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STATUTORY INSTRUMENTS

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**1998 No. 2857**

**MERCHANT SHIPPING**

**The Merchant Shipping and Fishing Vessels  
(Manual Handling Operations) Regulations 1998**

*Made - - - - 10th November 1998*  
*Laid before Parliament 25th November 1998*  
*Coming into force - - 31st December 1998*

Whereas the Secretary of State is a Minister designated(1) for the purpose of section 2(2) of the European Communities Act 1972(2) 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(3), 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 section 85(1)(a) and (b), (3) and (7) and 86(1) of the Merchant Shipping Act 1995 and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

**Citation, commencement and repeal**

1.—(1) These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998 and shall come into force on 31st December 1998.

(2) The following provisions are hereby repealed—

- (a) section 18(1)(f) of the Children and Young Persons Act 1933(4);
- (b) section 28(1)(f) of the Children and Young Persons (Scotland) Act 1937(5);

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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).

(4) 1933 Geo 5, c. 12.

(5) 1937 c. 37.

- (c) paragraph 35 of Schedule 8 to the Children (Northern Ireland) Order 1995<sup>(6)</sup>.

## 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 sub-paragraph is a reference to the paragraph or, as the case may be, sub-paragraph bearing that number in the regulation or Schedule in which the reference appears.
- (2) In these Regulations—
- “the Act” means the Merchant Shipping Act 1995;
- “contract of employment” means a contract of employment, whether express or implied, and if express, whether oral or in writing;
- “employer” means a person by whom a worker is employed under a contract of employment;
- “General Duties Regulations” means the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997<sup>(7)</sup>;
- “health and safety” includes the occupational health and safety of persons whilst on board the ship and whilst boarding or leaving the ship;
- “injury” does not include injury caused by any toxic or corrosive substance which—
- (a) has leaked or spilled from a load,
  - (b) is present on the surface of a load, but has not leaked or spilled from it, or
  - (c) is a constituent part of a load,
- and injured shall be construed accordingly;
- “load” includes any person and any animal;
- “manual handling operation” means any transporting or supporting of a load (including lifting, putting down, pushing, pulling, carrying or moving thereof) by hand or by bodily force;
- “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 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,
- and is operating under a statutory code;
- “statutory code” means—
- The Code of Practice for the Safety of Small Commercial Sailing Vessels<sup>(8)</sup>;
- The Code of Practice for the Safety of Small Commercial Motor Vessels<sup>(9)</sup>; or
- The Code of Practice for Safety of Large Commercial Sailing and Motor Vessels<sup>(10)</sup>;

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<sup>(6)</sup> S.I. 1995/755 (N.I. 2).

<sup>(7)</sup> S.I. 1997/2962, as amended by S.I. 1998/2411.

<sup>(8)</sup> Published by The Stationery Office in 1993 (ISBN 0–11–551184–9).

<sup>(9)</sup> Published by The Stationery Office in 1993 (ISBN 0–11–551185–7).

<sup>(10)</sup> Published by The Stationery Office in 1997 (ISBN 0–11–551911–4).

“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<sup>(11)</sup>.

“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 90/269/EEC on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers<sup>(12)</sup>.

### **Application and exemption**

**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, 11, 12 and 13 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 Manual Handling Operations Regulations 1992<sup>(13)</sup> or the Manual Handling Operations Regulations (Northern Ireland) 1992<sup>(14)</sup>.

### **Persons on whom duties are imposed**

**4.** Where a person on whom a duty is imposed by any provision of these Regulations 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 person who has control of that matter.

### **Duties of employers**

**5.**—(1) The employer shall, so far as is reasonably practicable, take appropriate measures or provide means (including mechanical equipment) to avoid the need for manual handling of loads which involve a risk of workers being injured.

(2) Where it is not reasonably practicable to avoid the need for any manual handling operation which involves a risk of injury then the employer shall—

- (a) either separately or as an addition to the assessment made under regulation 7 of the General Duties Regulations, carry out an assessment of all such manual handling operations, having regard to the factors which are specified in column 1 of the Schedule to these Regulations and considering the questions which are specified in the corresponding entry in column 2 of that Schedule; and

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<sup>(11)</sup> 1968 c. 59.

<sup>(12)</sup> O.J. L156, 21.6.90, p.9.

<sup>(13)</sup> S.I. 1992/2793.

<sup>(14)</sup> S.R. 1992/535.

- (b) take appropriate steps to reduce the risk of injury to workers arising out of their undertaking any such manual handling operations to the lowest level that is reasonably practicable; and
- (c) take appropriate steps to provide any worker who is undertaking any such manual handling operations with general indications and, where it is reasonably practicable to do so, precise information on—
  - (i) the weight of each load, and
  - (ii) the heaviest side of any load which has a centre of gravity which is not positioned centrally; and
- (d) provide workers who will be required to undertake any such manual handling operation with proper training and information on how to handle loads correctly and the risks to their health and safety from incorrect handling.

### **Duty of workers**

6. Every worker while at work shall make full and proper use of any system of work provided for his use by his employer in compliance with regulation 5(2)(b).

### **Penalties**

7.—(1) Any contravention of regulation 5 shall be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(2) Any contravention of regulation 6 shall be an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

### **Offences by body corporate and partnerships**

8.—(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.

(3) Where an offence under any of these Regulations committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.

### **Onus of proving what is reasonably practicable**

9. 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**

10. 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 persons aboard ship is secured, but shall not in the exercise of this power detain or delay the ship unreasonably.

