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STATUTORY INSTRUMENTS

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**2008 No. 2924**

**The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008**

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 and come into force on 8<sup>th</sup> December 2008.

**Interpretation**

2.—(1) In these Regulations—

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

“the 1995 Regulations” means the Merchant Shipping (Port State Control) Regulations 1995(1);

“additional survey” means a survey carried out under regulation 10(3);

“Annex VI” means Annex VI to the Convention, which was added to the Convention by the Protocol of 1997, and includes—

- (a) all amendments to that Annex adopted by the Marine Environment Protection Committee of the IMO before the date on which these Regulations are made, and
- (b) any subsequent amendment to that Annex which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“anniversary date” means the day and month of each year which will correspond to the date of expiry of the latest appropriate certificate which has been issued and which is still valid in respect of the ship in question;

“annual survey” means a survey carried out under regulation 5(3);

“annual survey period” means the period specified in regulation 7(5);

“appropriate certificate” means—

- (a) an IAPP Certificate, in relation to—
  - (i) a platform which is or will be engaged in voyages to waters under the sovereignty or jurisdiction of a Contracting Government other than the United Kingdom, and
  - (ii) any other United Kingdom ship of 400 GT or above which is or will be engaged in voyages to a port or offshore terminal under the jurisdiction of a Contracting Government other than the United Kingdom,

- (b) a UKAPP Certificate in relation to—
- (i) a platform which is not or will not be engaged in voyages to waters under the sovereignty or jurisdiction of a Contracting Government other than the United Kingdom, and
  - (ii) any other United Kingdom ship of 400 GT or above which is not and will not be engaged in voyages to a port or offshore terminal under the jurisdiction of a Contracting Government other than the United Kingdom;

“Certifying Authority” means the Secretary of State or any organisation which is an authorised organisation for the purposes of the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996<sup>(2)</sup>;

“Contracting Government” means the Government of a State which has consented to be bound by the Convention, and for which the Protocol of 1997 to the Convention is in force;

“the Convention” means the International Convention for the Prevention of Pollution from Ships, 1973<sup>(3)</sup> including its protocols, annexes and appendices, as amended by the Protocols of 1978<sup>(4)</sup> and 1997<sup>(5)</sup>, and includes—

- (a) all the amendments adopted by the Marine Environment Protection Committee of the IMO on or before the date on which these Regulations are made; and
- (b) any subsequent amendment to that Convention which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“continuous feed” in relation to a shipboard incinerator, means the process whereby waste is fed into a combustion chamber without human assistance while the incinerator is in normal operating conditions with the combustion chamber operative temperatures within the range of 850° and 1200°C;

“controlled waters” means the waters specified by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996<sup>(6)</sup> as areas within which the jurisdiction and rights of the United Kingdom are exercisable;

“date of expiry”, in relation to an appropriate certificate held in respect of a ship, means the last day of the period specified in that appropriate certificate as the period for which the certificate is valid;

“emission” means any release of a substance subject to control by these Regulations from a ship into the atmosphere or sea;

“exclusive economic zone”, in relation to a foreign State, means the area beyond and adjacent to the territorial sea of that State, but not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured;

“flag State”, in relation to a ship, means the State whose flag the ship is entitled to fly;

“fuel oil” means such substances as may be specified by the Secretary of State in a Merchant Shipping Notice;

“GT” means gross tonnage, and the gross tonnage of a ship is to be determined for the purposes of these Regulations in accordance with Schedule 1;

“harbour master” has the same meaning as in section 144(7) of the 1995 Act;

“IAPP Certificate” means a certificate entitled “International Air Pollution Prevention Certificate” issued in accordance with the Convention;

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(2) [S.I. 1996/2908](#): an “authorised organisation” is defined in regulation 2 of those Regulations.

(3) Cmnd 5748

(4) Cmnd 7347.

(5) Cmnd 4427.

(6) [S.I. 1996/2128](#), amended by [S.I. 1997/506](#).

