

2022 No. 737

MARINE POLLUTION

**The Merchant Shipping (Control and Management of Ships’
Ballast Water and Sediments) Regulations 2022**

<i>Made</i> - - - -	<i>3rd July 2022</i>
<i>Laid before Parliament</i>	<i>7th July 2022</i>
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The Secretary of State, in exercise of the powers conferred by articles 3 and 4(a), (b)(ii), (c), (e) and (f) of the Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Order 2022(a), article 2(1), (2)(a) to (c), (2)(e) to (g) and (3) of the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996(b) and sections 128(5) and (6) and 302(1) of the Merchant Shipping Act 1995(c), and with the consent of the Treasury(d), makes the following Regulations:

PART 1 General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Regulations 2022 and come into force on 29th July 2022.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In these Regulations—

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

“active substance” means a substance or organism, including a virus or a fungus, that has a general or specific action on or against harmful aquatic organisms;

“ballast water” means water with its suspended matter taken on board a ship to control the trim, list, draught, stability or stresses of the ship;

“ballast water capacity” means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging ballast water, including any multi-use tank, space or compartment designed to allow carriage of ballast water;

“ballast water management” means mechanical, physical, chemical or biological processes, used singly or in combination, to remove, render harmless, or avoid the uptake or discharge of harmful aquatic organisms within ballast water or sediments;

(a) S.I. 2022/629.

(b) S.I. 1996/282, amended by the Marine and Coastal Access Act 2009 (c. 23), Schedule 4(1), paragraphs 3(1) to (4). There are other amendments to this Order but none is relevant.

(c) 1995 c. 21; there are amendments to section 128 which are not relevant to these Regulations.

(d) The consent of the Treasury is required to make these Regulations under section 302(1) of the Merchant Shipping Act 1995 (c. 21).

“ballast water management plan” is a plan which meets the requirements of regulation 9 (ballast water management plan);

“ballast water management system” means any system which processes ballast water to meet the standard in regulation 13 (ballast water and sediment treatment standard) and—

(a) includes—

- (i) ballast water treatment equipment;
- (ii) its associated control and monitoring equipment;
- (iii) piping arrangements as specified by the manufacturer; and
- (iv) its sampling facilities;

(b) does not include a ship’s ballast water fittings that would be required if a ballast water management system was not fitted;

“ballast water record book” is a record book which meets the requirements of regulation 10(1) (ballast water record book);

“ballast water tank” means any tank, space or compartment on board a ship used for carrying ballast water;

“BWMS Type Approval Certificate” means a certificate which—

(a) contains the information; and

(b) is in the form,

specified in section 12 of Merchant Shipping Notice MSN 1908 (M+F)(a);

“Certifying Authority” has the meaning given in regulation 3 (Certifying Authorities);

“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(b) as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea(c) (Protection and Preservation of the Marine Environment);

“the Convention” means the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004, including its Annex and Appendices(d);

“discharge”, in relation to ballast water or sediments, means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying;

“exchange” means a process involving the replacement of water in a ballast water tank using the sequential method or pump-through method which complies with regulations 11 (location of ballast water exchange) and 12 (ballast water exchange standard);

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

“foreign State” means a State other than the United Kingdom;

(a) Merchant Shipping Notices are published by the Maritime and Coastguard Agency (“MCA”). Copies of MSN 1908 (M+F) can be obtained free of charge at www.gov.uk or in hard copy from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

(b) S.I. 2014/3306.

(c) This Convention (the “UNCLOS” Convention) was originally published in Cmnd. 8941, and subsequently in Cm. 4524. A hard copy of Cm. 4524 is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London, SW1A 0PW (catalogue number: HL/PO/JO/10/11/3186/287). An electronic copy of Cm. 4524 can be found at <https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=69421>. A copy of the UNCLOS Convention can be obtained from the United Nations (email doalos@un.org), and at www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

(d) CP 557. This Convention was adopted on 13th February 2004 by the International Conference on Ballast Water Management for Ships, 2004, convened by the International Maritime Organization. It entered into force on 8th September 2017 and has been amended by IMO Resolutions MEPC.296(72), MEPC.297(72), MEPC.299(72), and MEPC.325(75). The Convention (ISBN 978-92-801-60963) is available from IMO Publishing, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications; email: sales@imo.org; telephone: 0207 735 7611. IMO Resolutions are available from the IMO Library, also of 4 Albert Embankment, London SE1 7SR.

“harbour master” includes a dock master, pier master and any person specifically appointed by a harbour authority, within the meaning of section 151(1) (interpretation) of the 1995 Act, for the purpose of enforcing the provisions of these Regulations;

“harmful aquatic organisms” means aquatic organisms which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas;

“high seas” means all waters beyond—

- (a) United Kingdom waters and controlled waters; and
- (b) the internal waters, archipelagic waters, territorial sea and the exclusive economic zone of any foreign State;

“IBWM Certificate” means an International Ballast Water Management Certificate, containing the information specified in Schedule 2 to Merchant Shipping Notice MSN 1908 (M+F), issued—

- (c) by a Certifying Authority in accordance with Part 6 (survey and certification of ships); or
- (d) by a Contracting State in accordance with Regulation E-2 of the Convention;

“IMO” means the International Maritime Organization(a);

“in writing” or “written” include the provision of a written communication by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication;

“Merchant Shipping Notice” means a notice described as such and issued by the Secretary of State, and any reference to a 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;

“nominated body” means a person designated as a nominated body under regulation 15(1) (designation of nominated bodies);

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

- (e) transferred between ships;
- (f) loaded onto a ship after having been transported from the shoreline; or
- (g) unloaded from a ship for transporting to the shoreline;

“organism” includes pathogens;

“pump-through method” means a process by which replacement ballast water is pumped into a ballast water tank while ballast water is simultaneously discharged from the tank;

“reception facility” means a facility that is capable of safely disposing of ballast water or sediments in a manner that does not impair or damage the environment, human health, property or resources of the United Kingdom or foreign States;

“resources” means any aquatic resources which may be commercially exploited;

“sediment” means matter settled out of ballast water within a ship;

“sequential method” means a process by which a ballast water tank is first emptied and then re-filled with replacement ballast water;

“ship” means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, floating storage units and floating production storage and offloading units;

(a) The IMO is a special agency of the United Nations responsible for shipping safety and security, and the prevention of pollution.

“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;

“treatment” means mechanical, physical, chemical or biological processes, used singly or in combination, to ensure that any ballast water or sediments discharged from a ship meet the standard in regulation 13 (ballast water and sediment treatment standard); 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.

Certifying Authorities

3.—(1) In these Regulations, “Certifying Authority” means the Secretary of State or any person authorised by the Secretary of State.

(2) Authorisation under paragraph (1) may be given conditionally or unconditionally and is subject to paragraph (4).

(3) Without prejudice to the generality of paragraph (2), conditions may impose limitations on any person’s authorisation relating to—

- (a) individual ships;
- (b) classes of ships;
- (c) the extent of any survey to be carried out by that person.

(4) The Secretary of State may specify in relation to an individual case or to a class of cases, that for the purpose of these Regulations a survey, or part of a survey, may only be carried out by the Secretary of State and not by another Certifying Authority.

(5) A Certifying Authority, other than the Secretary of State, is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown and its property is not to be regarded as property of, or held on behalf of, the Crown.

Application

4.—(1) Subject to paragraphs (2) and (3), these Regulations apply to—

- (a) a United Kingdom ship wherever it may be; and
- (b) any other ship while it is in United Kingdom waters or controlled waters.

(2) These Regulations do not apply to—

- (a) a ship which is not designed or constructed to carry ballast water;
- (b) a ship which operates only in waters under the jurisdiction of a single Contracting State;
- (c) a ship which operates only in waters under the jurisdiction of a single Contracting State and on the high seas;
- (d) a warship, naval auxiliary or other ship owned or operated by a State and used only in government, non-commercial service; and
- (e) a ship which carries permanent ballast water in sealed tanks, which is not subject to discharge.

(3) Part 4 (sediment reception facilities) applies to any shipyard within a harbour in the United Kingdom in which—

- (a) the cleaning or repair of ballast water tanks occurs; and

(b) the ballast water tanks in question are those of ships to which these Regulations apply.

(4) In paragraph (2) “the jurisdiction of a single Contracting State” means, in the case of the United Kingdom, United Kingdom waters or controlled waters.

PART 2

Discharge of ballast water and sediments

Requirement to conduct ballast water management

5.—(1) Subject to regulations 6 (exceptions to the requirement to conduct ballast water management), 7 (exemptions from the requirement to conduct ballast water management) and 21 (prototype ballast water management systems), any ballast water or sediments taken on board a ship must not be discharged from that ship unless they are subject to ballast water management which meets the requirements of paragraph (2).

(2) The requirements referred to in paragraph (1) are—

- (a) treatment or exchange; or
- (b) treatment—
 - (i) where the ship was constructed on or after 8th September 2017;
 - (ii) where the ship had—
 - (aa) an IOPP renewal survey in the period beginning on 8th September 2014 and ending on 7th September 2017; and
 - (bb) an IOPP renewal survey in the period beginning on 8th September 2017 and ending on 7th September 2019;
 - (iii) where the ship had an IOPP renewal survey in the period beginning on 8th September 2019 and ending immediately before the coming into force of these Regulations;
 - (iv) following the ship’s first IOPP renewal survey after the coming into force of these Regulations; or
 - (v) where—
 - (aa) the ship is not subject to an IOPP renewal survey; and
 - (bb) the discharge is after 8th September 2024.

