STATUTORY INSTRUMENTS

2018 No. 68

The Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018

PART 1

General

Interpretation

3.—(1) In these Regulations—

"the 1995 Act" means the Merchant Shipping Act 1995;

"Annex II" means Annex II to the Convention(**1**);

"anniversary date" means the day and month of each year which correspond to the date of expiry of a relevant NLS certificate;

"annual survey period" means the period of six months beginning three months before each anniversary date;

"approved" in relation to a Procedures and Arrangements Manual or Marine Pollution Emergency Plan means—

(a) in the case of a United Kingdom NLS ship, approved by a Certifying Authority as respects that ship; and

(b) in the case of any other NLS ship, approved by or on behalf of the government of the Contracting State in which the ship is registered;

"BCH Code" means the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the IMO(**2**), and amended by IMO Resolutions MEPC.249(66) and MSC.376(93);

"Cargo Record Book" has the meaning given in regulation 29(1);

"Certifying Authority", except in regulation 2, means the Secretary of State or any person authorised by the Secretary of State in accordance with paragraph (6);

"chemical tanker" means a cargo ship constructed or adapted for the carriage in bulk of any liquid substance listed in Chapter 17 of the IBC Code, but does not include an offshore support vessel or a gas carrier;

"constructed" in relation to a ship has the meaning in paragraph 14 of regulation 1 of Annex II;

"Contracting State" means a State which has consented to be bound by the Convention;

"controlled waters" means the areas of sea specified by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2014(**3**) as waters within which the jurisdiction and rights

(**1**) Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk. See footnote (e) for further information.
(**2**) The latest edition of the BCH Code was published in 2008, to reflect amendments made in 2007. A copy may be obtained from IMO Publishing: ISBN 978-92-801-15093 and copies of the resolutions which amend it from the IMO Library.
(**3**) S.I. 2014/3306.

of the United Kingdom are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea(**4**) for the protection and preservation of the marine environment;

"the Convention" means the International Convention for the Prevention of Pollution from Ships, 1973(**5**);

"discharge", in relation to noxious liquid substances, means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, but does not include the release of noxious liquid substances directly arising from the exploration, exploitation and associated off-shore processing of sea-bed mineral resources, or the release of such substances for purposes of legitimate scientific research into pollution abatement or control;

"gas carrier" means a cargo ship—

(a) for which a certificate certifying compliance with the IGC Code (an International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk) is in force;

(b) which is constructed or adapted for the carriage in bulk of any substance listed in Chapter 19 of the IGC Code and identified in that list by an asterisk; and

(c) which is not intended for, or engaged in, the carriage of any other noxious liquid substance in bulk;

"gross tonnage" means gross tonnage as determined in accordance with regulation 6 of the Merchant Shipping (Tonnage) Regulations 1997(**6**);

"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 1995 Act) for the purpose of enforcing the provisions of these Regulations;

"IBC Code" means the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the IMO(**7**);

"IGC Code" means the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk published by the IMO(**8**);

"IMO" means the International Maritime Organization;

"in bulk" means directly and without any intermediate form of containment in a tank forming an integral part of, or permanently located in, or on, a ship;

"intermediate survey period" means a period of six months beginning three months before the second or third anniversary date;

"Marine Pollution Emergency Plan" has the meaning given in regulation 30;

"Merchant Shipping Notice" means a Notice described as such, issued by the Maritime and Coastguard Agency (an executive agency of the Department for Transport), and includes a

(**4**) This Convention (the "UNCLOS" Convention) was published in Cmnd. 8941, and subsequently in Cmnd 4524. Hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London, SW1A 0PW. A copy of the Convention may be obtained from the United Nations.

(**5**) This Convention (the "MARPOL" Convention) was published in Cmnd. 5748, and amended by the Protocol of 1978 (Cmnd. 7347) and 1997 (Cmnd. 4427). Hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London, SW1A 0PW. IMO Resolution MEPC.21(22) introduced Protocol 1 to the Convention, which was amended by MEPC.68(38). Annex II was revised and replaced by IMO Resolution MEPC.118(52) and further amended by MEPC.216(63), MEPC.238(65), MEPC.246(66), MEPC.265(86), MEPC.270(69) and the Polar Code. The MEPC Resolutions may be obtained from the IMO Library. The 2017 Consolidated Version of the Convention, which contains all amendments up to the date of publication of this instrument, may be obtained from IMO Publishing: ISBN: 978-92-801-16571.

(**6**) S.I. 1997/1510. These regulations are amended by S.I. 1998/1916 and S.I. 1999/3206. There are other amendments but none is relevant.

