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STATUTORY INSTRUMENTS

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**1997 No. 2367**

**The Merchant Shipping (Dangerous Goods  
and Marine Pollutants) Regulations 1997**

**PART I  
GENERAL**

**Citation, commencement and revocation**

1.—(1) These Regulations may be cited as the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997 and shall come into force on 1st November 1997.

(2) The Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990(1) are hereby revoked.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires:

“Bulk Cargoes Code” means the 1996 edition of IMO Code of Practice for Solid Bulk Cargoes;

“BCH Code” means the 1993 edition of the IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;

“cargo transport unit” means a road freight vehicle, a railway freight wagon, a freight container, a road tank vehicle, a railway tank wagon and a portable tank;

“classify” means to determine whether goods are dangerous goods or a marine pollutant for the purposes of sea transport. This is the determination (by appropriate method) of whether the goods possess the hazardous characteristics of classes from 1 to 9 of the IMDG Code in accordance with the most hazardous property of the goods. It extends to goods—

- (i) listed in the IMDG Code;
- (ii) not specifically listed but falling within the defining criteria for the classes from 1 to 9 of the IMDG Code; and
- (iii) where there is any cause to suspect that the substance is a marine pollutant as defined by the IMDG Code;

“correct technical name” means a description of the goods sufficient to identify their dangerous or polluting characteristics;

“dangerous goods” means goods classified in the IMDG Code or in any other IMO publication referred to in these Regulations as dangerous for carriage by sea, and any other substance or article that the shipper has reasonable cause to believe might meet the criteria for such classification;

This expression also includes—

- (i) residues in empty receptacles, empty tanks or cargo holds which have been used previously for the carriage of dangerous goods unless such receptacles, empty tanks or cargo holds have been cleaned and dried, purged, gas freed or ventilated as appropriate or, in the case of radioactive materials, have been both cleaned and adequately closed; and
- (ii) goods labelled, marked or declared as dangerous goods.

The expression shall not include goods forming part of the equipment or stores of the ship in which they are carried;

“dangerous goods declaration” means, subject to regulation 12, a certificate or declaration in writing, signed by the person making it, that the shipment offered for carriage is properly classified, packaged, marked, labelled and placarded, as appropriate, in accordance with the IMDG Code and is in proper condition for carriage by sea;

“employee” means a person (including the master but excluding dock workers or shore-based repair or other workers temporarily employed on board the ship) employed:

- (i) in the deck, engine, radio, medical or catering department of a ship, or
- (ii) in the provision of goods, services or entertainment on board;

“forwarder” means the person by whom the dangerous goods declaration or marine pollutants declaration and packing certificate are received, and any person responsible for packing the goods into a cargo transport unit, for eventual delivery to the ship or its agent;

“Gas Carrier Code” means the 1983 edition of the IMO Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;

“Gas Carrier Code for Existing Ships” means the 1976 edition of the IMO Code for Existing Ships Carrying Liquefied Gases in Bulk, including the first set of amendments (adopted by the Maritime Safety Committee of the IMO in April 1978), the second set of amendments (adopted by the Maritime Safety Committee of IMO in May 1979), the third set of amendments (adopted by the Maritime Safety Committee of IMO in May 1980) and the fourth set of amendments (adopted by the Maritime Safety Committee of IMO in November 1984);

“handling” includes the operations of loading, unloading and transferring dangerous goods or marine pollutants and cleaning, purging, gasfreeing, ullaging, sounding, sampling and similar operations required for the carriage of such goods in a ship; and cognate expressions shall be construed accordingly;

“IBC Code” means the 1994 edition of the IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;

“IGC Code” means the 1993 edition of the IMO International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;

“IMDG Code” means the 1994 consolidated edition of the International Maritime Dangerous Goods Code as amended by Amendment No. 28–96;

“IMO” means the International Maritime Organisation;

“IMO Recommendations” means the 1995 edition of Recommendations on the Safe Transport of Dangerous Cargoes and Related Activities in Port Areas (1995 edition);

“in bulk” means directly and without intermediate form of containment in a hold, tank or cargo space, which is a structural part of or permanently attached to a ship;

“marine pollutant” means a substance classified as such in the IMDG Code, or as a noxious liquid substance in the IBC Code, and any other substance, material or article that the shipper has reasonable cause to believe might meet the criteria for such classification;

“marine pollutants declaration” means a certificate or declaration in writing, signed by the person making it, that the shipment offered for carriage is properly classified, packaged and

marked in accordance with the IMDG Code and is in a proper condition for carriage to minimise the hazard to the marine environment;

“Marine Safety Agency” means the Marine Safety Agency, an executive agency of the Department of the Environment, Transport and the Regions;

“Merchant Shipping Notice” means a Notice described as such, issued by the Marine Safety Agency and any reference to a particular Merchant Shipping Notice includes a reference to any Merchant Shipping Notice amending or replacing it which the Secretary of State considers relevant from time to time;

“operator” in relation to a ship includes any owner, charterer, manager and agent of the ship;

“package” means an individual package or receptacle described in the IMDG Code an intermediate bulk container;

“packaged goods” means packaged dangerous goods or packaged marine pollutants;

“shipper” means a person who, whether as principal or agent for another, consigns for carriage by sea dangerous goods or marine pollutants;

“SOLAS” means the Safety of Life at Sea Convention 1974(2), and its 1978 Protocol(3), as amended, as in force on 1st January 1996;

“UN number” means the number allocated to the dangerous substance, article or material by the IMDG Code or in any other IMO publication referred to in these Regulations;

“United Kingdom ship” means a ship or hovercraft which—

- (a) is registered under Part II of the Merchant Shipping Act 1995;
- (b) is registered under the Hovercraft Act 1968(4);
- (c) is a Government ship, within the meaning of section 308(4) of the Merchant Shipping Act 1995 used for commercial purposes; or
- (d) is not registered under the law of any other country but is wholly owned by persons each of whom is—
  - (i) a British citizen, a British Dependent Territories citizen or a British Overseas citizen, or
  - (ii) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.