(3) In this regulation—

- (a) “changes the ship type” refers to a ship conversion that—
 - (i) substantially alters the dimensions or carrying capacity of the ship; or
 - (ii) changes the type of cargo carried as a result of a major alteration of the ship;
- (b) “constructed” means the keel is laid or—
 - (i) a stage of construction is reached where—
 - (aa) construction identifiable with the ship begins; and
 - (bb) assembly of the ship has commenced comprising at least 50 tonnes, or one per cent of the estimated mass of all structural material, whichever is less; or
 - (ii) a stage of construction is reached where the ship undergoes a major conversion.
- (c) “IOPP renewal survey” means a survey of that description as set out in section 2 of Merchant Shipping Notice MSN 1908 (M+F); and
- (d) subject to paragraph (4), “major conversion” means the conversion of a ship which—
 - (i) changes its ballast water capacity by 15 percent or greater;
 - (ii) changes the ship type;

- (iii) in the opinion of the Secretary of State, is projected to prolong its life by ten years or more; or
- (iv) results in modifications to its ballast water system other than the replacement-in-kind of components.

(4) The conversion of a ship to achieve the standard specified in regulation 12 (ballast water exchange standard) is not a major conversion for the purposes of paragraph (3)(b)(ii).

Exceptions to the requirement to conduct ballast water management

- 6.—(1) Regulation 5 (requirement to conduct ballast water management) does not apply to—
- (a) the discharge of ballast water to a reception facility of a type specified in section 3 of Merchant Shipping Notice MSN 1908 (M+F);
 - (b) the discharge of any ballast water or sediments necessary for the purpose of—
 - (i) ensuring the safety of a ship in an emergency;
 - (ii) saving life at sea; or
 - (iii) avoiding or minimising the discharge of pollution from the ship;
 - (c) the accidental discharge of any ballast water or sediments resulting from damage to the ship or its equipment—
 - (i) where all reasonable precautions have been taken before and after the—
 - (aa) occurrence of the damage; or
 - (bb) discovery of the damage or discharge,
 for the purpose of preventing or minimising the discharge; and
 - (ii) unless the owner, manager, demise charterer or master wilfully or recklessly caused the damage; or
 - (d) the discharge of any ballast water or sediments where—
 - (i) the same ballast water or sediments are—
 - (aa) taken on board a ship; and
 - (bb) subsequently discharged,
 on the high seas; or
 - (ii) the same ballast water or sediments are—
 - (aa) taken on board a ship;
 - (bb) discharged in the same location where they originated; and
 - (cc) not mixed with any ballast water or sediments from a different location which have not been subject to ballast water management in accordance with regulation 5 (requirement to conduct ballast water management).
- (2) In sub-paragraph (d)(ii) “same location” means—
- (a) where any ballast water or sediments have been taken on board a ship within a harbour, within the harbour limits of that harbour; or
 - (b) where paragraph (a) does not apply, within one nautical mile of the point of uptake of any ballast water or sediments.

Exemptions from the requirement to conduct ballast water management

7.—(1) Subject to paragraph (2) the Secretary of State may exempt discharges of any ballast water or sediments in a specified location, in UK waters or UK controlled waters, from the requirements of regulation 5 (requirement to conduct ballast water management) where the same ballast water or sediments are—

- (a) taken on board a ship in a location specified by the Secretary of State; and

- (b) not mixed with any ballast water or sediments from a location which has not been specified by the Secretary of State.
- (2) The grant of an exemption under paragraph (1) must be—
 - (a) based on; and
 - (b) reviewed in accordance with,
 the guidelines referred to in section 10 of Merchant Shipping Notice MSN 1908 (M+F).
- (3) Subject to paragraph (4) an exemption by the Secretary of State is valid—
 - (a) from the date specified in the exemption;
 - (b) for such period as is specified in the exemption, not exceeding five years.
- (4) An exemption by the Secretary of State 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.
- (5) The particulars of any exemption granted under paragraph (1) and relied on by a ship must be recorded in the ship's ballast water record book.

Equivalents

- 8.—**(1) A relevant ship may meet the requirements of these Regulations through equivalent compliance if this has been approved by the Secretary of State and—
- (a) the owner or master of the ship has made an application to the Secretary of State for permission for the equivalent compliance;
 - (b) a surveyor—
 - (i) is satisfied that the equivalent compliance applied for is at least as effective as that required by these Regulations; and
 - (ii) has endorsed the application to the Secretary of State to that effect; and
 - (c) the equivalent compliance complies with any conditions or limitations set out in the approval.
- (2) An approval given by the Secretary of State 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.
- (3) In this regulation—
- (a) “equivalent compliance” means the use of any fitting, material, appliance or apparatus, or other provision made, as an alternative to one that complies with these Regulations;
 - (b) “overall length” means the length of the hull excluding any bowsprit, boom, bumpkin and pulpit; and
 - (c) “relevant ship” means—
 - (i) a ship engaged primarily in search and rescue operations which is less than 50 metres in overall length and which has a maximum ballast water capacity of 8 cubic metres; or
 - (ii) a ship which is a pleasure vessel less than 50 metres in overall length and which has a maximum ballast water capacity of 8 cubic metres.
- (4) In this regulation “pleasure vessel” means—
- (a) any vessel which at the time it is being used is—
 - (i) in the case of a vessel wholly owned by—
 - (aa) an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or

- (bb) a body corporate, used only for sport or pleasure and on which the persons on board are employees or officers of the body corporate, or their immediate family or friends; and
- (ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or
- (b) any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club,

where, in the case of any vessel referred to in paragraph (a) or (b), no other payments are made by or on behalf of users of the vessel, other than by the owner.

(5) In paragraph (4) "immediate family" means, in relation to an individual, the spouse or civil partner of the individual, and a relative of the individual or the individual's spouse or civil partner; and "relative" means brother, sister, ancestor or lineal descendant.

PART 3

Ballast water management

Ballast water management plan

9.—(1) Every ship must carry on board a ballast water management plan specific to that ship which has been—

- (a) in the case of a United Kingdom ship, approved by a Certifying Authority; or
- (b) in the case of any other ship, approved by the ship's flag State.

(2) A Certifying Authority must take into account the guidelines referred to in section 4 of Merchant Shipping Notice MSN 1908 (M+F) when considering whether to approve a ballast water management plan.

(3) The master of a ship must ensure that—

- (a) the crew of the ship are—
 - (i) familiar with their duties under the ballast water management plan; and
 - (ii) familiar with the ballast water management plan, where this is appropriate to their duties; and
- (b) the ballast water management plan relating to the ship is implemented.

(4) The ballast water management plan must include the information specified in section 4 of Merchant Shipping Notice MSN 1908 (M+F).

(5) The ballast water management plan must be—

- (a) written in the working language of the ship's personnel; and
- (b) if the working language is not English, French or Spanish, translated into one of these languages.

Ballast water record book

10.—(1) Every ship must have on board a ballast water record book which—

- (a) contains the information specified in section 5 of Merchant Shipping Notice MSN 1908 (M+F); and
- (b) may be in electronic form and may be integrated into another hardcopy or electronic record book.

(2) Each operation referred to in section 5 of Merchant Shipping Notice MSN 1908 (M+F) must be fully recorded without delay in the ballast water record book.

(3) In the event of—

- (a) a discharge of ballast water as referred to in regulation 6 (exceptions to the requirement to conduct ballast water management);
- (b) a discharge of ballast water which is covered by an exemption granted under regulation 7 (exemptions from the requirement to conduct ballast water management);
- (c) a discharge of ballast water in accordance with regulation 11(5) (location of ballast water exchange); or
- (d) an accidental or other exceptional discharge of ballast water not permitted under these Regulations,

an entry must be made in the ballast water record book describing the circumstances of, and the reason for, the discharge.

(4) Each entry in the ballast water record book must be signed by the officer in charge of the relevant operation.

(5) Each completed page of the ballast water record book must be signed by the master of the ship.

(6) The ballast water record book must be—

- (a) written in the working language of the ship's personnel; and
- (b) if the working language is not English, French or Spanish, translated into one of those languages.

(7) Where an entry has been written in the national language of the ship's flag State as well as a language referred to in paragraph (6), in the case of any dispute or discrepancy the entry made in that national language prevails.

(8) Subject to paragraph (9), the ballast water record book must—

- (a) be kept on board the ship to which it relates;
- (b) be retained on board the ship to which it relates for a period of two years after the last entry has been made; and
- (c) be readily available for inspection at all reasonable times.

(9) In the case of an unmanned ship under tow, the ballast water record book may be kept on the towing ship.

(10) The ballast water record book must be retained by the owner of the ship for a period of three years after the period in paragraph (8)(b) has elapsed.

Location of ballast water exchange

11.—(1) Subject to paragraphs (4) and (5), ballast water exchange must, where possible, be carried out—

- (a) at least 200 nautical miles from the nearest land; and
- (b) in water at least 200 metres in depth.

(2) Subject to paragraphs (4) and (5), where it is not possible to carry out ballast water exchange in accordance with paragraph (1), ballast water exchange—

- (a) must be carried out—
 - (i) as far as possible from the nearest land and in any case not less than 50 nautical miles from the nearest land; and
 - (ii) in water at least 200 metres in depth; or
- (b) must be carried out in an area designated by the Secretary of State under paragraph (6) in accordance with any conditions or limitations imposed under paragraph (7)(c)(i).

(3) Ballast water exchange in accordance with paragraphs (1) and (2) must take into account the guidelines developed by the IMO as specified in section 6 of Merchant Shipping Notice MSN 1908 (M+F).

