

## SCHEDULE 2

Regulation 2(4)

### Consequential and other amendments to the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

1. The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 are amended as follows.

2. In regulation 2 (interpretation) in paragraph (1)—

(a) for the definition of “fuel oil” substitute—

““fuel oil” means marine fuel as defined in paragraph 1 of Schedule 2A and such other substances as may be specified by the Secretary of State in a Merchant Shipping Notice;”;

(b) after the definition of “new installation” insert—

““North Sea sulphur oxide emission control area” means all sea areas within the following boundaries including the North Sea proper and the English Channel and its approaches—

(a) the North Sea southwards of latitude 62° N and eastwards of longitude 4° W,

(b) the Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57°44′.8 N, and

(c) the English Channel and its approaches eastwards of longitude 5° W and northwards of latitude 48°30′ N;”;

(c) for the definition of “short voyage” substitute—

““short voyage” means a voyage which—

(a) does not exceed 1000 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

(b) on any return voyage does not exceed 1000 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;”;

(d) for the definition of “sulphur oxide emission control area” substitute—

““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 sulphur oxide emission control area; and

(c) any other sea area, including a port area, designated as a sulphur oxide emission control area for the purposes of these Regulations by the Secretary of State in a Merchant Shipping Notice;”;

(e) after the definition of “UKAPP certificate” add—

““warship” means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and the crew of which is under regular armed forces discipline”.

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**3. In regulation 3 (application and exemptions)—**

(a) for paragraph (1) substitute—

“(1) Subject to—

(a) paragraphs (2) to (12), and

(b) paragraphs 2 to 4, 6 and 7 of Schedule 2A,

these Regulations apply to—

(i) a United Kingdom ship wherever it may be, and

(ii) any other ship while it is within United Kingdom waters.”;

(b) for paragraph (6) substitute—

“(6) Regulation 16(1) and (2) also applies to a ship which—

(a) is not a United Kingdom ship,

(b) is engaged in voyages to ports or offshore terminals under the jurisdiction of a Contracting Government other than the United Kingdom,

(c) is of 400 GT or above, unless it is a drilling rig, and

(d) is—

(i) in a port in the United Kingdom,

(ii) at an offshore terminal in United Kingdom or controlled waters, or

(iii) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit;

and regulation 16(6) has effect in relation to the application of regulation 16(1) and (2) to such a ship.”;

(c) omit paragraphs (10) and (11); and

(d) after paragraph (12) insert—

“(12A) These Regulations do not apply to fuel oil—

(a) intended for the purpose of research and testing,

(b) intended for processing prior to final combustion, or

(c) to be processed in the refining industry.”.

**4. In regulation 16 (procedure to be adopted when a ship is deficient)—**

(a) for paragraph (1) substitute—

“(1) This regulation applies where a surveyor determines that—

(a) the condition of a ship or its equipment does not correspond substantially with the particulars of the appropriate certificate (if any) issued in respect of the ship, or

(b) a ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.”; and

(b) for paragraph (6) substitute—

“(6) In the application of paragraphs (1) and (2) to a ship of the kind specified in regulation 3(6)—

(a) “the Certifying Authority” means the Government of the State where the ship is registered (or if the ship is not registered, the Government of the flag State), and

(b) “surveyor” includes a person authorised by that Government to survey the ship.”.

5. In regulation 17 (arbitration)—
- (a) at the beginning of paragraph (2) insert “Subject to paragraph (2A),”;
  - (b) after paragraph (2) insert—

“(2A) In default of agreement between the applicant and the responsible person, the arbitrator is such person as may be appointed by the President or Vice-President of the Chartered Institute of Arbitrators following a request made by—

    - (a) one party, after giving written notice to the other party, or
    - (b) the parties jointly,

but this paragraph does not apply in Scotland.”; and
  - (c) for paragraph (7)(b) substitute—

“(b) “qualified person” means—

    - (i) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis<sup>(1)</sup>,
    - (ii) a person who is an advocate or solicitor in Scotland of at least 7 years’ standing, or
    - (iii) a person who is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland of at least 7 years’ standing.”.
6. In regulation 25 (fuel oil quality) for paragraph (6) substitute—

“(6) For the purposes of paragraph (5), the appropriate sulphur content limit means—

  - (a) subject to paragraph (c), in the case of fuel oil used or intended to be used in a sulphur oxide emission control area, not more than 1.50 per cent by mass,
  - (b) subject to paragraph (c), in the case of fuel oil not intended to be used in a sulphur oxide emission control area, not more than 4.50 per cent by mass, and
  - (c) in the case of marine fuel used or intended to be used by a ship while paragraph 4(3) of Schedule 2A applies to that ship, not more than 0.10 per cent by mass.”.
7. In regulation 26 (inspection of ships)—
- (a) in paragraph (1) after the words “any of these Regulations apply” insert “or any ship delivering fuel oil for combustion purposes”;
  - (b) in paragraph (2)(e) for “regulation 22(5)” substitute “paragraph 5 of Schedule 2A”; and
  - (c) for paragraph (3) substitute—

“(3) The power in those sections to go on board a ship may only be exercised if the ship in question is—