“IMO” means the International Maritime Organization;

“intermediate survey period” means the period specified in regulation 8(4);

“Marine Guidance Note” means a note described as such and issued by the MCA and any reference to a particular Marine Guidance Note includes a reference to a Marine Guidance Note amending or replacing that Note which is considered by the Secretary of State to be relevant from time to time;

“maximum continuous rating of the engine” means the rated power in kW as given in the Engine International Air Pollution Prevention Certificate issued in accordance with the NOx Technical Code;

“MCA” means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

“Merchant Shipping Notice” means a notice described as such and issued by the MCA, and any reference to any particular Merchant Shipping Notice includes a reference to a Merchant Shipping Notice amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time;

“nautical mile” means an international nautical mile of 1,852 metres;

“new installation” means the installation of systems, equipment, including new portable fire extinguishing units, insulation, or other material on a ship, but excludes repair or recharge of previously installed systems, equipment, insulation, or other material, and excludes recharge of portable fire extinguishing units;

“noxious liquid substance” has the meaning given in regulation 1.10 of Annex II to the Convention;

“NOx Technical Code” means the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines (7) and includes any document amending it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“offshore terminal” means an installation situated away from the shore, where bulk, fluid or gas cargo (or more than one of these) is—

- (a) transferred between ships,
- (b) loaded onto a ship after having been transported from the shoreline, or
- (c) unloaded from a ship for transporting to the shoreline;

“ozone-depleting substance” means a controlled substance defined in paragraph 4 of article 1 of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987(8) listed in Annex A, B, C or E to that Protocol and in Appendix 4 to Merchant Shipping Notice 1819 (M+F);

“platform” includes fixed and floating platforms and drilling rigs;

“Protocol of 1997” means the Protocol, dated 26th September 1997, to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;

“renewal survey” means a survey carried out under regulation 6(3);

“sea” includes any estuary or arm of the sea;

“ship” means a vessel of any type whatsoever, including a hydrofoil boat, an air-cushion vehicle, a submersible, a floating craft and a platform, which is operating in the marine environment—

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(7) IMO publication, IMO – 664E; ISBN 92-801-6089-3.

(8) Publication of the United Nations Environment Programme; ISBN: 92-807-1888-6.

- (a) beyond the limits of waters in categories A and B, or
- (b) in waters in category C, but excluding deep lakes and lochs where the significant wave height (calculated as four times the square root of the area under the wave energy spectrum) could not be expected to exceed 1.2 metres at any time,

where categories A, B and C have the meanings given to them in Merchant Shipping Notice 1776(M);

“shipboard incineration” means the incineration on board a ship of wastes or other matter generated during the normal operation of the ship;

“shipboard incinerator” means a shipboard facility designed for the primary purpose of incineration;

“short voyage” means a voyage—

- (a) in the course of which a ship is never more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety, and
- (b) which does not exceed 600 nautical miles between the last port of call in the country in which the voyage begins and the last port of call in the voyage before beginning any return voyage, and which on any return voyage does not exceed 600 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the country in which the voyage began,

and for the purposes of this definition no account is to be taken of any deviation by a ship from its intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled;

“sludge oil” means sludge from fuel or lubricating oil separators, waste lubricating oil from main or auxiliary machinery, or waste oil from bilge water separators, oil filtering equipment or drip trays;

“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (9), as amended in 1995 by resolution 1 of the STCW Convention (10), convened at the IMO’s headquarters from 26th June to 7th July 1995;

“sulphur oxide emission control area” means—

- (a) the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at latitude 57° 44'. 8 N;
- (b) the North Sea being all sea areas within the following boundaries including the North Sea proper and the English Channel and its approaches—
  - (i) the North Sea southwards of latitude 62°N and eastwards of longitude 4°W;
  - (ii) the Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57° 44. 8’N, and
  - (iii) the English Channel and its approaches eastwards of longitude 5°W and northwards of latitude 48°30’N; and

any other sea area, including a port area, designated as a sulphur oxide emission control area for the purposes of this regulation by the Secretary of State in a Merchant Shipping Notice;

“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;

“tanker” means—

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(9) Cmnd 9266.

(10) Cmnd 3772.

- (a) an oil tanker as defined in regulation 1(5) of Annex I to the Convention, or
- (b) a chemical tanker as defined in regulation 1.16.1 of Annex II to the Convention;

“terminal operator” means the person who controls the activities of any terminal, jetty, pier, floating structure or other work within a port at which ships can obtain shelter or ship and unship goods or passengers;

“UKAPP Certificate” means a certificate entitled “United Kingdom Air Pollution Prevention Certificate” issued by a Certifying Authority and evidencing compliance with these Regulations.

(2) For the purposes of these Regulations, “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.

(3) Any reference in Part 2 to a survey, so far as it concerns a survey of engines and equipment for compliance with regulation 21, means a survey in accordance with the NO<sub>x</sub> Technical Code.

(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 incorporated at least 50 tonnes of structural material or one per cent of the estimated mass of all structural material, whichever is less.

(5) In the application of these Regulations to—

- (a) an air-cushion vehicle, a reference to the master of a ship includes a reference to the captain of that air-cushion vehicle, and
- (b) a platform, a reference to the master of a ship includes a reference to the manager of that platform.