(4) A requirement under paragraph (1) or (2)(a) does not apply to a ship where compliance with it would require the ship to—

- (a) deviate from its intended voyage; or
- (b) delay its voyage.

(5) Paragraphs (1) and (2) do not apply where the master of a ship reasonably decides that conducting ballast water exchange in accordance with them would threaten—

- (a) the safety or stability of the ship;
- (b) its crew; or
- (c) its passengers,

because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.

(6) The Secretary of State may designate areas of sea in which ships may conduct ballast water exchange.

(7) A designation under paragraph (6)—

- (a) may only be made for areas of sea where the distance from the nearest land or the depth of water does not meet the parameters in paragraph (1) or (2)(a);
- (b) must take into account the guidelines developed by the IMO as specified in section 7 of Merchant Shipping Notice MSN 1908 (M+F); and
- (c) is valid only if given in writing and may be—
 - (i) subject to such conditions and limitations as the Secretary of State may specify; and
 - (ii) altered or cancelled by a notice given in writing by the Secretary of State.

(8) In this regulation “from the nearest land” means from the baseline from which the territorial sea of the territory in question is established in accordance with international law except that, for the purposes of this regulation, it shall mean in the case of land off the north-eastern coast of Australia from a line drawn from a point on the coast of Australia in—

latitude 11°00′ S, longitude 142°08′ E

to a point in latitude 10°35′ S, longitude 141°55′ E

thence to a point latitude 10°00′ S, longitude 142°00′ E

thence to a point latitude 9°10′ S, longitude 143°52′ E

thence to a point latitude 9°00′ S, longitude 144°30′ E

thence to a point latitude 10°41′ S, longitude 145°00′ E

thence to a point latitude 13°00′ S, longitude 145°00′ E

thence to a point latitude 15°00′ S, longitude 146°00′ E

thence to a point latitude 17°30′ S, longitude 147°00′ E

thence to a point latitude 21°00′ S, longitude 152°55′ E

thence to a point latitude 24°30′ S, longitude 154°00′ E

thence to a point on the coast of Australia in latitude 24°42′ S, longitude 153°15′ E.

Ballast water exchange standard

12.—(1) Where the sequential method of ballast water exchange is used, it must achieve 95 per cent volumetric exchange of ballast water.

(2) Where the pump-through method of ballast water exchange is used—

- (a) at least three times the volume of the ballast water tank must be pumped through that tank; or
- (b) it must achieve 95 per cent volumetric exchange of ballast water.

Ballast water and sediment treatment standard

13.—(1) Treatment must ensure that the concentrations of any viable organisms and indicator microbes in any ballast water or sediments discharged into the sea are less than—

- (a) 10 viable organisms per cubic metre for large organisms;
- (b) 10 viable organisms per millilitre for small organisms;
- (c) one colony-forming unit of toxicogenic *Vibrio cholerae* (O1 and O139) per 100 millilitres or less than one colony-forming unit per gram (wet weight) of zooplankton samples;
- (d) 250 colony-forming units of *Escherichia coli* per 100 millilitres; and
- (e) 100 colony-forming units of Intestinal Enterococci per 100 millilitres.

(2) In this regulation—

- (a) “large organism” means an organism equal to or greater than 50 micrometres in minimum dimension;
- (b) “small organism” means an organism equal to or greater than 10 micrometres and less than 50 micrometres in minimum dimension; and
- (c) “viable organism” means organisms that have the ability to successfully generate new individuals in order to reproduce the species.

PART 4

Sediment reception facilities

Requirement to provide sediment reception facilities

14.—(1) This regulation applies to any shipyard within a harbour in the United Kingdom in which—

- (a) the cleaning or repair of ballast water tanks occurs; and
- (b) the ballast water tanks in question are those of ships to which these Regulations apply.

(2) The owner and operator of a shipyard to which this regulation applies must ensure that sediment reception facilities which meet the requirements of paragraph (3), are provided for the facility.

(3) The requirements are that the sediment reception facilities must—

- (a) be designed and operated in accordance with section 11 of Merchant Shipping Notice MSN 1908 (M+F);
- (b) operate without causing undue delay to ships; and
- (c) provide for the safe disposal of sediments from ships’ ballast water tanks in a manner that does not impair or damage the environment, human health, property or resources of the United Kingdom or foreign States.

(4) In this regulation “shipyard” means any yard or dry dock (including the precincts thereof) in which ships or vessels are constructed, reconstructed, repaired, fitted or finished.

PART 5

Equipment

Designation of nominated bodies

15.—(1) The Secretary of State may designate any person as a nominated body to carry out the procedures specified in section 12 of Merchant Shipping Notice MSN 1908 (M+F).

(2) A designation must be made in writing and set out—

- (a) the functions to be performed by the nominated body; and
- (b) any time limit or condition which applies to the designation.

(3) The Secretary of State may withdraw a designation—

- (a) on request by the nominated body; or
- (b) where the nominated body fails to comply with any time limit or condition imposed under paragraph (2) above.

(4) The Secretary of State may vary a designation—

- (a) on request by the nominated body; or
- (b) where it appears necessary or expedient to do so.

(5) The Secretary of State may inspect a nominated body to ensure it is performing its functions—

- (a) under regulation 18 (grant of type approval: obligations of nominated bodies); and
- (b) in accordance with the conditions of its designation.

(6) Where a person applies for designation under paragraph (1), the Secretary of State must inform that person in writing of the reasons for—

- (a) refusing to designate that person as a nominated body; or
- (b) imposing any condition more onerous than proposed by the applicant.

(7) The Secretary of State must inform a nominated body in writing of the reasons for withdrawing or varying a designation.

Approval of ballast water management systems

16.—(1) Subject to regulation 21(5) (prototype ballast water management systems), a ballast water management system when it is installed on a United Kingdom ship, must have a BWMS Type Approval Certificate issued under regulation 18 (grant of approval: obligations of nominated bodies).

(2) A copy of the BWMS Type Approval Certificate must be kept on board the ship to which it relates.

Application for grant of type approval

17.—(1) A manufacturer must apply to a nominated body for type approval of a ballast water management system in accordance with the procedures set out in section 12 of Merchant Shipping Notice MSN 1908 (M+F).

(2) An application under paragraph (1) must be—

- (a) in writing; and
- (b) accompanied by the documentation required by section 12 of Merchant Shipping Notice MSN 1908 (M+F).

Grant of type approval: obligations of nominated bodies

18.—(1) A nominated body must decide whether to grant or refuse type approval for ballast water management systems in accordance with the requirements of section 12 of Merchant Shipping Notice MSN 1908 (M+F).

(2) Where a nominated body grants type approval for a ballast water management system, it must—

- (a) issue a BWMS Type Approval Certificate; and
- (b) provide the Secretary of State with a type approval report containing the information specified in section 12 of Merchant Shipping Notice MSN 1908 (M+F).

(3) Where a nominated body refuses type approval, it must notify the manufacturer, giving detailed reasons for its decision in writing.

Duration, suspension and withdrawal of BWMS Type Approval Certificates

19.—(1) A BWMS Type Approval Certificate issued by a nominated body is valid for such period, and subject to such conditions, as is specified in the Certificate, not exceeding five years beginning with the date of issue of the Certificate.

(2) Where a nominated body knows or has reason to believe that equipment to which it has granted a BWMS Type Approval Certificate no longer complies with the requirements of section 12 of Merchant Shipping Notice MSN 1908 (M+F) it must—

- (a) require the manufacturer to take immediate corrective measures to ensure that the equipment complies with the requirements of section 12 of Merchant Shipping Notice MSN 1908 (M+F); and
- (b) where necessary, suspend or withdraw its approval for that equipment.

(3) A nominated body may by giving notice to the manufacturer restrict, suspend or withdraw a BWMS Type Approval Certificate where a manufacturer fails to take the corrective measures required under paragraph (2)(a).

(4) Before issuing a notice under paragraph (3), a nominated body must give the manufacturer an opportunity to make written representations.

(5) A notice under paragraph (3) must—

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the grounds for the decision.

(6) The nominated body must send a copy of any notice given under paragraph (3) to the Secretary of State.

Ballast water management systems which use active substances

20.—(1) The Secretary of State may prohibit the use of—

- (a) any ballast water management system which uses active substances; or
- (b) any active substances used in ballast water management systems,

on ships.

(2) A prohibition under paragraph (1) must—

- (a) be published by the Secretary of State; and
- (b) specify the date on which it takes effect.

(3) The date on which the prohibition takes effect must not be less than 11 months after the publishing of the prohibition.

(4) A prohibition must be complied with in accordance with this regulation.

(5) The Secretary of State may withdraw or vary a prohibition.

Prototype ballast water management systems

21.—(1) The Secretary of State may approve programmes to test and evaluate prototype ballast water management systems.

(2) Where—

(a) a ship which is permitted to manage ballast water through exchange or treatment participates in a programme approved under paragraph (1); and

(b) the prototype ballast water management system is operated consistently and as designed, the requirement in regulation 5 (requirement to conduct ballast water management) to conduct ballast water management through treatment does not apply to the ship until five years after the date on which it would otherwise would.

(3) A ship to which paragraph (2) applies is not required to manage ballast water through exchange.

(4) Where—

(a) a ship which is permitted to manage ballast water only through treatment participates in a programme approved under paragraph (1); and

(b) the prototype ballast water management system—

(i) has the potential to process ballast water such that it exceeds the minimum standard in regulation 13 (ballast water and sediment treatment standard); and

(ii) is operated consistently and as designed,

the requirement in regulation 5 (requirement to conduct ballast water management) to conduct ballast water management through treatment does not apply to the ship until five years after the date of installation of the prototype on the ship.

