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## STATUTORY INSTRUMENTS

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# 2010 No. 323

## The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010

### PART 1

### GENERAL

#### Citation and commencement

1. These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010 and shall come into force on 6th April 2010.

#### Commencement Information

II [Reg. 1](#) in force at 6.4.2010, see [reg. 1](#)

#### Interpretation

2.—(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

“the Approved List of biological agents” means the list by that name published by the Health and Safety Executive<sup>(1)</sup> and includes any document containing an amendment or replacement of that list which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

[<sup>F1</sup>“biological agents” means micro-organisms, cell cultures, or human endoparasites, whether or not genetically modified, which may cause infection, allergy, toxicity or otherwise create a hazard to human health;]

“cell culture” means the *in-vitro* growth of cells derived from multicellular organisms;

“the Directive” means Directive [2000/54/EC](#) of the European Parliament and of the Council on the protection of workers from risks related to exposure to biological agents at work (seventh individual directive within the meaning of Article 16(1) of Directive [89/391/EEC](#));

“employer” means a person by whom a worker is employed on a ship under a contract of employment;

“exposure” means exposure at work to biological agents;

“the General Duties Regulations” means the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997<sup>(2)</sup>;

“Government ship” has the meaning given by section 308(4) of the Act;

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(1) The Approved List of biological agents was published by the Health and Safety Executive in 2004.

(2) [S.I. 1997/2962](#), amended by [S.I. 1998/2411](#) and [2001/54](#).

**Changes to legislation:** There are currently no known outstanding effects for the *The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010, PART 1.* (See end of Document for details)

“group 1 biological agent” means a biological agent that is unlikely to cause human disease;  
“group 2 biological agent” means a biological agent that can cause human disease and might be a hazard to workers but is unlikely to spread to the community and for which there is usually an effective prophylaxis or treatment available, and includes agents classified as such <sup>F2</sup>... in the Approved List of biological agents;

“group 3 biological agent” means a biological agent that can cause severe human disease, presents a serious hazard to workers and may present a risk of spreading to the community but for which there is usually an effective prophylaxis or treatment available, and includes agents classified as such <sup>F3</sup>... in the Approved List of biological agents;

“group 4 biological agent” means a biological agent that causes severe human disease, is a serious hazard to workers and may present a high risk of spreading to the community and for which there is usually no effective prophylaxis or treatment available, and includes agents classified as such <sup>F4</sup>... in the Approved List of biological agents;

“health and safety” includes the occupational health and safety of persons whilst on board a ship and whilst boarding or leaving the ship;

<sup>F5</sup> ...

[<sup>F6</sup>“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 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;]

“micro-organism” means a microbiological entity, cellular or non-cellular, capable of replication or of transferring genetic material;

“regulation 6 assessment” has the meaning given by regulation 6(2);

“representative” in relation to workers, means any person lawfully elected, chosen or designated to represent the workers in regard to issues about the health and safety of workers at work;

“ship” includes hovercraft;

“surveyor of ships” has the meaning given by section 256(9) of the Act; and

“United Kingdom ship” means a ship which is—

- (a) a United Kingdom ship within the meaning of section 85(2) of the Act<sup>(3)</sup>;
- (b) a Government ship; or
- (c) a hovercraft registered under the Hovercraft Act 1968<sup>(4)</sup>.

<sup>F7</sup>(2) .....

(3) Subject to paragraph (1) and regulation 3, words and expressions used in these Regulations have the same meaning as in the Directive.

(4) In the application of these Regulations to a hovercraft, a reference to the master of a ship includes a reference to the captain of that hovercraft.

**F1** Words in reg. 2(1) substituted (31.12.2020) by [The Merchant Shipping and Fishing Vessels \(Health and Safety at Work\) \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1202\)](#), regs. 1(2), **8(2)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

<sup>(3)</sup> The British Overseas Territories Act 2002 (c.8), section 2(3), makes a non-textual amendment to section 85(2) of the Act.  
<sup>(4)</sup> 1968 c.59.

- F2** Words in reg. 2(1) omitted (31.12.2020) by virtue of *The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1202)*, regs. 1(2), **8(2)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in reg. 2(1) omitted (31.12.2020) by virtue of *The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1202)*, regs. 1(2), **8(2)(a)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in reg. 2(1) omitted (31.12.2020) by virtue of *The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1202)*, regs. 1(2), **8(2)(a)(iv)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in reg. 2(1) omitted (31.12.2020) by virtue of *The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1202)*, regs. 1(2), **8(2)(a)(v)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in reg. 2(1) substituted (31.12.2020) by *The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1202)*, regs. 1(2), **8(2)(a)(vi)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Reg. 2(2) omitted (31.12.2020) by virtue of *The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1202)*, regs. 1(2), **8(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I2** Reg. 2 in force at 6.4.2010, see [reg. 1](#)

#### Meaning of “worker”

3.—(1) In these Regulations, “worker” means a person employed under a contract of employment, and includes a trainee or apprentice other than a person who is training in a sailing vessel which is being used—

- (a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship, or
- (b) to provide instruction in navigation and seamanship for yachtsmen,

and which is operating under a relevant code.

(2) In paragraph (1) “a relevant code” means—

- (a) the Large Commercial Yacht Code as set out in Merchant Shipping Notice No. 1792(M) – Edition 2;
- (b) the Code of Practice for the Safety of Small Commercial Sailing Vessels<sup>(5)</sup>;
- (c) the Code of Practice for the Safety of Small Commercial Motor Vessels<sup>(6)</sup>; or
- (d) the Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point<sup>(7)</sup>.