(**7**) The 2016 Consolidated Version of the IBC Code is available from IMO Publishing: ISBN 978-92-801-15956.

(**8**) The 2016 Consolidated Version of the IGC Code is available from IMO Publishing: ISBN 978-92-801-16311.

reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

"nautical mile" means an international nautical mile of 1,852 metres;

"NLS ship" means a ship intended for, or engaged in, the carriage of noxious liquid substances in bulk;

"noxious liquid substance" means—

(a) any substance which has been categorised in accordance with the provisions of regulation 6 of Annex II and which is indicated in the Pollution Category column of chapter 17 or 18 of the IBC Code as falling within category X, Y or Z;

(b) any mixture containing a substance referred to in sub-paragraph (a);

(c) any substance which has been provisionally assessed as falling within category X, Y or Z in accordance with the provisions of regulation 6.3 of Annex II, and which is either—

  (i) listed in MEPC.2/Circ. on the Provisional Categorisation of Liquid Substances in Accordance with Annex II and the IBC Code, issued on 1st December each year(**9**); or

  (ii) in the case of any substance provisionally assessed after the publication of MEPC.2/Circ. in any given year but in advance of the publication of the next MEPC.2/Circ., publicised by the IMO(**10**) as such; and

(d) any mixture containing a substance referred to in sub-paragraph (c);

"offshore installation" means fixed or floating platforms including drilling rigs, floating production, storage and offloading facilities used for the offshore production and storage of oil or noxious liquid substances, and floating storage units used for the offshore storage of produced oil;

"offshore support vessel" means—

(a) a vessel which is primarily engaged in the transport of stores, materials and equipment to and from mobile offshore drilling units, fixed or floating platforms or other similar offshore installations; or

(b) a vessel, including a well-stimulation vessel but excluding a mobile offshore drilling unit, derrick barge, pipelaying barge or floating accommodation unit, which is otherwise primarily engaged in supporting the work of offshore installations;

"OSV Guidelines" means the Guidelines for the Transport and Handling of Limited Amounts of Hazardous and Noxious Liquid Substances in Bulk on Offshore Support Vessels (OSV) published by the IMO(**11**);

"Polar Code" means the International Code for Ships Operating in Polar Waters, consisting of an introduction, parts I-A and II-A and parts I-B and II-B as adopted by IMO Resolutions MSC.385(94) and MEPC.264(68)(**12**);

(**9**) The MEPC.2/Circ. lists noxious liquid substances with associated categories and minimum carriage requirements which have been established through Tripartite Agreements and registered with the IMO Secretariat in accordance with regulation 6.3 of Annex II. The current circular is MEPC.2/Circ.23 dated December 2017 and is available at http://www.imo.org/en/OurWork/Environment/PollutionPrevention/ChemicalPollution/Documents/MEPC.2-Circ.23.pdf or from the IMO Library.

(**10**) Products assessed between the dates of publication of MEPC.2/Circ. are published by the IMO at http://www.imo.org/en/OurWork/Environment/PollutionPrevention/ChemicalPollution/Pages/TripartiteAgreements.aspx and available from the IMO Library.

(**11**) These Guidelines were adopted by IMO Assembly Resolution A.673(16) in October 1989 and amended and adopted by IMO Resolution MSC.184(79), MEPC.158(55) and MSC.236(82). The 2007 Edition is available from IMO Publishing: ISBN 978-92-801-14874. Copies of the Resolutions are available from the IMO Library.

(**12**) The Polar Code took effect on 1st January 2017 upon entry into force of new Chapter XIV of the International Convention for the Safety of Life at Sea 1974 ("SOLAS"). The Polar Code (ISBN 978-92-801-16281) and SOLAS (ISBN: 978-92-801-49906) are available from IMO Publishing. Copies of the Resolutions are available from the IMO Library.

"polar waters" means the Antarctic area and Arctic waters and, for the purposes of this definition, the "Antarctic area" means the sea area south of latitude 60°S, and "Arctic waters" has the meaning given in regulation 21.2 of Annex II;

"Procedures and Arrangements Manual" has the meaning given in regulation 28;

"RO Code" means the Code for Recognised Organisations adopted on 17th May 2013 by IMO Resolution MEPC.237(65)(**13**);

"sea" includes any estuary or arm of the sea;

"ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

"Shipboard Marine Pollution Emergency Plan" has the meaning given in regulation 30(4);

"surveyor" means a surveyor of ships, or any other person appointed by a Certifying Authority other than the Secretary of State to be a surveyor, and "survey" means a survey carried out by a surveyor;

"United Kingdom NLS ship" means an NLS ship which is a United Kingdom ship; and

"United Kingdom ship" means a ship which—

(a) is registered in the United Kingdom; or

(b) is not registered under the law of any country but is wholly owned by persons each of whom is—

(i) a British citizen, a British overseas territories citizen or a British Overseas citizen; or

(ii) a body corporate which is established under the law of any part of the United Kingdom and has its principal place of business in the United Kingdom.