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

**11.**—(1) A relevant inspector may inspect any ship which is not a United Kingdom ship when the ship is in United Kingdom waters, 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.

(2) The measures specified in paragraph (1) may be taken only when the ship has called at a United Kingdom port in the normal course of business for operational reasons.

(3) If either of the measures specified in paragraph (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.

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

### **Enforcement of detention**

**12.** 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 (Manual Handling Operations) Regulations 1998”.

### **Compensation**

**13.** 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.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

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

10th November 1998

## SCHEDULE

Regulation 5(2)(a)

The factors to which the employer must have regard and questions he must consider when making an assessment of manual handling operations or providing instruction for workers.

<i>Column 1</i> <i>Factors</i>	<i>Column 2</i> <i>Questions</i>
<b>1. The task</b>	<p><b>Does it involve:</b></p> <ul style="list-style-type: none"> <li>– activity which is too strenuous;</li> <li>– holding or manipulating loads at distance from trunk;</li> <li>– unsatisfactory or unstable bodily movement or posture, especially: <ul style="list-style-type: none"> <li>twisting the trunk?</li> <li>stooping?</li> <li>reaching upward?</li> </ul> </li> <li>– excessive movement of loads, especially: <ul style="list-style-type: none"> <li>excessive lifting or lowering distances?</li> <li>excessive carrying distances?</li> </ul> </li> <li>– risk of sudden movement of loads?</li> <li>– frequent or prolonged physical effort, particularly affecting the spine?</li> <li>– insufficient rest or recovery periods?</li> <li>– a rate of work imposed by a process?</li> </ul>
<b>2. The load</b>	<p><b>Is it:</b></p> <ul style="list-style-type: none"> <li>– heavy?</li> <li>– bulky or unwieldy or difficult to grasp?</li> <li>– unstable, or with contents likely to shift?</li> <li>– likely, because of its contours and/or consistency, to injure workers, particularly if the individual collides with someone or something?</li> </ul>
<b>3. The working environment</b>	<p><b>Are there any:</b></p> <ul style="list-style-type: none"> <li>– space constraints preventing handling loads at a safe height or with good posture?</li> <li>– uneven, slippery or unstable deck surfaces?</li> </ul>

<i>Column 1</i> <i>Factors</i>	<i>Column 2</i> <i>Questions</i>
<b>4. Individual capability</b>	<p>– variations in level of deck surfaces (eg door sills) or work surfaces?</p> <p>– extremes of temperature or humidity?</p> <p><b>Is the individual:</b></p> <p>– physically unsuited to carry out the task, either because of the nature of the task or because of a need to protect an individual from a danger which specifically affects him?</p> <p>– wearing unsuitable clothing footwear or other personal effects?</p> <p>– inadequately experienced or trained?</p>

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## EXPLANATORY NOTE

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

These Regulations, which repeal the provisions in the Children and Young Persons Act 1933, the Children and Young Persons (Scotland) Act 1937 and the Children and Young Persons Act (Northern Ireland) 1968 which restrict the manual handling of loads by children, give effect as regards shipping activities in the United Kingdom to Council Directive [90/269/EEC](#) on the minimum health and safety requirements for the manual handling where there is a risk particularly of back injury to the workers (O.J. L156, 21.6.90, p.9).

The Regulations apply to all United Kingdom ships, other than public service vessels or vessels engaged 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 10–13*). The Regulations do not apply if the Manual Handling Operations Regulations 1992 (*S.I.1992/2793*) or the Manual Handling Operations Regulations (Northern Ireland) 1992 (*S.R. 1992/535*) cover the matter (*regulation 3(3)*).

An obligation is placed on the employer to avoid, so far as is reasonably practicable, the need for any manual handling of a load which would involve a health and safety risk to the worker (*regulation 5(1)*) but if avoidance is not reasonably practicable the employer shall

- carry out an assessment having regard to specified factors and consider specified questions in relation to those factors (*regulation 5(2)(a) and the Schedule*),
- take appropriate steps to reduce the risk of injury to workers to the lowest level that is reasonably practicable (*regulation 5(2)(b)*),
- take steps to provide the worker with precise information on the weight and centre of gravity where it is practicable to do so (*regulation 5(2)(c)*), and

– provide workers who will be involved in a manual handling operation with proper training and information (*regulation 5(2)(d)*).

The obligation placed on the employer can be extended to another person if the employer is not in control of the matter because he does not have responsibility for the operation of the ship (*regulation 4*).

An obligation is placed on the worker to make full use of any system of work provided by the employer to reduce the risk to the lowest level that is reasonably practicable (*regulation 6*).

The Regulations make contravention of the requirement on the employer (or, if appropriate, another person in control of the matter) an offence with a maximum penalty of £5,000 (*regulation 7(1)*), and contravention of the requirement on the worker an offence with a maximum penalty of £500 (*regulation 7(2)*).

Provision is made for offences by a corporate body or a Scottish partnership (*regulation 8*) and the burden of showing that failure to comply with a duty in these Regulations was not reasonably practicable is on the defendant (*regulation 9*).

Inspection and detention of United Kingdom and non-United Kingdom ships are separately provided for (*regulations 10 and 11*) and sections in the Merchant Shipping Act 1995 dealing with arbitration and compensation are applied (*regulation 13*).

These Regulations are made under 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 revocations (*regulation 1(2)*).