### **Application and exemptions**

3.—(1) Subject to paragraphs (2) to (12) these Regulations apply to—

- (a) a United Kingdom ship wherever it may be,
- (b) any other ship while it is within United Kingdom waters.

(2) Regulations 5 to 11 apply to—

- (a) a platform, other than one that is registered in, or is not registered in but is entitled to fly the flag of, a country whose Government is a Contracting Government other than the United Kingdom,
- (b) any other United Kingdom ship of 400 GT or above,

wherever it may be.

(3) Regulation 12 applies to—

- (a) a platform engaged in voyages to waters under the sovereignty or jurisdiction of a Contracting Government other than the United Kingdom,

- (b) any United Kingdom ship of 400 GT or above engaged in voyages to ports or offshore terminals under the jurisdiction of a Contracting Government other than the United Kingdom.
- (4) Regulations 13 and 19(1) apply to a ship which is—
  - (a) not a United Kingdom ship,
  - (b) registered in, or is not registered in but is entitled to fly the flag of, a country whose Government is a Contracting Government,
  - (c) engaged in voyages to ports or offshore terminals under the jurisdiction of a Contracting Government,
  - (d) of 400 GT or above, unless it is a drilling rig, and
  - (e) in United Kingdom waters or controlled waters.
- (5) Regulations 14, 15, 16(1) to (5), 17 and 18(1) and (2) apply to—
  - (a) a platform other than one that is registered in, or is not registered in but is entitled to fly the flag of, a country whose Government is a Contracting Government other than the United Kingdom,
  - (b) any other United Kingdom ship of 400 GT or above,wherever it may be.
- (6) Regulation 16(6) applies to a ship which is—
  - (a) not a United Kingdom ship,
  - (b) engaged in voyages to ports or offshore terminals under the jurisdiction of a Contracting Government other than the United Kingdom,
  - (c) of 400 GT or above, unless it is a drilling rig, and
  - (d) in a port or offshore terminal in the United Kingdom.
- (7) Regulation 18(3) and (4) applies in relation to a ship which is—
  - (a) a platform engaged in voyages to waters under the sovereignty or jurisdiction of a Contracting Government other than the United Kingdom,
  - (b) a United Kingdom ship, of 400 GT or above, wherever it may be, which is engaged in voyages to ports or offshore terminals under the jurisdiction of a Contracting Government other than the United Kingdom,
  - (c) any other ship of 400 GT or above while it is within United Kingdom waters which is not a United Kingdom ship.
- (8) Regulation 19(2) applies to a ship which satisfies all the criteria set out in paragraph (4) except for the criterion in paragraph (4)(b).
- (9) Regulation 21(4) applies to any engine on a ship wherever that ship may be.
- (10) Regulation 22(1) applies to—
  - (a) a United Kingdom ship wherever it may be, unless it is within a sulphur oxide emission control area, and
  - (b) any other ship wherever it may be unless it is within a sulphur oxide emission control area outside United Kingdom waters.
- (11) Regulation 22(2) applies to—
  - (a) a United Kingdom ship wherever it may be while it is within a sulphur oxide emission control area, and
  - (b) any other ship while it is within a sulphur oxide emission control area.

(12) These Regulations do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used for the time being on government, non-commercial service.

(13) These Regulations do not apply to any emission—

- (a) necessary for the purpose of securing the safety of a ship or saving life at sea,
- (b) resulting from damage to a ship or its equipment, except to the extent that the emission is due to—
  - (i) a failure to take all reasonable precautions after the occurrence of the damage or discovery of the emission for the purpose of preventing or minimising the emission, or
  - (ii) damage caused in consequence of the owner or master acting either intending to cause damage, or recklessly and with knowledge that damage would probably result,
- (c) from any platform resulting from the incineration of substances that are solely and directly the result of exploration, exploitation and associated offshore processing of sea-bed mineral resources, including but not limited to—
  - (i) the flaring of hydrocarbons and the burning of cuttings, muds and stimulation fluids during well completion and testing operations,
  - (ii) flaring arising from upset conditions, and
  - (iii) the release of gases and volatile compounds entrained in drilling fluids and cuttings,
- (d) associated solely and directly with the treatment, handling or storage of a sea-bed mineral,
- (e) from a diesel engine that is solely dedicated to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources.

### **Equivalents**

4. The Secretary of State may permit any fitting, material, appliance or apparatus to be fitted in a ship as an alternative to that required by these Regulations if that fitting, material, appliance or apparatus is at least as effective as that required by these Regulations.