    - (a) in a port in the United Kingdom,
    - (b) at an offshore terminal in United Kingdom waters or controlled waters,
    - (c) a fixed platform in United Kingdom waters or controlled waters, or
    - (d) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.”.
8. In regulations 28 (general provisions on detention), 29 (powers for harbour master to detain) and 34 (enforcement and application of fines)—
- (a) for “offence under regulation 20(1), 21(4), 22(1), (2) or (4),” wherever those words occur substitute “offence comprising a contravention of regulation 20(1), 21(4),”; and

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(1) The meaning of “a person who satisfies the judicial-appointment eligibility condition on an N-year basis” (where N is the number stated in the provision) is defined in section 50 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

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- (b) after “or (7)” wherever it occurs insert “or paragraph 2(2), (3) or (5) of Schedule 2A”.
- 9. In regulation 28 (general provisions on detention)—
  - (a) in paragraph (1), for “Where regulation 16(1) has effect” substitute “Where a determination is made of the kind mentioned in regulation 16(1)”;
  - (b) for paragraph (4) substitute—
    - “(4) The power under this regulation to detain a ship may only be exercised if the ship in question is—
    - (a) in a port in the United Kingdom,
    - (b) at an offshore terminal in United Kingdom waters or controlled waters,
    - (c) a fixed platform in United Kingdom waters or controlled waters, or
    - (d) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.”;
  - (c) in paragraph (8)(b) for “any offence under those regulations” substitute “any such offence”; and
  - (d) in paragraph (8)(d) for “an offence under that regulation” substitute “any such offence”.
- 10. In regulation 29 (power for harbour master to detain)—
  - (a) in paragraph (4)(b) for “an offence under that regulation” substitute “any such offence”;
  - (b) in paragraph (4)(d) for “an offence under any of those regulations” substitute “any such offence”; and
  - (c) in paragraph (5)(b) after “any” insert “such”.
- 11. After regulation 31 (right of appeal and compensation) insert—

**“Non-compliant fuel oil for combustion purposes**

**31A.**—(1) Where any person exercising a power of inspection under section 258 or 259 of the 1995 Act finds on a ship fuel oil for combustion purposes that does not comply with these Regulations and which is intended for use on a relevant ship, that person may require the relevant local supplier of fuel oil—

- (a) to bring that fuel oil into compliance, or
- (b) not to deliver that fuel oil to the relevant ship.

(2) Where any person exercising a power of inspection under section 258 or 259 of the 1995 Act finds on a relevant ship fuel oil for combustion purposes that does not comply with these Regulations that person may require that it be brought into compliance or removed.

(3) In this regulation “local supplier of fuel oil” and “relevant ship” have the same meaning as in regulation 25.”.

- 12. In regulation 32 (offences)—
  - (a) in paragraph (1)(a) for “of these Regulations” substitute “, or paragraph 5(6) of Schedule 2A,”;
  - (b) in paragraph (1)(b) for “18(5)” substitute “16(5)”;
  - (c) in paragraph (1)(c)—
    - (i) omit “22,” and
    - (ii) before “is” insert “or paragraph 2(2) to (6), 3(3), 4(3) or 5(1) to (5) of Schedule 2A”;
  - (d) after paragraph (3) add—

“(3A) Where a ship uses emission abatement technologies which are not—

- (a) permitted in accordance with paragraph 7 or 8 of Schedule 2A,
- (b) authorised for the purposes of article 4c of the 1999 Directive by an EEA State other than the United Kingdom, or
- (c) authorised for the purposes of Annex VI by a Contracting Government other than the United Kingdom,

the owner and master are guilty of an offence and punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine.

(3B) A person who—

- (a) places on the market marine diesel oil that has a sulphur content exceeding 1.50 per cent by mass, or
- (b) places marine gas oil on the market in contravention of paragraph 9 of Schedule 2A,

is guilty of an offence and punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine.

(3C) A local supplier of fuel oil who fails to comply with a requirement under regulation 31A(1) is guilty of an offence and punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine.

(3D) A person to whom a requirement under regulation 31A(2) is addressed who fails to comply with that requirement is guilty of an offence and punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine.”; and

(e) at the start of paragraph (5) insert “In this regulation”.

**13.** In regulation 35 (restriction on jurisdiction over offences outside United Kingdom limits) in paragraph (1) for “an offence of a provision of regulation 2 1(4) or 22(1) or (2)” substitute “a contravention of regulation 21(4) or paragraph 2(2) or (3) of Schedule 2A”.

**14.** In regulation 36 (suspension of proceedings at flag state request) in paragraphs (1) and (3) (a) for “22(1) or (2)” substitute “paragraph 2(2) or (3) of Schedule 2A”.

**15.** In regulation 37 (defences)—

- (a) in paragraph (2) for “under regulation 22(4) or 23(1) or (2)” substitute “comprising a contravention of regulation 21(4) or paragraph 2(2) or (3) of Schedule 2A”;
- (b) at the end of paragraph (2)(b), for “United Kingdom waters.” substitute “United Kingdom waters, and”.

**16.** In Schedule 3, for paragraph 7 (information to be included in a bunker delivery note) substitute—

“7. Density at 15°C (kg/m<sup>3</sup>) where the fuel has been tested in accordance with ISO 3675(2).”.

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(2) ISO Standard – Crude Petroleum and Liquid Petroleum Products – Laboratory Determination of Density – Hydrometer Method: ISO Publication: ISBN 0-580-38570-1.