(5) Regulation 16 (approval of ballast water management systems) does not apply to a prototype ballast water management system being tested and evaluated on a programme approved under paragraph (1).

(6) An approval under paragraph (1) 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.

PART 6

Survey and certification of ships

Interpretation of Part 6

22. In this Part—

(a) “additional survey” means a survey carried out under regulation 32(3) (additional surveys of United Kingdom ships);

(b) “anniversary date” means the day and the month of each year which correspond to the date of expiry of a relevant IBWM Certificate;

(c) “annual survey” means a survey by a surveyor to verify that the structure, equipment, systems, fitting, arrangements, material and processes associated with a ship’s ballast water management plan—

(i) have been maintained to conform with these Regulations; and

(ii) remain satisfactory for the service for which the ship is intended;

(d) “commissioning test” means a test conducted to validate the installation of a ballast water management system which meets the requirements of section 9 of Merchant Shipping Notice MSN 1908 (M+F);

- (e) “endorsement” in relation to an IBWM Certificate means an endorsement in the form specified in Schedule 2 to Merchant Shipping Notice MSN 1908 (M+F), and “endorse” and “endorsed” are to be construed accordingly;
- (f) “initial survey” means a survey by a surveyor completed before a ship is put in service or before an IBWM Certificate is first issued in respect of that ship to verify that—
 - (i) there is on board the ship an approved ballast water management plan; and
 - (ii) the structure, equipment, systems, fittings, arrangements, material and processes associated with the ship’s ballast water management plan fully comply with the requirements of Part 3 (ballast water management) and Part 5 (equipment);
- (g) “intermediate survey” means a survey by a surveyor to verify that the equipment, associated systems and processes for a ship’s ballast water management fully comply with the requirements of Part 3 (ballast water management) and Part 5 (equipment) and are in good working order;
- (h) “renewal survey” means a survey by a surveyor to verify that—
 - (i) there is on board a ship an approved ballast water management plan; and
 - (ii) the structure, equipment, systems, fittings, arrangements, material and processes associated with the ship’s ballast water management plan fully comply with the requirements of Part 3 (ballast water management) and Part 5 (equipment).

Prohibition on United Kingdom ships proceeding to sea without an IBWM Certificate

23. Subject to regulation 40(2) (general provisions on detention) a United Kingdom ship to which this regulation applies must not—

- (a) proceed to sea; or
- (b) if it is already at sea, remain at sea,

unless an IBWM Certificate has been issued in respect of the ship which is still valid.

Prohibition on non-United Kingdom ships proceeding to sea without an IBWM Certificate or appropriate documentation

24. A ship other than a United Kingdom ship must not proceed to sea from a port in the United Kingdom unless—

- (a) a Contracting State has issued, and where appropriate endorsed, an IBWM Certificate in respect of that ship and that Certificate and, where appropriate that endorsement, is still valid;
- (b) the Government of a State which is not a Contracting State has issued, and where appropriate endorsed, a Certificate in respect of that ship which is deemed by the Certifying Authority to have the same force as an IBWM Certificate issued in accordance with the requirements of the Convention and that Certificate and, where appropriate, that endorsement, is still valid;
- (c) documentation has been issued in respect of that ship which is still valid and shows that a surveyor of ships—
 - (i) has carried out an initial survey of the ship; and
 - (ii) is satisfied that the ship can proceed to sea without presenting a threat of harm to the environment, human health, property or resources; or
- (d) it has been permitted to proceed pursuant to regulation 40(2) (general provisions on detention).

Surveys of United Kingdom ships

25. A United Kingdom ship to which this regulation applies must be subjected to—

- (a) an initial survey, which must be completed before the ship is put in service or before an IBWM Certificate is first issued in respect of that ship;
- (b) a renewal survey, which must be completed before a subsequent IBWM Certificate is issued;
- (c) an intermediate survey—
 - (i) in the period beginning three months before, and ending three months after, the second anniversary date of the issue of an IBWM certificate; or
 - (ii) in the period beginning three months before, and ending three months after, the third anniversary date of the issue of an IBWM certificate, and
- (d) an annual survey which must be completed in the period beginning three months before, and ending three months after, the anniversary date of the issue of an IBWM certificate, except where an intermediate survey described in sub-paragraph (c) has been completed within that period.

Issue of IBWM Certificates by a Certifying Authority in respect of United Kingdom ships

26.—(1) A Certifying Authority must issue an IBWM Certificate in respect of a United Kingdom ship where—

- (a) that Certifying Authority has been notified by a surveyor that the surveyor has carried out an initial or renewal survey;
- (b) the notification described in paragraph (a) includes confirmation that, at the date of that survey, the surveyor is satisfied that—
 - (i) there is on board the ship an approved ballast water management plan;
 - (ii) the structure, equipment, systems, fittings, arrangements, material and processes associated with the ship’s ballast water management plan fully comply with the requirements of Part 3 (ballast water management) and Part 5 (equipment); and
 - (iii) any ballast water management system which has not previously been subject to a survey under these Regulations—
 - (aa) has been installed in accordance with the requirements of section 8 of Merchant Shipping Notice MSN 1908 (M+F); and
 - (bb) has been subject to a commissioning test which shows that it processes any ballast water or sediments such that they meet the standard in regulation 13 (ballast water and sediment treatment standard); and
- (c) any fee due under the Merchant Shipping (Fees) Regulations 2018^(a) has been paid to that Certifying Authority.

(2) An IBWM Certificate issued under this regulation must be in English.

Endorsement of IBWM Certificates by a Certifying Authority in respect of United Kingdom ships

27.—(1) A Certifying Authority must endorse an IBWM Certificate in respect of a United Kingdom ship where that Certifying Authority has been notified by a surveyor that the surveyor has carried out—

- (a) an intermediate survey, and the notification includes confirmation that—
 - (i) the survey took place in accordance with regulation 25 (surveys of United Kingdom ships); and
 - (ii) at the date of the survey, the surveyor was satisfied that the equipment, associated systems and processes for the ship’s ballast water management fully comply with the

(a) S.I. 2018/1104, to which there are amendments not relevant to these Regulations.

requirements of Part 3 (ballast water management) and Part 5 (equipment) and are in good working order; or

- (b) an annual survey, and the notification includes confirmation that—
 - (i) the survey took place in accordance with regulation 25 (surveys of United Kingdom ships); and
 - (ii) that, at the date of the survey, the surveyor was satisfied the structure, equipment, systems, fittings, arrangements, material and processes associated with the ship's ballast water management plan—
 - (aa) have been maintained to conform with these Regulations so as to ensure that the ship, in all respects, remains fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources; and
 - (bb) remain satisfactory for the service for which the ship is intended.

(2) Where—

- (a) an annual survey is completed before the beginning of the period specified in regulation 25(d) (surveys of United Kingdom ships); or
- (b) an intermediate survey is completed before the beginning of the period specified in regulation 25(c)(i) or (ii) (surveys of United Kingdom ships),

the anniversary date shown on the relevant IBWM Certificate must be amended by an endorsement on the IBWM Certificate by the surveyor undertaking the survey to a date not more than three months later than the date on which the survey referred to in sub-paragraph (a) or (b) was completed.

(3) Where the anniversary date on an IBWM Certificate is amended in accordance with paragraph (2)—

- (a) the subsequent annual or intermediate survey must be completed at the intervals prescribed in regulation 25 (surveys of United Kingdom ships) using the new anniversary date; and
- (b) the date of expiry of the IBWM Certificate may remain unchanged provided that one or more annual or intermediate surveys, as the case may be, are completed so that the maximum intervals between the surveys as prescribed in regulation 25 (surveys of United Kingdom ships) are not exceeded.

Duration and validity of an IBWM Certificate

28.—(1) An IBWM Certificate issued in respect of a United Kingdom ship is valid from the date of completion of the initial or renewal survey which immediately preceded the issue of the Certificate.

(2) Subject to paragraphs (4) to (6) and regulations 29 (extension of periods of validity of IBWM Certificates by a Certifying Authority) and 30 (extension of periods of validity of IBWM Certificates by a surveyor), an IBWM Certificate issued in respect of a United Kingdom ship is valid for such period as is specified in the Certificate, not exceeding five years beginning with—

- (a) the date specified in paragraph (1);
- (b) the date of expiry of the previous IBWM Certificate where the renewal survey is completed—
 - (i) within three months before the expiry of that IBWM Certificate; or
 - (ii) after the date of expiry of that IBWM Certificate; or
- (c) the original date of expiry of the previous IBWM Certificate, where a new IBWM Certificate has been issued in respect of a ship referred to in regulation 29(1)(b) or (3) (extension of periods of validity of IBWM Certificates by a Certifying Authority).

(3) Paragraph (4) applies where, following a renewal survey, an IBWM Certificate is issued in respect of—

- (a) a ship to which paragraph (2)(b)(ii) applies; or

- (b) a ship referred to in regulation 29(1)(b) or (3) (extension of periods of validity of IBWM Certificates by a Certifying Authority).

(4) In the circumstances described in paragraph (5) the Secretary of State may direct a Certifying Authority that the new IBWM Certificate is to be valid for such a period as is specified in the Certificate, not exceeding five years beginning with the date of completion of the renewal survey in question.

(5) The circumstances are where the owner of the ship—

- (a) submits a request to the Secretary of State for a direction in paragraph (4);
- (b) satisfies the Secretary of State that the owner is justified in making such a request; and
- (c) complies with any reasonable additional survey requirements which the Secretary of State may impose.