(2) Any reference in these Regulations to the Bulk Cargoes Code, the BCH Code, the Gas Carrier Code, the Gas Carrier Code for existing ships, the IBC Code, the IGC Code, the IMDG Code, or IMO Recommendations shall include a reference to any document amending that publication which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice.

(3) Where these Regulations require the carriage of dangerous goods or marine pollutants to be in accordance with a Code or Recommendation referred to in paragraph (2), and the Secretary of State has specified in Merchant Shipping Notices MSN 1705 or MSN 1706 conditions in relation to such carriage then (whether or not the Code or Recommendation contains conditions on such matters) the Code or Recommendation shall have effect for the purposes of these Regulations as if it contains the conditions so specified by the Secretary of State. “Carriage” in this paragraph includes packing, documentation, packaging, marking, labelling, stowage, segregation and handling.

(4) Any reference in these Regulations, unless otherwise stated,

- (a) to a numbered regulation is to the regulation of that number in these Regulations;

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(2) Cmnd 7874.

(3) Cmnd 7346.

(4) 1968 c. 59.

- (b) to a numbered paragraph is to the paragraph of that number in that regulation.

### **Amendment of Dangerous Substances in Harbours Areas Regulations 1987**

3. The Dangerous Substances in Harbour Areas Regulations 1987(5) are hereby amended as follows:

- (a) in regulation 2(1) in sub-paragraph (a)(i) of the definition of “classification”, and in regulation 25(2)(e), for “the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990” there shall be substituted “the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997”;
- (b) in regulation 2(1), in the definition of “the IMDG Code”, for “regulation 1(3) of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990” there shall be substituted “the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997”; and
- (c) in regulation 3(1), for “regulation 1(2) of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990” there shall be substituted “the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, except that nothing in those Regulations shall be construed as defining a marine pollutant in Class 9 of the IMDG Code under UN number 3077 or 3082 or any substance otherwise included in Class 9 of the IMDG Code solely by reason of its being a marine pollutant, as a dangerous substance for the purposes of these Regulations.”.

### **Exemptions**

4. The Secretary of State may grant exemptions from all or any of the provisions of these regulations (as may be specified in the exemption) for classes of cases or individual cases on such terms (if any) as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

### **Application**

5.—(1) Subject to paragraph (2) these Regulations apply to ships carrying dangerous goods in bulk or packaged form or marine pollutants in packaged form.

(2) These Regulations apply to United Kingdom ships wherever they may be and to other ships while they are within the United Kingdom waters.

### **General duties of operators and employers**

6.—(1) It shall be the duty of every operator, every employer of persons aboard a ship and every master of a ship to ensure that, so far as is reasonably practicable, when dangerous goods are being handled, stowed or carried on the ship nothing in the manner in which those goods are handled, stowed or carried as the case may be is such as might create a significant risk to the health and safety of any person.

(2) Without prejudice to the generality of the operator's, employer's or master's duty under paragraph (1) the matters to which the duty of the operator and of the employer extends shall include in particular:

- (a) the provision and maintenance of ship's structure, fittings and equipment for the handling, stowage and carriage of dangerous goods.

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(5) S.I. 1987/37; relevant amendment in S.I. 1990/2605.

(b) the provision of such information, instruction, training and supervision to all employees in connection with the handling, stowage and carriage of dangerous goods in the ship.

(3) If an employer, operator or master fails to comply with paragraphs (1) and (2) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale.

(4) It shall be a defence to a charge under this regulation in relation to the handling of dangerous goods that such handling was carried out in accordance with appropriate provisions of the IMO Recommendations.

### **General duties of employees aboard ship**

7.—(1) It shall be the duty of every employee aboard ship:

- (a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions in connection with the handling, stowage and carriage of dangerous goods in the ship; and
- (b) as regards any duty or requirement imposed on the operator, or the employee's employer by the Merchant Shipping Act 1995 or any regulation or rule made thereunder with regard to the health and safety of persons aboard a ship to which these Regulations apply, to cooperate with the operator or employer so far as is necessary to enable that duty or requirement to be performed or complied with in connection with the handling, stowage and carriage of dangerous goods in the ship.

(2) If any employee aboard a ship carrying dangerous goods fails to comply with paragraph (1) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level three on the standard scale.

### **Misconduct endangering a United Kingdom ship or persons aboard**

8.—(1) In connection with the handling, stowage and carriage of dangerous goods in a United Kingdom ship, no person shall intentionally or recklessly interfere with or misuse anything provided on, or disobey instructions displayed on, the ship in the interests of health or safety in pursuance of the Merchant Shipping Act 1995 or any regulation or rule made thereunder.

(2) If any person aboard a ship carrying dangerous goods fails to comply with paragraph (1) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level four on the standard scale.

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

9. In any proceedings for an offence under regulation 5 or 6 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 accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.