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STATUTORY INSTRUMENTS

2009 No. 1210

MERCHANT SHIPPING

The Merchant Shipping (Implementation of Ship- Source Pollution Directive) Regulations 2009

<i>Made</i>	- - - -	<i>11th May 2009</i>
<i>Laid before Parliament</i>		<i>11th May 2009</i>
<i>Coming into force</i>	- -	<i>1st July 2009</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by article 3 of the Merchant Shipping (Prevention of Oil Pollution) Order 1983⁽¹⁾, articles 3 and 5 of the Merchant Shipping (Prevention and Control of Pollution) Order 1987⁽²⁾, article 2 of the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996⁽³⁾, sections 85 and 86 of the Merchant Shipping Act 1995⁽⁴⁾ and section 2(2) of the European Communities Act 1972⁽⁵⁾.

The Secretary of State is a Minister designated⁽⁶⁾ for the purposes of section 2(2) of that Act in relation to measures relating to maritime transport.

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Implementation of Ship-Source Pollution Directive) Regulations 2009 and come into force on 1st July 2009.

Interpretation

2. In these Regulations—

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

(1) S.I. 1983/1106. Article 3 was amended by S.I. 1985/2002, 1991/2885 and 1993/1580.
(2) S.I. 1987/470. Article 3 was amended by S.I. 1990/2595. Article 5(1) was inserted by S.I. 1997/2569 and amended by S.I. 1998/254.
(3) S.I. 1996/282.
(4) 1995 c.21. Sections 85 and 86 were amended by sections 8 and 29 of, and Schedule 7 to, the Merchant Shipping and Maritime Security Act 1997 (c.28). Relevant amendments to section 85 were also made by section 2 of the British Overseas Territories Act 2002 (c.8).
(5) 1972 c.68.
(6) S.I. 1994/757.

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

Amendment of section 131 of the Merchant Shipping Act 1995

3.—(1) Section 131 of the Act (discharge of oil from ships into certain United Kingdom waters) is amended as follows.

(2) Before subsection (1) insert—

“(A1) In this section “relevant discharge” means—

(a) a discharge of oil or a mixture containing oil which is made—

(i) from a ship which is an offshore installation, and

(ii) into United Kingdom national waters which are navigable by sea-going ships, or

(b) a discharge of oil or a mixture containing oil which is made—

(i) from a ship which is not an offshore installation, and

(ii) into United Kingdom national waters which are navigable by sea-going ships but which do not form part of the sea.”

(3) In subsection (1)—

(a) for the words from “If any oil” to “seagoing ships, then” substitute “If there is a relevant discharge”;

(b) in paragraph (a), omit “if the discharge is from a ship,”; and

(c) in paragraph (b), for “is from a ship but” substitute “from the ship”.

(4) In subsection (2) after “any discharge” insert “from an offshore installation”.

(5) After subsection (3) insert—

“(3A) 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.”

Amendment of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996

4.—(1) The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996⁽⁸⁾ 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, 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—

(7) OJ No L 255, 30.9.2005, p11.

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

““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;” and

- (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), after the first use of the word “discharge” insert “, other than a discharge from 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 from an excepted ship 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 a ship or its equipment if—

- (a) the damage was not caused by a person connected with the excepted ship’s business 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 of the excepted ship acted—
 - (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 from a UK excepted ship 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 ship or its equipment if—

- (a) the damage was not caused by a person connected with the UK excepted ship’s business 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 of the UK excepted ship 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 from a non-UK excepted ship 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 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 of the non-UK excepted ship acted—
 - (i) with intent to cause damage, or
 - (ii) recklessly and with knowledge that damage would probably result.

Definitions 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) “UK excepted ship” means an excepted ship which is a United Kingdom ship;
 - (c) “non-UK excepted ship” means an excepted ship which is not a UK excepted ship; and
 - (d) reference to a person connected with a ship’s business includes, in particular—
 - (i) a seafarer on the ship;
 - (ii) the master;
 - (iii) the owner;
 - (iv) an owner of cargo carried on the ship; and
 - (v) a classification society which has issued a class certificate showing that the ship conforms to the class standards stipulated by that society.”
- (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) Omit regulation 12(6).
- (8) For regulation 12(7) substitute—
“(7) Paragraphs (2) and (3) do not apply to a discharge from an offshore installation which occurs landward of the line which for the time being is the baseline for measuring the breadth of the territorial waters of the United Kingdom.”
- (9) Omit regulation 13(6) and (7).
- (10) Omit regulation 32(3)(a).
- (11) After regulation 35, insert—

“Powers of harbour masters

35A.—(1) In any case where a ship is liable to be detained under regulation 35(2)(a)(i)(9), 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(1A) to (5) and (8) of the Act shall have effect in relation to that ship as if—

(9) Paragraph 2 of regulation 35 was substituted by [S.I. 2004/303](#).

- (a) the reference to competent authority in subsection (2) includes a reference to the harbour authority; and
 - (b) the persons in relation to whom subsection (4) applies include the harbour master or any person acting on behalf of the harbour master.
- (3) Where a ship, other than a United Kingdom ship, is detained under 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(10) apply in relation to a detention under paragraph (1) as if for “the Secretary of State”, wherever it occurs, there were substituted “the harbour master”.
- (12) Omit regulation 36(2).
- (13) 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 Act 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 section 131(3) of the Act shall apply as it applies to an offence under that section, so that such person shall be liable on summary conviction to a fine not exceeding £250,000 or on conviction on indictment to a fine.

(3) Where a UK 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 a 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 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, “UK excepted ship” has the meaning given in regulation 11C.”

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

(15) In regulation 37(3)(c)(ii), omit “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(11)—

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

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

(a) before paragraph (1A)(12) insert—

“(1ZA) If any noxious liquid substance is discharged from a ship in contravention of regulation 5(a), then section 131(3) of the Merchant Shipping Act 1995 shall apply as it applies to an offence under that section, so that any person who causes or contributes to that discharge is guilty of an offence punishable on summary conviction by a fine not exceeding £25,000 or 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))”.

Transitional provision

6. The amendments made by regulation 3 do not apply in relation to any discharge which occurred before the coming into force of these Regulations.

Signed by authority of the Secretary of State for Transport

11th May 2009

Jim Fitzpatrick
Parliamentary Under Secretary 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 7th September 2005 on ship-source pollution and on the introduction of penalties for infringements (O.J. No. L 255, 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.

Regulation 3 amends the Merchant Shipping Act 1995 to limit the provisions of section 131 regarding discharges of oil or a mixture containing oil into certain types of water that are not sea. *Regulation 6* contains a transitional provision in relation to the amendments set out in regulation 3.

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, in line with the Directive, 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 full impact assessment of the effect that the instrument will have on the costs of business and the voluntary sector has been prepared. A Transposition Note which sets out how Directive [2005/35/EC](#) is to be transposed into UK law has also been prepared. Both documents are available from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG and are annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk). Copies of each document have been placed in the library of each House of Parliament.

Copies of MARPOL 73/78 may be obtained from the International Maritime Organization at 4 Albert Embankment, London SE1 7SR.