(6) An IBWM Certificate issued in respect of a United Kingdom ship ceases to be valid—

- (a) upon the ship being transferred to the flag of a foreign State;
- (b) if a survey under regulation 25 (surveys of United Kingdom ships) is not completed in accordance with the requirements of these Regulations;
- (c) upon the ship proceeding to sea when—
 - (i) regulation 32 (additional surveys of United Kingdom ships) applies to the ship; but
 - (ii) the requirements of regulation 32(3) have not been complied with;
- (d) if the relevant IBWM Certificate is not endorsed following an intermediate or annual survey;
- (e) for so long as the IBWM Certificate is suspended pursuant to regulation 35(3) (procedure to be adopted when a ship is deficient);
- (f) upon the IBWM Certificate being cancelled by the Secretary of State under regulation 37 (miscellaneous provisions relating to IBWM Certificates);
- (g) subject to regulation 30 (extension of periods of validity of IBWM Certificates by a surveyor), upon a new IBWM Certificate being issued in respect of the ship; or
- (h) upon the date of expiry of the IBWM Certificate.

(7) In this regulation and regulation 30 (extension of periods of validity of IBWM Certificates by a surveyor) “the original date of expiry” means the date on which a relevant IBWM Certificate would have expired but for any extension of its period of validity.

Extension of periods of validity of IBWM Certificates by a Certifying Authority

29.—(1) The Certifying Authority that issued an IBWM Certificate in respect of a United Kingdom ship may extend the period of validity of that Certificate—

- (a) to a maximum period of five years provided that—
 - (i) the remaining period of validity for that Certificate prior to the extension is less than five years; and
 - (ii) any surveys required under regulation 25(c) (surveys of United Kingdom ships) have been carried out; and
- (b) for a period not exceeding three months if—
 - (i) a renewal survey has not been completed before the date of expiry of that Certificate;
 - (ii) at the date of expiry, the ship is not in the port in which the survey is to be carried out; and
 - (iii) it appears to the Certifying Authority that it is proper and reasonable to do so solely for the purpose of enabling that ship to proceed to the port in which the survey is to be carried out.

(2) Where the period of validity of an IBWM Certificate has been extended under paragraph (1)(b), the ship in question must not leave the port of survey until a new IBWM Certificate has been issued in respect of that ship.

(3) Subject to paragraph (4), the Certifying Authority that issued an IBWM Certificate in respect of a United Kingdom ship engaged solely on short voyages may extend the period of validity of that Certificate for a period not exceeding one month.

(4) A Certifying Authority must not extend the period of validity of an IBWM Certificate under paragraph (3) if the period of validity of that Certificate has already been extended under—

- (a) paragraph (1)(a) or (b); or
- (b) regulation 30 (extension of periods of validity of IBWM Certificates by a surveyor).

(5) Where the period of validity of an IBWM Certificate is extended under paragraph (1) or (3), the issuing Certifying Authority must endorse the IBWM Certificate.

(6) In this regulation “short voyage” means a voyage which—

- (a) does not exceed 1,000 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 1,000 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(a).

Extension of periods of validity of IBWM Certificates by a surveyor

30.—(1) A surveyor may extend the period of validity of an IBWM Certificate issued in respect of a United Kingdom ship by endorsing that Certificate if—

- (a) a renewal survey has been completed by the surveyor;
- (b) the surveyor is satisfied of the matters in regulation 26(1)(b) (issue of IBWM Certificates by a Certifying Authority in respect of United Kingdom ships); and
- (c) a new IBWM Certificate cannot be issued or placed on board the ship before the date on which the existing IBWM Certificate is due to expire.

(2) Where an IBWM Certificate has been endorsed under paragraph (1), that Certificate is valid for such further period as is specified in the Certificate, not exceeding five months beginning with the original date of expiry of the Certificate.

Responsibilities of the owner and the master

31.—(1) The owner and the master of a ship must ensure that the condition of the ship and its equipment, systems and processes are maintained to conform—

- (a) in the case of a United Kingdom ship, or any ship surveyed in accordance with these Regulations, with the provisions of these Regulations; or
- (b) in the case of any other ship, with the requirements of the Convention,

so as to ensure that the ship, in all respects, remains fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

(a) The definition of “short voyage” derives from IMO Resolution A.1104(29). Resolutions of the IMO can be obtained from the IMO Library at 4 Albert Embankment, London SE1 7SR and www.imo.org/en/MediaCentre/Pages/Default.aspx; email: media@imo.org; telephone: 020 7587 3134. They will also be made available via the Foreign and Commonwealth Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch/#home>).

(2) The owner and the master of a ship must ensure that, after any survey of the ship required by these Regulations has been completed, no change, except by way of direct replacement, is made to the structure, equipment, fittings, arrangements or materials associated with the ship's ballast water management plan and covered by the survey, without the approval of—

- (a) the Certifying Authority who appointed the surveyor to carry out the survey;
- (b) the Secretary of State, where the relevant survey was carried out and the relevant IBWM Certificate was issued by a Contracting State other than the United Kingdom following a request made by the Secretary of State pursuant to regulation 33 (issue or endorsement of IBWM Certificates by another Contracting State); or
- (c) the administration of the ship's flag State, where the ship is not a United Kingdom ship.

(3) Whenever—

- (a) an accident occurs to a ship; or
- (b) a defect is discovered in a ship,

which substantially affects the ability of the ship to conduct ballast water management in accordance with Part 2 (discharge of ballast water and sediments) and Part 3 (ballast water management), the owner, demise charterer or master of the ship must comply with the requirements of paragraph (4).

(4) The requirements are that—

- (a) the accident or defect is reported at the earliest opportunity to the Certifying Authority that issued the IBWM Certificate in respect of the ship;
- (b) in the case of a United Kingdom ship in a port outside the United Kingdom the accident or defect is immediately reported to the appropriate maritime authorities in the country in which the port is situated;
- (c) in the case of any other ship in a port in the United Kingdom, the accident or defect is reported to the Secretary of State.

(5) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a), the Certifying Authority—

- (a) must cause an investigation to be initiated to determine whether or not an additional survey is necessary; and
- (b) must, if it considers that an additional survey is necessary, cause that survey to be carried out.

(6) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph 4(a) and the ship in question is a United Kingdom ship and in a port outside the United Kingdom, the Certifying Authority must take all appropriate steps to ascertain that the requirement in paragraph 4(b) has been complied with.

(7) In paragraph (2) "direct replacement" means the direct replacement of equipment and fittings with equipment and fittings that conform with the relevant requirements which apply to that ship.

Additional surveys of United Kingdom ships

32.—(1) This regulation applies to a United Kingdom ship where—

- (a) a repair resulting from an investigation referred to in regulation 31(5) (responsibilities of the owner and the master) has been made to the ship; or
- (b) a change, replacement or significant repair has been made to the structure, equipment, systems, fittings, arrangements or material necessary to achieve full compliance with Part 2 (discharge of ballast water and sediments), Part 3 (ballast water management) and Part 5 (equipment).

(2) A ship to which this regulation applies must not—

- (a) proceed to sea; or
- (b) if it is already at sea, remain at sea,

unless the requirements set out in paragraph (3) are met.

(3) The requirements are that—

- (a) a survey has been carried out in respect of the ship;
- (b) at the date of the survey the surveyor is satisfied that—
 - (i) the change, replacement or significant repair has been made effectively; and
 - (ii) the ship complies in all respects with the requirements of these Regulations; and
- (c) the surveyor has issued a report expressing the satisfaction required by sub-paragraph (b).

(4) Where a survey of a ship under paragraph (3) results from the installation of a new ballast water management system, in order to be satisfied that the change or replacement has been made effectively the surveyor must verify that it—

- (a) has been installed in accordance with the requirements of section 8 of Merchant Shipping Notice MSN 1908 (M+F); and
- (b) has been subject to a commissioning test which shows that it processes any ballast water or sediments such that they meet the standard in regulation 13 (ballast water and sediment treatment standard).

(5) In the case of a dispute as to whether a repair effected or intended to be effected in respect of a ship is a significant repair for the purposes of paragraph (1)(b), the owner or master of a ship may serve a written request upon the Secretary of State seeking advice^(a).

(6) A repair is not to be regarded as being a significant repair for the purposes of this regulation unless the Secretary of State advises to the contrary within 21 days of receipt of a request under paragraph (5).

Issue or endorsement of IBWM Certificates by another Contracting State

33.—(1) The Secretary of State may request a Contracting State to survey a United Kingdom ship and, if the Contracting State is satisfied that the ship complies with the requirements of the Convention, to—

- (a) issue or authorise the issue of an IBWM Certificate in respect of that ship; or
- (b) endorse, or authorise the endorsement of, an existing IBWM Certificate,

in accordance with the Convention.

(2) Where an IBWM Certificate is issued pursuant to paragraph (1)—

- (a) the Secretary of State is to be treated as the Certifying Authority in relation to it; and
- (b) any reference in these Regulations to the Certifying Authority who issued the Certificate is to be treated as a reference to the Secretary of State.

Issue or endorsement of IBWM Certificates in respect of non-United Kingdom ships

34.—(1) The Secretary of State, when requested to do so by a Contracting State other than the United Kingdom, may cause a survey to be carried out in respect of a ship which flies the flag of that Contracting State.

(2) If a survey has been carried out as described in paragraph (1) and is an initial or renewal survey, the Secretary of State must issue, or authorise the issue of, an IBWM Certificate where—

- (a) a surveyor has notified a Certifying Authority that, at the date of that survey, they are satisfied of the matters referred to in regulation 26(1)(b) (issue of IBWM Certificates by a Certifying Authority in respect of United Kingdom ships); and
- (b) any fee due under the Merchant Shipping (Fees) Regulations 2018 has been paid.

