.** Contravention of each separate duty provided for in this regulation is a criminal offence and punishable in accordance with the appropriate maximum penalty set out in regulation 24.

**15.** Provision is made for corporate offences (*regulation 25*) and the burden of showing that failure to comply with a duty in these Regulations was not reasonably practicable is on the defendant (*regulation 26*).

**16.** Inspection and detention of United Kingdom and non-United Kingdom ships are separately provided for (*regulations 26 and 27*), and sections in the Merchant Shipping Act 1995 dealing with arbitration and compensation are applied (*regulation 30*).

**17.** These Regulations are made under the powers contained in the Merchant Shipping Act 1995 except in respect of their application to Government ships (*regulation 2(2)*) and in respect of the provision of benefits to new or expectant mothers contained in Regulations 8 and 9, where the power is provided by section 2(2) of the European Communities Act 1972.

**18.** Merchant Shipping Notices are obtainable from EROS Marketing Support services, Unit B, Imber Court Trading Estate, Orchard Lane, East Molesey, Surrey KT8 0BN (tel: 0181-957 5008) and the Code of Safe Working Practices for Merchant Seamen is obtainable from the Stationery Office Publications Centre, PO Box 276, London SW8 5DT (tel: 0171-873 0011).

**19.** A copy of the compliance cost assessment for these Regulations can be obtained from the Marine Information Centre of the Marine Safety Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG.