

2002 No. 1587

**MERCHANT SHIPPING
SAFETY**

The Merchant Shipping (Diving Safety) Regulations 2002

Made - - - - - *13th June 2002*
Laid before Parliament *17th June 2002*
Coming into force - - *1st September 2002*

The Secretary of State for Transport, in exercise of the powers conferred upon him by section 88(2) of, and Schedule 2 to, the Merchant Shipping Act 1995(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Diving Safety) Regulations 2002 and shall come into force on 1st September 2002.

Interpretation

2.—(1) In these Regulations:

“casualty” means any casualty or other incident which involves loss or danger to the life of any person engaged in a diving project;

“craft” means a ship, hovercraft, or floating structure, including any fishing vessel or work boat, which is used for or in connection with a diving project;

“diving contractor” in relation to a diving project means, subject to regulation 7, a person who—

- (a) is the employer of one or more persons taking part in the diving project as a diver who is at work, or
- (b) dives in the diving project as a self-employed diver;

“diving operation” means an activity within a diving project in which at least one person takes part or will take part as a diver and which can be safely supervised by one person;

“diving plant and equipment” means any plant and equipment used or intended to be used as part of a diving project and includes:

- (a) fixed or mobile plant and equipment forming part of a United Kingdom ship or other craft’s own plant and equipment, and
- (b) mobile plant and equipment provided and brought on board for a diving project;

“diving project” means any activity in which at least one person takes part or will take part as a diver and extends from the time when that person, or the first such person, commences to prepare to dive until that person, or the last such person, has left the water, chamber or other environment in which the dive, or any part of the dive, took place and has completed any requisite decompression procedures including, where it may be reasonably anticipated that it will be needed, any therapeutic recompression;

(a) 1995 c. 21.

“diving project plan” means a plan prepared pursuant to regulation 9;

“diving services” means services which are provided, for profit or gain, by the master or owner of a craft, to a person taking part in a diving project as a diver, (including the supply of submersible equipment for personal use by a diver or the supply of compressed gas (excluding therapeutic oxygen) for all forms of breathing apparatus, but excluding the provision of tuition or of transportation services); and for the purposes of this definition “tuition” includes information on local conditions and “transportation services” means the provision of a craft for the purposes of conveying its occupants to or from a diving operation or providing a platform for a diving operation;

“diving supervisor” means a person appointed, in accordance with regulation 10, to supervise a diving operation;

“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 any document amending or replacing such a notice which is considered by the Secretary of State to be relevant from time to time;

“self-contained underwater breathing apparatus” means diving plant and equipment in which a supply of breathing mixture is carried by the diver independently of any other source.

(2) For the purposes of these Regulations a person “dives” if.

(a) he enters—

(i) water or any other liquid, or

(ii) a chamber in which he is subject to pressure greater than 100 millibars above atmospheric pressure, and

(b) in order to survive in such an environment he breathes in air or other gas at a pressure greater than atmospheric pressure,

and references to “a dive”, “dive” and “diver” shall be construed accordingly.

(3) Where a United Kingdom ship or other craft is managed by a person other than her owner (whether on behalf of the owner or some other person, or on his own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that person.

Application

3.—(1) These Regulations apply to a diving project, within United Kingdom waters:

(a) which takes place from a craft the master or owner of which is the diving contractor for the diving project, and

(b) to which the Diving at Work Regulations 1997(a) or the Diving Operations at Work (Northern Ireland) Regulations 1983(b) do not apply.

(2) These Regulations also apply:

(a) outside United Kingdom or other national waters or an area designated by order under section 1(7) of the Continental Shelf Act 1964(c), to a diving project launched or operated from a United Kingdom ship, which relates to an offshore installation or pipeline and in relation to which there is a diving contractor, and

(b) outside United Kingdom or other national waters, to any diving project launched or operated from a United Kingdom ship, other than one which relates to an offshore installation or pipeline in relation to which there is a diving contractor.

(3) Where in relation to a diving project in United Kingdom waters:

(a) there is no person falling within the definition “diving contractor”,

(b) the Diving at Work Regulations 1997 and the Diving Operations at Work (Northern Ireland) Regulations 1983 do not apply, and

(c) the diving project takes place from a craft the master or owner of which is providing diving services to persons on board the craft,

regulations 5(2) and 6(2) of these Regulations shall apply.

(a) S.I. 1997/2776.

(b) S.I. 1983/209.

(c) 1964 c. 29, section 1 was amended by the Oil and Gas (Enterprise) Act 1982 (c. 23) Schedule 3, paragraph 1.

Duty to ensure compliance with the Regulations

4. Every person who to any extent is responsible for, has control over or is engaged in any diving project to which these Regulations apply or whose acts or omissions could adversely affect the health and safety of persons engaged in any such project, shall take such measures as it is reasonable for a person in his position to take to ensure that these Regulations are complied with.

Duties of owner of craft

5.—(1) The owner of a craft from which a diving project is, or will be, undertaken shall ensure:

- (a) that all plant and equipment, other than diving plant and equipment, necessary for the safe conduct of the diving project are available, suitable and sufficient for that purpose,
- (b) that the plant and equipment made available in accordance with sub-paragraph (a) are maintained in a safe working condition,
- (c) so far as reasonably practicable, that the diving contractor, diving supervisor and divers undertake their duties under these Regulations.

(2) The owner of a craft from which any diving project is to be undertaken who provides diving plant and equipment shall ensure that such plant and equipment are suitable for the safe conduct of the diving project and are maintained in a safe working condition.

Duties of master of craft

6.—(1) The master of a craft from which a diving project is, or will be, undertaken shall:

- (a) ensure, so far as reasonably practicable, that no operations or activities which might adversely affect the health and safety of any person engaged in the diving project are undertaken from or on the craft during the period of the diving project,
- (b) take such measures as are reasonable to ensure that there is a safe place on board the craft from which the diving project may be undertaken,
- (c) take such measures as are reasonable to ensure that the craft is positioned in a safe location for the duration of the diving project, bearing in mind the weather conditions, tides and condition of the sea-bed and, if using a dynamic positioning system, all other relevant factors,
- (d) take such measures as are reasonable to ensure that all plant and equipment, other than diving plant and equipment, necessary for the safe conduct of the diving project are sufficient and available for that purpose,
- (e) take such measures as are reasonable to ensure that the plant and equipment made available pursuant to sub-paragraph (d) above are maintained in a safe working condition, and
- (f) before the diving project is commenced, and at appropriate intervals during it, consult the diving supervisor about the said project or activities and any other matters which may affect the safety of the diving project.

(2) The master of a craft from which any diving project is to be undertaken who provides diving plant and equipment shall ensure that such plant and equipment are suitable for the safe conduct of the diving project and are maintained in a safe working condition.

Diving contractor

7. Where there is more than one person falling within the definition of “diving contractor” those persons shall, before commencing the diving project, jointly and in writing appoint one of them to act as the diving contractor for the purpose of these Regulations.

Duties of diving contractor

8.—(1) The diving contractor shall ensure, so far as is reasonably practicable, that a diving project in respect of which he is diving contractor is planned, managed and conducted in a manner which protects the health and safety of all persons taking part in the project.

- (2) The diving contractor shall ensure:
- (a) that there are sufficient competent persons to carry out safely and without risk to health both the diving project and any action (including giving first aid) which may be necessary in a reasonably foreseeable emergency connected with the diving project,
 - (b) that suitable and sufficient diving plant and equipment are available whenever needed to carry out safely and without risk to health both the diving project and any action (including the giving of first aid) which may be necessary in a reasonably foreseeable emergency connected with the diving project,
 - (c) that the plant and equipment made available under sub-paragraph (b) are maintained in a safe working condition,
 - (d) so far as is reasonably practicable, that any person taking part in the diving project complies with the requirements imposed on him by these Regulations and the provisions of the diving project plan applicable to him,
 - (e) that a record in accordance with the requirements of Merchant Shipping Notice 1762 (M) + (F) is kept for each diving operation which forms part of the diving project and shall retain the record in his possession or control for at least two years after the date of the last entry in it.

Diving project plan

9.—(1) The diving contractor shall before commencing the diving project ensure that a diving project plan is prepared for the project and that the plan is updated as necessary during the project.

(2) The diving project plan shall be based on an assessment of the risks to the health and safety of any person taking part in the diving project or of other persons who may be affected thereby and shall contain such information and instructions as are necessary to give advice to, and regulate the behaviour of, any persons taking part in the diving project so as to ensure, so far as is reasonably practicable, their health and safety and that of other persons who may be affected thereby.

- (3) Without prejudice to the generality of paragraph (2), the diving project plan shall;
- (a) contain a record of the assessment, information and instructions carried out by the diving contractor pursuant to regulation 9(2),
 - (b) identify each diving operation to be undertaken as part of the diving project,
 - (c) contain an assessment of the availability of emergency support services, referring (as appropriate) to one or more of the Codes of Practice referred to in Merchant Shipping Notice 1762 (M) + (F), and
 - (d) incorporate an assessment of risk in accordance with the requirements of Merchant Shipping Notice 1762 (M) + (F) and any relevant Code of Practice referred to in that Merchant Shipping Notice.

Diving supervisor

10.—(1) Subject to paragraph (2), a diving contractor shall appoint a person to be the diving supervisor in respect of a diving operation.

- (2) Where a diving contractor:
- (a) is competent and (where appropriate) suitably qualified to act as diving supervisor, and
 - (b) has recorded in writing, before the commencement of the diving operation, that he intends to act as diving supervisor,

he may act as the diving supervisor for that diving operation.

- (3) A diving contractor who appoints a person as diving supervisor shall:
- (a) before the commencement of the diving operation, make the appointment, and record it in writing,
 - (b) before the commencement of the diving operation, supply the person appointed with a copy of any part of the diving project plan which relates to that diving operation, and
 - (c) as soon as possible after the appointment, provide the person appointed with a written copy of his appointment.

(4) A diving contractor shall not appoint a person as a diving supervisor unless that person is competent and (where appropriate) suitably qualified to perform the functions of diving supervisor in respect of the diving operation for which he is the diving supervisor.

Duties of diving supervisor

11.—(1) In respect of a diving operation for which he has been appointed the diving supervisor shall:

- (a) before the diving operation commences, ensure that each person taking part is aware of the contents of the diving project plan which relate to that operation,
- (b) before the diving operation commences, and at appropriate intervals during it, consult with the master of the craft from which the diving project is, or will be, undertaken, and
- (c) during the course of the diving operation ensure that it is undertaken, so far as is reasonably practicable:
 - (i) without risk to the health and safety of any person taking part in the operation or of other persons who may be affected thereby,
 - (ii) in accordance with the requirements imposed on him by these Regulations, and
 - (iii) where this would not conflict with either sub-paragraph (i) or (ii) above, in accordance with the diving project plan, and
- (d) during the course of the diving operation keep a record of that operation in accordance with the requirements of Merchant Shipping Notice 1762 (M) + (F).

(2) Subject to paragraph (3), a diving supervisor may dive during a diving operation in respect of which he is appointed if:

- (a) he is guiding persons engaged in, or training persons to carry out or teach, recreational diving, or
- (b) the dive is for educational purposes and takes place in a tank or pool artificially constructed for the purpose of swimming or diving,

and the persons taking part in the dive, including the diving supervisor, use only self-contained underwater breathing apparatus.

(3) A diving supervisor may only dive as referred to in paragraph (2) if:

- (a) he can do so without risk to the health and safety of any other person taking part in the diving operation or of any other person who may be affected thereby, and
- (b) the diving project plan which relates to the diving operation specifically provides for the supervisor to dive.

Power of master and diving supervisor to give directions

12.—(1) A diving supervisor may, while supervising a diving operation in respect of which he is appointed, give such reasonable directions to any person:

- (a) taking part in that operation, or
- (b) on board the craft from which the diving operation is taking place, as are necessary in order to ensure the safety of the divers taking part in the diving operation.

(2) The master of a craft from which a diving operation takes place may give the diving supervisor and any person taking part in the diving operation such reasonable directions as are necessary in order to ensure the safety of the craft.

(3) A person to whom a direction is given under this regulation shall comply with that direction.

Competence and fitness of divers

13.—(1) No person shall dive in a diving operation unless:

- (a) he is competent to carry out safely and without risk to his health any activity which he may reasonably expect to carry out while taking part in the diving operation,
- (b) subject to paragraph (3), he has an approved qualification, as set out in Merchant Shipping Notice 1762 (M) + (F), which is valid for any activity he may reasonably expect to carry out while taking part in the diving operation, and

- (c) subject to paragraph (4), he has a certificate of medical fitness to dive which is issued and is valid in accordance with regulation 15.
- (2) No person shall dive in a diving operation if he knows of anything (including illness or medical condition) which makes him unfit to dive.
- (3) Paragraph (1)(b) shall not apply to a diver who is diving:
 - (a) as a recreational activity, unless his work normally involves work as a diver,
 - (b) as part of training which, if successfully completed, would lead to the issue of an approved qualification as referred to in Merchant Shipping Notice 1762 (M) + (F),
 - (c) for educational purposes in a tank or pool artificially constructed for the purpose of swimming or diving and who is using only self-contained underwater breathing apparatus, unless his work normally involves work as a diver,
 - (d) only by virtue of entering a chamber in order to provide emergency medical treatment, or
 - (e) as an actor or performer taking part in a live performance or the recording of a performance, unless his work normally involves work as a diver.
- (4) Paragraph (1)(c) shall not apply to a diver who is diving as a recreational activity, unless his work normally involves work as a diver.

Duties on persons taking part in a diving project

14.—(1) Every person taking part in a diving project shall comply with any provisions applicable to him which are contained in the diving project plan and which do not conflict with directions given to him pursuant to regulation 12.

- (2) Subject to paragraph (3), a diver shall:
 - (a) maintain a daily record of his diving, and
 - (b) keep that daily record in his possession or control for at least two years after the date of the last entry on it.
- (3) Paragraph (2) shall not apply to a diver whose work does not normally involve work as a diver and who is diving:
 - (a) as a recreational activity, or
 - (b) for educational purposes in a tank or pool artificially constructed for the purpose of swimming or diving and who is using only self-contained underwater breathing apparatus.

Certificate of medical fitness to dive

15.—(1) A certificate of medical fitness to dive is a certificate, issued by a medical examiner of divers, which certifies that the person named therein is fit to dive and which states:

- (a) the period (which shall not exceed 12 months) during which the medical examiner of divers issuing the certificate considers the person named therein will remain fit to dive,
 - (b) any limitations as to the nature of category of diving to which it relates, and
 - (c) any conditions to which it is subject.
- (2) A certificate of medical fitness to dive shall not be valid:
 - (a) if the diver is not in compliance with any extant limitation or condition stated therein, or
 - (b) it has been revoked on medical grounds by any medical examiner of divers.
 - (3) In this regulation “medical examiner of divers” means:
 - (a) a medical practitioner who is, or who falls within a class of medical practitioners which is, for the time being approved in writing by the Health and Safety Executive for the purposes of regulation 15 of the Diving at Work Regulations 1997, or
 - (b) in relation to the certification of a person diving from a United Kingdom ship outside United Kingdom waters, a qualified medical practitioner who is competent to examine divers for the purposes of issuing a certificate of medical fitness to dive.

Exemptions

16.—(1) Subject to paragraph (2), the Secretary of State may direct in writing that:

- (a) any person or class of persons,
- (b) any diving project or class of diving projects,
- (c) any diving operation or class of diving operations, or
- (d) any plant and equipment or class of plant and equipment

shall be exempt from any requirement imposed by any provision of these Regulations, and any such exemption may be granted subject to conditions and limitations (including conditions and limitations as to the duration of the exemption) and may be revoked at any time.

(2) The Secretary of State shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to:

- (a) the conditions and limitations, if any, to be attached to the exemption, and
- (b) any other requirements imposed by or under any enactment which apply to the case,

he is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced as a consequence.

Inquiries and investigations into marine accidents

17.—(1) The provisions of Part XI of the Merchant Shipping Act 1995 shall apply in relation to accidents in the course of a diving project involving any submersible or supporting apparatus which is not a ship as they apply to ships (subject to the modifications in paragraphs (2) and (3)) as if references in those provisions, on whatever terms, to a ship or a ship's boat or activities connected therewith included references to submersible or supporting apparatus or activities connected therewith.

(2) Section 267 of the Merchant Shipping Act 1995 shall have effect subject to the modification that for paragraph (2) there is substituted the following paragraph:

“(2) The accidents referred to in subsection (1) above are any accidents involving a submersible or supporting apparatus to which section 88 applies.”.