^(a) The process for requesting this advice from the Secretary of State can be found in Marine Guidance Note MGN 675 (M+F). Copies of MGN 675 (M+F) can be obtained free of charge at www.gov.uk or in hard copy from the Maritime and Coastguard Agency of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

(3) If a survey has been carried out as described in paragraph (1) and is an intermediate or annual survey, the Secretary of State must endorse, or authorise the endorsement of, an IBWM Certificate where—

- (a) a surveyor has notified a Certifying Authority that, at the date of that survey, they are satisfied of the matters referred to in regulation 27(1)(a) or (b) (endorsement of IBWM Certificates by a Certifying Authority in respect of United Kingdom ships) as appropriate; and

(b) any fee due under the Merchant Shipping (Fees) Regulations 2018 has been paid.

(4) An IBWM Certificate issued or endorsed under paragraphs (2) or (3)—

(a) must contain a statement that it has been issued or endorsed at the request of the Contracting State which made the request referred to in paragraph (1); and

(b) has the same effect as if it had been issued or endorsed by the Contracting State which made the request referred to in paragraph (1).

(5) The Secretary of State must, as soon as possible after the completion of a survey carried out under paragraph (1), send to the Contracting State which made the request a copy of—

(a) the IBWM Certificate issued or endorsed pursuant to paragraphs (2) or (3); and

(b) the report of the survey.

Procedure to be adopted when a ship is deficient

35.—(1) This regulation applies where a surveyor determines that a ship's ballast water management—

(a) does not conform to the particulars of the IBWM Certificate, if any, issued in respect of that ship; or

(b) is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

(2) In the circumstances described in paragraph (1) the surveyor must immediately—

(a) advise the owner or the master of the corrective action which, in the opinion of the surveyor, is required within a specific timeframe; and

(b) where the ship has a valid IBWM Certificate, notify the Certifying Authority that issued the Certificate that the owner or the master has been so advised.

(3) Where—

(a) an IBWM Certificate has been issued in respect of a United Kingdom ship and is still valid; and

(b) the corrective action advised in accordance with paragraph (2)(a) is not taken within the time specified by the surveyor,

the Certifying Authority must suspend the validity of that Certificate until that corrective action has been taken.

(4) Where a Certifying Authority suspends the validity of the IBWM Certificate issued in respect of a ship it must immediately give notice of such suspension—

(a) to the owner of the ship; and

(b) where the ship is in a port outside the United Kingdom, to the appropriate maritime authorities of the country in which the port is situated.

(5) Where the owner of the ship is given notice of the suspension, that owner must notify the master of the ship of the suspension.

(6) In the application of paragraphs (1) and (2) to a ship which is not a United Kingdom ship—

(a) “the Certifying Authority” means the appropriate maritime authorities of the ship's flag State or a diplomatic representative of that State; and

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

Arbitration

36.—(1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out in respect of a United Kingdom ship, the applicant may serve a written notice on the responsible person within the period of 21 days beginning with the date of receiving notification of that outcome—

- (a) stating that there is a dispute between them; and
- (b) requesting that the dispute be referred to a single arbitrator.

(2) Subject to paragraph (3), an arbitrator referred to in paragraph (1) must be appointed by agreement between the applicant and the responsible person.

(3) 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 relation to Scotland.

(4) No person is to be an arbitrator under this regulation unless that person is—

- (a) a person who holds a certificate to act as—
 - (i) a master or chief mate on a seagoing ship of 3,000 gross tonnage or more, in accordance with Regulation II/2 of Chapter 2 of the Annex to STCW; or
 - (ii) a chief engineer officer or second engineer officer on a seagoing ship powered by main propulsion machinery of 3,000 kW propulsion power or more, in accordance with Regulation III/2 of Chapter 3 of the Annex to STCW;
- (b) a person who holds a certificate of competency equivalent to a certificate referred to in sub-paragraph (a);
- (c) a naval architect;
- (d) a qualified person;
- (e) a person with special experience of shipping matters, or of activities carried on in ports; or
- (f) a member of the Chartered Institute of Arbitrators.

(5) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 259 (powers of inspectors in relation to premises and ships) of the 1995 Act.

(6) In the application of this regulation to Scotland—

- (a) any reference to an arbitrator is to be construed as a reference to an arbiter; and
- (b) the reference in paragraph (1) to a single arbitrator is to be construed as a reference to a single arbiter so appointed, or in default of agreement, appointed by a sheriff.

(7) The rules for arbitration set out in Merchant Shipping Notice M.1613(a) apply unless alternative procedures are agreed between the applicant and the responsible person before the commencement of arbitration proceedings.

(8) In this regulation—

- (a) “applicant” means a person who makes an application for arbitration required by these Regulations;
- (b) “qualified person” means—
 - (i) a person who satisfies the judicial appointment eligibility condition on a seven-year basis;

(a) Merchant Shipping Notices are published by the Maritime and Coastguard Agency (“MCA”). Copies of MSN M.1613 can be obtained free of charge at www.gov.uk or in hard copy from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

- (ii) a person who is an advocate or solicitor in Scotland of at least seven 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 seven years' standing;
- (c) "responsible person" means—
 - (i) the Certifying Authority responsible under regulation 26 (issue of IBWM Certificates by a Certifying Authority in respect of United Kingdom ships) or 33 (issue or endorsement of IBWM Certificates by another Contracting State) for the issue of the IBWM Certificate in connection with which a survey required by these Regulations is carried out; or
 - (ii) in the case of a dispute relating to an additional survey, the Certifying Authority which issued the IBWM Certificate in respect of the ship; and
- (d) "STCW" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978(a).

Miscellaneous provisions relating to IBWM Certificates

37.—(1) The Secretary of State may cancel an IBWM Certificate issued in respect of a United Kingdom ship where there is reason to believe that—

- (a) the Certificate was issued on false or erroneous information; or
- (b) since any survey required by these Regulations, the structure, equipment or machinery of the ship has sustained damage or is otherwise deficient.

(2) The Secretary of State may direct the surrender of an IBWM Certificate issued to a United Kingdom ship where that Certificate has expired, been suspended or been cancelled.

(3) A direction given by the Secretary of State under paragraph (2) may specify that an IBWM Certificate must be surrendered within such time and in such manner as the Secretary of State may direct.

(4) In relation to a ship, no person may—

- (a) intentionally alter an IBWM Certificate, unless permitted to do so under these Regulations;
- (b) intentionally make a false IBWM Certificate;
- (c) in connection with any survey required by these Regulations, knowingly or recklessly furnish false information;
- (d) with intent to deceive, use, lend or allow to be used by another person, an IBWM Certificate;
- (e) fail to surrender an IBWM Certificate when required to do so pursuant to paragraph (2);
or
- (f) in Scotland, forge an IBWM Certificate.

(5) The owner and the master of a ship, in respect of which an IBWM Certificate has been issued, must ensure that the IBWM Certificate is readily available on board the ship for examination at all times, except where it has been surrendered pursuant to paragraph (2).

(a) This Convention ("STCW") was originally published in Cmnd. 7543 and subsequently in Cmnd. 9266. An electronic copy of Cmnd. 9266 can be found at <https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=68238>. The Annex to STCW was replaced in full in 2010 following a conference of the parties to STCW held in Manila, The Philippines. STCW has since been amended by IMO Resolutions MSC.396(95) and MSC.416(97). STCW is available from IMO Publishing, 4 Albert Embankment, London SE1 7SR; www.imo.org/publications; email: sales@imo.org; telephone: 0207 735 7611. IMO Resolutions are available from the IMO Library, also of 4 Albert Embankment, London SE1 7SR. A hard copy of Cmnd. 9266 is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London, SW1A 0PW (catalogue number: HL/PO/JO/10/11/2230/2631).

(6) Where a United Kingdom ship is transferred to the flag of another Contracting State, and within three months after the date of transfer that Contracting State so requests, the Secretary of State must send that Contracting State—

- (a) a copy of the IBWM Certificate issued in respect of that ship before its transfer; and
- (b) where available, a copy of the report of the most recent survey required by these Regulations in respect of that ship.

PART 7

Enforcement

Inspection of ships

38.—(1) Insofar as sections 258(a) (powers to inspect ships and their equipment etc.) and 259 (powers of inspectors in relation to premises and ships) of the 1995 Act apply in relation to a ship to which these Regulations apply, for the purpose of checking compliance with these Regulations those sections have effect subject to the following modifications.

(2) The power to inspect a ship and its equipment, any part of the ship, any articles on board and any document carried in the ship, is limited to—

- (a) verifying that there is on board a valid IBWM Certificate in respect of the ship;
- (b) inspecting the ballast water record book; or
- (c) taking samples of the ship's ballast water,

except where paragraph (3) applies.

(3) This paragraph applies—

- (a) where the ship—
 - (i) does not carry a valid IBWM Certificate; or
 - (ii) is detected to have violated these Regulations or the Convention; or
- (b) if there are clear grounds for believing that—
 - (i) the condition of the ship or its equipment does not correspond substantially with the particulars of the IBWM Certificate; or
 - (ii) the master or the crew are not familiar with essential shipboard procedures relating to ballast water management or have not implemented such procedures.

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

- (a) in a port in the United Kingdom;
- (b) at an offshore terminal in United Kingdom waters or controlled waters; or
- (c) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.