(2) In these Regulations—

(a) a reference to an initial, renewal, annual, intermediate or additional survey is a reference to an initial, renewal, annual, intermediate or, as the case may be, additional survey carried out—

(i) in the case of an NLS ship which is a chemical tanker constructed or adapted before 1st July 1986, in accordance with section 1.6 of the BCH Code;

(ii) in the case of an NLS ship which is a chemical tanker constructed or adapted on or after 1st July 1986, in accordance with section 1.5.2 of the IBC Code;

(iii) in the case of an NLS ship which is a gas carrier, in accordance with regulation 8.1 of Annex II;

(iv) in the case of an NLS ship which is an offshore support vessel, in accordance with regulation 8.1 of Annex II and section 1.5 of the OSV Guidelines; and

(v) in the case of any other NLS ship, in accordance with regulation 8.1 of Annex II; and

(b) "relevant" in relation to a survey carried out in respect of an NLS ship means a survey described in any of sub-paragraph (a)(i) to (v) which is relevant to that ship.

(3) In these Regulations—

(a) "relevant NLS certificate" means a certificate drawn up in English and comprising—

(i) as respects an NLS ship which is a chemical tanker constructed or adapted before 1st July 1986, a BCH Code certificate in the form set out in the Appendix to the BCH

(**13**) The RO Code is available from the IMO Library.

Code issued and endorsed for a specified period in accordance with the requirements of that Code;

(ii) as respects an NLS ship which is a chemical tanker constructed or adapted on or after 1st July 1986, an IBC Code certificate in the form set out in the Appendix to the IBC Code issued and endorsed for a specified period in accordance with the requirements of that Code;

(iii) as respects an NLS ship which is a gas carrier, a certificate in the form set out in Appendix 3 to Annex II which satisfies the requirements of regulations 9 (issue or endorsement of certificate) and 10 (duration and validity of certificate) of that Annex;

(iv) as respects an NLS ship which is an offshore support vessel to which the OSV Guidelines apply, a Certificate of Fitness as set out in Appendix 2 to the OSV Guidelines issued and endorsed for a specified period in accordance with the requirements of the OSV Guidelines, together with a certificate as described in paragraph (iii); and

(v) as respects any other NLS ship, a certificate as described in paragraph (iii); and

(b) "endorsement" in relation to a relevant NLS certificate means an endorsement drawn up in English which—

(i) is issued in connection with a certificate described in sub-paragraph (a)(i) to (v); and

(ii) satisfies the requirements specified in the Code, Regulation, Appendix or Guidelines applicable to that certificate,

and "endorse" and "endorsed" are to be construed accordingly.

(4) Any reference in these Regulations to the date of construction of a ship is a reference to the date on which the keel of the ship is laid or on which the ship is at a stage of construction at which—

(a) construction identifiable with a specific ship has begun; and

(b) assembly of that ship has commenced comprising at least 50 tonnes or one per cent of the estimated mass of all structural material, whichever is less.

(5) Any approval, exemption, direction or notice given by the Secretary of State pursuant to these Regulations is valid only if given in writing and may be—

(a) given subject to such conditions and limitations as the Secretary of State may specify; and

(b) altered or cancelled by a notice given in writing by the Secretary of State,

any reference in these Regulations to the provision of any approval, exemption, direction or notice "in writing" includes the provision of such communication by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication.

(6) A person authorised by the Secretary of State as a Certifying Authority must be authorised(**14**) in accordance with—

(a) the Convention;

(b) Parts 1 and 2 of the RO Code (which are mandatory); and

(c) Part 3 of the RO Code (which is recommendatory).

(7) In any provision of the BCH Code, the IBC Code, the IGC Code, Annex II, the Polar Code, the RO Code or the OSV Guidelines which is applied by these Regulations—

(a) references to the Administration are, in relation to United Kingdom ships, to be read as references to the Secretary of State;

(**14**) Regulation (EC) No. 391/2009 of the European Parliament and of the Council of 23rd April 2009 on common rules and standards for ship inspection and survey organisations may also be applicable.

(b) references to the Port Administration are, in relation to any ship in the territorial waters of the United Kingdom, to be read as references to the Secretary of State; and

(c) references to the BCH Code, the IBC Code, the IGC Code, Annex II, the Polar Code, the RO Code and the OSV Guidelines are to be read as references to those instruments as defined in these Regulations.