(3) Section 268 of the Merchant Shipping Act 1995 shall have effect subject to the modification that for paragraph (1) there is substituted the following paragraph:

“(1) Where any accident has occurred in connection with any diving project to which the Merchant Shipping (Diving Safety) Regulations 2002 applies, the Secretary of State may (whether or not an investigation into it has been carried out under section 267) cause a formal investigation into the casualty to be held:

- (a) if in England, Wales or Northern Ireland, by a wreck commissioner, and
- (b) if in Scotland, by the sheriff,

and in this section “accident” means any accident which involves loss of, or danger to, the life of any person engaged in, or in connection with, a diving operation, and which occurs in the course of that diving operation.”.

Special reports of casualties

18. Without prejudice to regulation 17, where a casualty occurs, the Secretary of State may, at any time, direct an inspector to make a special report with respect to that casualty, and the Secretary of State may cause any such report to be made public at such time and in such manner as he thinks fit.

Offences

19.—(1) A person who contravenes a provision of these Regulations shall be guilty of an offence and liable on summary conviction to a time not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both.

(2) It shall be a defence for a person charged with an offence under these Regulations to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Proceedings

20.—(1) In any proceedings for an offence under these Regulations an averment in any process of the fact that anything was done or situated within United Kingdom waters shall, until the contrary is proved, be sufficient evidence of that fact as stated in the averment.

(2) In any proceedings in Scotland for an offence under these Regulations a statement in any complaint or indictment of the fact that anything was done or situated within United Kingdom waters shall, until the contrary is proved, be sufficient evidence of that fact as so stated.

(3) Proceedings for an offence under these Regulations may be taken, and the offence be treated for all incidental purposes as having been committed, in any place in the United Kingdom.

Revocations and supplementary provision

21.—(1) The Merchant Shipping (Diving Operations) Regulations 1975^(a) and the Merchant Shipping (Diving Operations) (Amendment) Regulations 1975^(b) are hereby revoked.

(2) Any diving operations logbook required to be maintained pursuant to regulation 10 of the Merchant Shipping (Diving Operations) Regulations 1975 shall be retained in the possession or control of the person required to maintain it for at least two years after the date of the last entry in it.

(3) Any diver's logbook required to be maintained pursuant to regulation 11 of the Merchant Shipping (Diving Operations) Regulations 1975 shall be retained in the possession or control of the person required to maintain it for at least two years after the date of the last entry in it.

Signed by authority of the Secretary of State
for Transport

13th June 2002

David Jamieson
Parliamentary Under Secretary of State
Department for Transport

(a) S.I. 1975/116.
(b) S.I. 1975/2062.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace, with modifications, the Merchant Shipping (Diving Operations) Regulations 1975 (S.I. 1975/116) and the Merchant Shipping (Diving Operations) (Amendment) Regulations 1975 (S.I. 1975/2062).

These Regulations apply to diving within UK territorial waters in the circumstances set out in regulation 3(1) and (3) of the Regulations: diving projects falling within these circumstances will usually be those which involve recreational divers who use a vessel or other floating structure to carry out the dive. Regulation 3(2) also applies the Regulations to diving from United Kingdom ships which takes place outside UK territorial waters and the UK continental shelf, and to diving operations within the UK continental shelf other than those relating to offshore installations or pipelines: both commercial and recreational diving projects may fall within regulation 3(2).

The Regulations place duties on the owner and master of a craft (as defined in the Regulations) from which certain diving projects are undertaken, on the diving contractor or diving supervisor for such a diving project, and on the persons diving in such projects; certain powers are also conferred on masters and diving supervisors. They make provision for the Secretary of State to grant exemptions, for transitional provisions, inquiries and investigations into accidents, and create criminal offences for contravention of the Regulations.

A regulatory impact assessment has been produced and a copy laid in the library of each House of Parliament. Copies may be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO1 1EG (telephone 023 8032 9478 (direct) or 023 8032 9100 (switchboard)).

Merchant Shipping Notices can be obtained from Marl Marketing (Scotland), Unit 6, Blooms Grove Industrial Estate, Norton Street, Nottingham NG7 3JG, and are also available on the Maritime and Coastguard Agency's website at www.mcga.gov.uk.

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