(5) Where the ship is inspected for the purposes of paragraph (3)(a)(ii) and is not a United Kingdom ship, the person exercising the powers of inspection must ensure that the report of the inspection is sent to—

- (a) the appropriate maritime authorities of the ship's flag State or a diplomatic representative of that State; and
- (b) any other party to the Convention who requested the inspection.

(6) Where the ballast water record book is inspected under paragraph (2)(b) the person exercising the power of inspection may—

(a) Section 258 is amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1, paragraph 4, and Schedule 7, Part 1, and the Protection of Freedoms Act 2012 (c. 9), Schedule 2, Part 1 paragraph 2 and Schedule 10, Part 2.

- (a) make a copy of an entry in that book; and
- (b) require the master of the ship to certify that the copy is a true copy of the original.

(7) Any copy certified in accordance with paragraph (6) is to be admissible in any judicial proceedings as evidence of the facts stated in it.

(8) The inspection of a ballast water record book and the taking of a certified copy of an entry as described in paragraph (6) must be performed as expeditiously as possible without causing the ship to be unduly delayed.

(9) The time required to analyse samples of a ship's ballast water taken pursuant to this regulation must not be used to unduly delay the operation, movement or departure of the ship.

Prohibition on discharge following sampling

39.—(1) Where a sampling of a ship's ballast water under regulation 38(2)(c) (inspection of ships) indicates that the ship poses a threat to the environment, human health, property or resources, the person exercising the powers of inspection must serve on the master of the ship a notice which—

- (a) prohibits the ship from discharging ballast water until the threat has been removed; and
- (b) states the grounds for the prohibition.

(2) The person exercising the powers of inspection must ensure that a copy of the notice is sent—

- (a) in the case of a United Kingdom ship, to the Certifying Authority that issued the ship's IBWM Certificate; or
- (b) in the case of a ship which is not a United Kingdom ship, immediately to the appropriate maritime authorities of the ship's flag State or a diplomatic representative of that State.

(3) Where the ship is permitted to proceed to its next port of call, the person exercising the powers of inspection must ensure that a copy of the notice is sent to that port.

(4) A notice served under paragraph (1) must be complied with.

General provisions on detention

40.—(1) Where—

- (a) a determination is made of a kind mentioned in regulation 35(1) (procedure to be adopted when a ship is deficient) in relation to a ship; or
- (b) a surveyor of ships has clear grounds for believing that—
 - (i) an IBWM Certificate is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
 - (ii) documentation referred to in regulation 24(b) (prohibition on non-United Kingdom ships proceeding to sea without an IBWM Certificate or appropriate documentation) ("appropriate documentation") is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
 - (iii) a ship's ballast water management does not conform to the particulars of the IBWM Certificate, if any, or other appropriate documentation issued in respect of that ship;
 - (iv) the master or crew of a ship are not familiar with essential shipboard procedures relating to the prevention of pollution by ballast water or have not implemented such procedures; or
 - (v) an offence under regulation 44 (offences) is being committed in respect of a ship,

the ship is liable to be detained until a surveyor of ships is satisfied that it can proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

(2) Notwithstanding paragraph (1), a person having power to detain a ship may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purpose of—

- (a) discharging ballast water; or
 - (b) proceeding to the nearest appropriate repair yard or reception facility available,
- provided that in proceeding to sea the ship will not present a threat of harm to the environment, human health, property or resources.
- (3) A person permitting a ship to proceed to sea under paragraph (2) must inform the ship's next port of call of all information relevant to the detention of the ship under paragraph (1).
- (4) Where a surveyor of ships has clear grounds for believing that an offence under regulation 44(1)(a) (offences) has been committed in respect of a ship, the ship is liable to be detained.
- (5) The power under this regulation to detain a ship may only be exercised if the ship is—
- (a) in a port in the United Kingdom;
 - (b) at an offshore terminal in United Kingdom waters or controlled waters; or
 - (c) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.
- (6) Section 284 of the 1995 Act^(a) (enforcing detention of a ship) applies where a ship is liable to be detained under the preceding provisions of this regulation as if—
- (a) references to detention of a ship under the Act were references to detention of the ship in question under the preceding provisions of this regulation; and
 - (b) subsection (7) were omitted.
- (7) Where a ship is liable to be detained under the preceding provisions of this regulation, the person detaining the ship must serve on the master of the ship a detention notice which—
- (a) states the grounds for the detention; and
 - (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the 1995 Act.
- (8) Where a ship is detained the person detaining the ship must—
- (a) in the case of a United Kingdom ship, inform the Certifying Authority that issued the ship's IBWM Certificate; or
 - (b) in the case of a ship which is not a United Kingdom ship, immediately inform the appropriate maritime authorities of the ship's flag State or a diplomatic representative of that State.
- (9) Where a ship is detained under paragraph (4), a person having power to detain the ship must immediately release the ship—
- (a) if no proceedings for an offence under regulation 44(1)(a) (offences) are instituted within the period of seven days beginning with the day on which the ship is detained;
 - (b) if any proceedings for an offence under regulation 44(1)(a) (offences), instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
 - (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security; or
 - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,
 by or on behalf of the owner, manager, demise charterer or master;
 - (d) where the owner, manager, demise charterer or master is convicted of an offence under regulation 44(1)(a) (offences), if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or

(a) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1, paragraph 5, and S.I. 2015/664, Schedule 4, Part 1, paragraph 27(1) and (15).

- (e) if the release is ordered by a court or tribunal referred to in Article 292 of UNCLOS and any bond or other financial security ordered by such court or tribunal is posted.

(10) The Secretary of State must repay any sum paid in pursuance of paragraph (9)(c) or release any security so given—

- (a) if no proceedings for an offence under regulation 44(1)(a) (offences) are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if any proceedings for an offence under regulation 44(1)(a) (offences), instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.

(11) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (9)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 44(1)(a) (offences), the sum so paid or the amount made available under the security must be applied as follows—

- (a) first, in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
- (b) next, in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(12) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (9) to (11) as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
- (b) references to an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were references to an offence under regulation 44(1)(a) (offences).

Power for a harbour master to detain a ship

41.—(1) Where the harbour master of a harbour in the United Kingdom has clear grounds for believing that an offence has been committed under regulation 44(1)(a) (offences) by the discharge from a ship of any ballast water or sediments into the waters of the harbour, the harbour master may detain the ship.

(2) Section 144(2) and (3) of the 1995 Act (harbour master's power of detention of ships for certain offences) apply to a detention under paragraph (1) as it applies to a detention under section 144(1) of the 1995 Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by the harbour authority.

(4) Where a ship is detained under this regulation, the harbour master must immediately release the ship—

- (a) if no proceedings for an offence under regulation 44(1)(a) (offences) are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under regulation 44(1)(a) (offences), having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
- (c) if either—
 - (i) the sum of £30,000 is paid to the harbour authority by way of security; or
 - (ii) security which, in the opinion of the harbour master, is satisfactory and is for an amount not less than £30,000 is given to the harbour authority,by or on behalf of the owner, manager, demise charterer or master;

- (d) where the owner, manager, demise charterer or master is convicted of an offence under regulation 44(1)(a) (offences), if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) if the release is ordered by a court or tribunal referred to in Article 292 of UNCLOS and any bond or other financial security ordered by such court or tribunal is posted.

(5) The harbour authority must repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—

- (a) if no proceedings for an offence under regulation 44(1)(a) (offences) are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for an offence under regulation 44(1)(a) (offences), having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.

(6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 44(1)(a) (offences), the sum so paid or the amount made available under the security must be applied as follows—

- (a) first, in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
- (b) next, in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(7) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
- (b) references to an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were references to an offence under regulation 44(1)(a) (offences).

Duty of a harbour master to report deficient ships

42. The harbour master of a harbour in the United Kingdom must immediately notify the Secretary of State if the harbour master has reason to believe that a ship is about to—

- (a) enter the harbour; or
- (b) leave the harbour,

and does not comply with the requirements of these Regulations.

Right of appeal and compensation

43.—(1) Regulations 15 (arbitration) and 16 (compensation) of the Merchant Shipping (Port State Control) Regulations 2011(a) apply in relation to the exercise of the power of detention under these Regulations as they apply in relation to the exercise of those powers under Part 1 (implementation of Directive 2009/16/EC) of those Regulations, subject to the modifications referred to in paragraph (2).

(2) The modifications are—

- (a) references to “inspector” are to be taken as references to the authority detaining the ship, or the harbour master, as the case may be;
- (b) references to—
 - (i) “issue of a refusal of access notice”;
 - (ii) “refusal of access”;

(a) S.I. 2011/2601, to which there are amendments not relevant to these Regulations.

- (iii) “refusal of access notice”;
 - (iv) “served with a refusal of access notice”; and
 - (v) “service of a refusal of access notice”,
- are omitted; and
- (c) in regulation 16(2) after “State” there is added “, except where the ship is detained by a harbour master, in which case any compensation awarded under this section must be paid by the harbour authority”.