(3) In paragraph (2) each reference to a Code includes a reference to any document containing an amendment or replacement of that Code which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice.

#### Commencement Information

- I3** Reg. 3 in force at 6.4.2010, see [reg. 1](#)

<sup>(5)</sup> Published by the Stationery Office in 1993 (ISBN 0-11-551184-9).

<sup>(6)</sup> Published by the Stationery Office in 1993 (ISBN 0-11-551185-7).

<sup>(7)</sup> Published by the Stationery Office in 1999 (ISBN 0-11-551812-6).

## Application

4.—(1) Without prejudice to regulation 5 of the General Duties Regulations and subject to paragraphs (2) to (7), these Regulations apply in relation to —

- (a) activities on United Kingdom ships in which workers are or are potentially exposed to biological agents as a result of their work, giving rise to risks or the likelihood of risks to their health and safety; and
- (b) United Kingdom ships on which such activities take place.

(2) Where—

- (a) a ship is being used in the course of public service activities or activities for the purpose of the civil protection services, and
- (b) characteristics peculiar to those activities inevitably conflict with a provision of these Regulations,

that provision does not apply in relation to that ship to the extent of that conflict.

(3) To the extent that a provision of these Regulations does not apply in relation to a ship because of paragraph (2) there is in relation to that ship a duty on the employer to ensure, so far as is reasonably practicable, the health and safety of workers who are or who are likely to be exposed to risks from biological agents as a result of their work.

(4) Regulations 8 to 20 do not apply in relation to a group 1 biological agent in cases where there is no identifiable health risk to workers.

(5) To the extent that a provision of these Regulations does not apply in relation to a group 1 biological agent because of paragraph (4), there is a duty on the employer and workers, when working with such agents, to observe the principles of good occupational safety and hygiene.

(6) Regulations 8, 10, 11 and 13 to 20 do not apply in relation to an activity listed in [F8Annex 1 of Merchant Shipping Notice 1889 (M+F)] in any case where—

- (a) the regulation 6 assessment shows that the activity does not involve a deliberate intention to work with or use a biological agent but may result in workers being exposed; and
- (b) the result of that assessment shows the requirements in those regulations as being unnecessary.

(7) This regulation (other than paragraph (1)) and regulations 5, 26 and 28 apply to activities on ships other than United Kingdom ships which are for the time being in United Kingdom waters in which workers are or are potentially exposed to biological agents as a result of their work, giving rise to risks or the likelihood of risks to their health and safety.

(8) In paragraph (2)—

- (a) “civil protection services” includes the fire and rescue and ambulance services and search and rescue services provided by any other person; and
- (b) “public service activities” includes the activities of the armed forces, HM Coastguard, HM Revenue and Customs, immigration officers, police, prison officers and the security and intelligence services.

**F8** Words in [reg. 4\(6\)](#) substituted (31.12.2020) by [The Merchant Shipping and Fishing Vessels \(Health and Safety at Work\) \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1202\)](#), [regs. 1\(2\)](#), [8\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)

### Commencement Information

**I4** [Reg. 4](#) in force at 6.4.2010, see [reg. 1](#)

## Application of related legislation

5.—(1) The General Duties Regulations continue to apply to activities to which these Regulations apply, where these regulations contain more stringent or specific provisions than such provisions apply.

(2) These Regulations apply without prejudice to the provisions of any instrument made for the purpose of implementing Council Directive [90/219/EEC](#) on the contained use of genetically modified micro-organisms(8) and of Council Directive [2001/18/EC](#) on the deliberate release into the environment of genetically modified organisms(9).

(3) These Regulations do not apply to activities to which the Control of Substances Hazardous to Health Regulations 2002(10) or the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003(11) apply.

### Commencement Information

**I5** [Reg. 5](#) in force at 6.4.2010, see [reg. 1](#)

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- (8) O.J. No. L 117, 8.5.1990, p.1 as last amended by Council Directive [98/81/EC](#) (O.J. No. L 330, 5.12.1998, p. 13) and implemented by the Genetically Modified Organisms (Contained Use) Regulations 2000 (S.I. [2000/2831](#) amended by S.I. [2002/63](#), [2005/2466](#) and [2009/693](#)) and by the Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2001 (S.R. (NI) [2001/295](#) amended by S.R. (NI) [2003/510](#) and [2006/524](#) and revoked in part by S.R. (N.I.) [2003/167](#).
- (9) O.J. No. L 106, 17.4.2001, p.1 as last amended by Council Regulation (EC) No. [1830/2003](#) concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive [2001/18/EC](#) (O.J. No. L 268, 18.10.2003, p. 24) and implemented by Part VI of the Environmental Protection Act 1990 (c. 43) and by the Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. [2002/2443](#) amended by S.I. [2004/2411](#), [SI 2005/2759](#) and [SI 2009/1892](#)), the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. [2002/3188](#) amended by S.I. [2005/1913](#) and [SI 2005/2759](#)), the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.I. [2002/541](#) amended by S.I. [2004/439](#) and [SI 2005/2759](#)) and by the Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003 (S.R. (NI) [2003/167](#) amended by S.R. (NI) [2003/206](#) and [2005/272](#)).
- (10) S.I. [2002/2677](#) amended by S.I. [2003/978](#), [2004/568](#), [2004/3386](#), [2006/557](#), [2006/2739](#), [2007/1573](#), [2008/960](#), [2008/2852](#) and [2009/716](#).
- (11) S.R. (NI) [2003/34](#) amended by S.R (NI) [2003/288](#), [2005/165](#), [2006/173](#), [2007/31](#) and [2009/238](#); also amended and revoked in part by S.I. [2008/2852](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010, PART 1.