Offences

44.—(1) Any contravention of—

- (a) regulation 5(1) (requirement to conduct ballast water management) or 39(4) (prohibition on discharge following sampling) is an offence by the owner, manager, demise charterer and master of the ship;
- (b) regulation 9(1), (4) or (5) (ballast water management plan), 10(1)(a), (2) to (4), (6) or (8) (ballast water record book), 16(2) (approval of ballast water management systems) or 29(2) (extension of periods of validity of IBWM Certificates by a Certifying Authority), is an offence by the owner, manager, demise charterer and master of the ship;
- (c) regulation 9(3) (ballast water management plan) or 10(5) (ballast water record book) is an offence by the master of the ship;
- (d) regulation 10(4) (ballast water record book) is an offence by the officer in charge of the relevant operation;
- (e) regulation 10(10) (ballast water record book), 16(1) (approval of ballast water management systems) or 35(5) (procedure to be adopted when a ship is deficient) is an offence by the owner of the ship;
- (f) regulation 14(2) (requirement to provide sediment reception facilities) is an offence by the owner and operator of the shipyard in question;
- (g) regulation 20(4) (ballast water management systems which use active substances), 23 (prohibition on United Kingdom ships proceeding to sea without an IBWM Certificate), 24 (prohibition on non-United Kingdom ships proceeding to sea without an IBWM Certificate or appropriate documentation), 31(1) or (2) (responsibilities of the owner and the master), 32(2) (additional surveys of United Kingdom ships) or 37(5) (miscellaneous provisions relating to IBWM Certificates) is an offence by the owner and the master of the ship;
- (h) regulation 31(3) (responsibilities of the owner and the master) is an offence by the owner, demise charterer and the master of the ship; or
- (i) regulation 37(4) (miscellaneous provisions relating to IBWM Certificates) is an offence by the person in question.

(2) Any failure by a master to comply with a requirement under regulation 38(6)(b) (inspection of ships) is an offence.

(3) An offence under paragraphs (1) or (2) is punishable—

- (a) on summary conviction—
 - (i) in England and Wales, by a fine; or
 - (ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment by a fine.

Defences

45.—(1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that they took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings for an offence comprising a contravention of regulation 5(1) (requirement to conduct ballast water management) or regulation 39(4) (prohibition on discharge following sampling) it is a defence for the person charged to prove that—

- (a) the ship was not a United Kingdom ship;
- (b) the discharge took place in waters that were not United Kingdom waters or controlled waters; and
- (c) the ship was in a port in the United Kingdom at the time of the institution of the proceedings by reason only of stress of weather or any other reason beyond the control of the owner, manager, charterer or master of the ship.

Restriction on jurisdiction over offences outside United Kingdom limits

46.—(1) In respect of a ship which is not a United Kingdom ship, proceedings for an offence under regulation 44(1)(a) (offences) alleged to have been committed in the internal waters, territorial sea or exclusive economic zone of a foreign State must not be instituted in the United Kingdom unless—

- (a) that foreign State, the flag State of the ship or a foreign State polluted or threatened with pollution as a result of the offence requests that such proceedings be taken; or
- (b) the offence has caused or is likely to cause pollution in United Kingdom waters or controlled waters.

(2) Where such proceedings have been instituted but not concluded, they must be suspended upon the request of the foreign State in question and the Secretary of State must send all the evidence, court records and documents relating to the case, together with any sum paid or security given, to the foreign State.

(3) In this regulation “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.

Suspension of proceedings at flag State request

47.—(1) This regulation applies to proceedings instituted but not concluded in the United Kingdom for an offence under regulation 44(1)(a) (offences) alleged to have been committed outside United Kingdom waters in relation to a ship which is not a United Kingdom ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the court is satisfied that the ship’s flag State has instituted proceedings corresponding to the proceedings in paragraph (1) within six months of the institution of the proceedings in the United Kingdom.

(3) Paragraph (2) does not apply—

- (a) where the offence resulted in serious pollution of the United Kingdom; or
- (b) if the Secretary of State certifies that the ship’s flag State has repeatedly disregarded its obligations to enforce effectively the requirements of the Convention in respect of its ships.

(4) Where proceedings instituted by the ship’s flag State have been brought to a conclusion, the suspended proceedings must be terminated.

Service of documents on foreign companies

48. Section 143(6) of the 1995 Act(a) (service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 131 of the 1995 Act) applies to proceedings for an offence under these Regulations as it applies to

(a) Section 143(6) is amended by S.I. 2009/1941, Schedule 1, paragraph 152(1) and (2).

proceedings for an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) of the 1995 Act, as if—

- (a) the reference to section 131 were to these Regulations;
- (b) in the case of an offence in respect of a ship other than a floating platform, the reference to the owner were to the owner, manager or demise charterer; and
- (c) in the case of any offence in respect of a floating platform, the reference to—
 - (i) the owner of the ship were to the owner of the platform; and
 - (ii) the master of the ship were to the manager of the platform.

Enforcement and application of fines

49. Section 146 of the 1995 Act (enforcement and application of fines) applies to any fine for an offence under regulation 44(1)(a) (offences) as if—

- (a) in subsection (1) of that section the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 were a reference to proceedings against the owner, manager, demise charterer or master for an offence under regulation 44(1)(a) (offences); and
- (b) in subsection (2) of that section, the reference to an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were a reference to an offence under regulation 44(1)(a) (offences).

PART 8

Amendment

Amendment to the Merchant Shipping (Fees) Regulations 2018

50. In the Table in paragraph 5 of Part 1 of Schedule 1 (fees under the Merchant Shipping Act 1995) to the Merchant Shipping (Fees) Regulations 2018(a) after the entry under heading J (prevention and control of pollution) relating to the Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018(b), insert—

“The Merchant Shipping (Control and Management of Ships’ Ballast Water and Sediments) Regulations 2022	2022/737	None”
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PART 9

Review

Review

51.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
 - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before 29th July 2027.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.

(a) S.I. 2018/1104, to which there are amendments not relevant to these Regulations.
(b) S.I. 2018/68.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015^(a) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under the Convention are implemented in other countries which are subject to the obligations.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Signed by authority of the Secretary of State for Transport

Robert Courts
Parliamentary Under Secretary of State
Department for Transport

3rd July 2022

We consent to the making of these Regulations

Michael Tomlinson
Gareth Johnson
Two of the Lords Commissioners of Her Majesty’s Treasury

30th June 2022

(a) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12) and Schedule 8, Part 2, paragraph 36 to the European Union (Withdrawal) Act 2018 (c. 16).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 ("the Convention"). The Convention was adopted on 13th February 2004 and came into force internationally on 8th September 2017. The United Kingdom acceded to the Convention on 26th May 2022. These Regulations implement all amendments to the Convention as at the date of this statutory instrument.

The Regulations apply to United Kingdom ships wherever they may be and any other ship whilst it is operating in United Kingdom waters or controlled waters (regulation 4). The Regulations are disapplied in relation to certain ships including those which are not designed or constructed to carry ballast water, ships which operate only in waters under the jurisdiction of a single Contracting State or only in waters under the jurisdiction of a single Contracting State and on the high seas and ships which carry permanent ballast water in sealed tanks not subject to discharge.

Part 2 imposes a prohibition on discharging any ballast water or sediments from a ship unless they are subject to ballast water management (regulation 5). There are a number of exceptions (regulation 6) and the Secretary of State may grant exemptions (regulation 7) and, for certain ships, approve equivalents (regulation 8).

Part 3 requires ships to have an approved ballast water management plan (regulation 9) and to carry a ballast water record book to record operations concerning ballast water (regulation 10). Regulation 11 imposes requirements on where ballast water exchange may take place and regulation 12 sets the standard for the exchange of ballast water. Regulation 13 sets the standard for the treatment of ballast water and sediments.

Part 4 requires the owner and operator of a shipyard within a harbour to provide sediment reception facilities (regulation 14).

Part 5 of the Regulations contains a power to designate nominated bodies to carry out type approval of ballast water management systems (regulation 15). Regulation 16 imposes a requirement on United Kingdom ships to have a valid BWMS (ballast water management system) Type Approval Certificate when the BWMS is installed. The procedure for applying for type approval is contained in regulation 17, whilst the requirements that must be fulfilled for type approval to be granted are in regulation 18. Regulation 19 enables nominated bodies to suspend or withdraw type approval in certain circumstances. Part 5 also makes provision for the Secretary of State to prohibit the use of systems which use active substances and the substances themselves (regulation 20). Regulation 21 allows the Secretary of State to approve the testing of prototype ballast water management systems.

Part 6 of the Regulations provides that a UK ship must not proceed to sea or, if it is already at sea, remain at sea without a valid IBWM Certificate (International Ballast Water Management Certificate) (regulation 23). There is a similar requirement for non-UK ships (regulation 24). United Kingdom ships must be subjected to various surveys (regulation 25) and if they satisfy the requirements of these surveys then a Certifying Authority must issue them with an IBWM Certificate or endorse an existing IBWM Certificate (regulations 26 and 27). Part 6 also provides that an additional survey will be required following a change, replacement or significant repair (regulation 32) and that the ship must be maintained to conform with the provisions of the Regulations following a survey (regulation 31).

Part 7 of the Regulations makes provision in relation to the powers of inspection and detention of ships, and in relation to offences and penalties.

Part 8 amends the Merchant Shipping (Fees) Regulations 2018 (S.I. 2018/1104) to allow fees to be charged for various functions carried out by the Maritime and Coastguard Agency ("MCA") under these Regulations.

The Secretary of State must review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years thereafter

(regulation 51). Following such a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke the Regulations or to amend them.

Merchant Shipping Notices are published by the MCA and a copy of MSN 1908 (M+F) can be obtained free of charge at www.gov.uk or in hard copy from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

Guidance supporting these Regulations has been published in a Marine Guidance Note (MGN 675 (M+F)). Copies can be obtained free of charge at www.gov.uk or in hard copy from the address given above.

The Convention can be obtained from the International Maritime Organization (“the IMO”) at IMO Publishing, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications; email: sales@imo.org; telephone: 0207 735 7611. The text of IMO Regulations can be obtained in hard copy from the IMO Library at the same address as IMO Publishing.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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