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STATUTORY INSTRUMENTS

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**2009 No. 2796**

**MARINE POLLUTION**

**The Merchant Shipping (Anti-Fouling Systems) Regulations 2009**

<i>Made</i>	- - - -	<i>19th October 2009</i>
<i>Laid before Parliament</i>		<i>22nd October 2009</i>
<i>Coming into force</i>	- -	<i>1st December 2009</i>

The Secretary of State is a Minister designated for the purpose of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to the environment and to maritime transport<sup>(2)</sup>.

The Secretary of State makes the following Regulations in exercise of the powers conferred by that section.

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.** These Regulations may be cited as the Merchant Shipping (Anti-Fouling Systems) Regulations 2009 and they come into force on 1st December 2009.

**Interpretation**

**2.—(1)** In these Regulations—

“the 1995 Act” means the Merchant Shipping Act 1995<sup>(3)</sup>;

“Annex I” means Annex I to the EC Regulation;

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<sup>(1)</sup> 1972 c.68; by virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

<sup>(2)</sup> S.I. 2008/301 and 1994/757.

<sup>(3)</sup> 1995 c.21.

“Certifying Authority” means the Secretary of State or any organisation which is an authorised organisation for the purposes of the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996(4);

“controlled waters” means the waters specified by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996(5) as areas within which the jurisdiction and rights of the United Kingdom are exercisable;

“the EC Regulation” means Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14th April 2003 on the prohibition of organotin compounds on ships(6);

“master” includes every person (except a pilot) having command or charge of a ship;

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

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

“operates under the authority of” has the same meaning as in Article 3(1)(b) of the EC Regulation (which provides for the scope of application of the Regulation);

“owner”, in relation to a ship, includes any person or organisation, including a manager, or a charterer on bareboat charter terms, who has assumed responsibility for the operation of the ship from the owner; and in this definition “bareboat charter terms” means the hiring of the ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew;

“ship”, except in the expression “United Kingdom ship”, means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, fixed or floating platforms, floating storage units and floating production storage and off-loading units;

“surveyor of ships” means a person who is appointed as a surveyor of ships under section 256(2) of the 1995 Act;

“United Kingdom ship” has the same meaning as in section 85(2) of the 1995 Act(7);

“United Kingdom waters” means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom; and

“voyage” includes an excursion, and is to be taken to commence when a ship leaves its berth or anchorage.

(2) In these Regulations, the following expressions have the meanings given in Article 2 of the EC Regulation (which provides definitions): “anti-fouling system”, “AFS-Convention”, “AFS-Certificate”, “AFS-Declaration”, “gross tonnage” and “length”.

(3) In these Regulations, a reference to a numbered Article or a numbered Annex is to the Article or Annex of that number in the EC Regulation.

(4) In the application of these Regulations to—

- (a) an air-cushion vehicle, a reference to the master of a ship includes a reference to the captain of that air-cushion vehicle;

(4) S.I. 1996/2908; an “authorised organisation” is defined in regulation 2 of those Regulations; amendments have been made to some definitions in regulation 2 but none is relevant to this definition.

(5) S.I. 1996/2128, amended by S.I. 1997/506.

(6) O.J. L 115, 9.5.2003, p.1; amended by Commission Regulation (EC) No 536/2008 of 13 June 2008 (O.J. L 156, 14.6.2008, p. 10), and Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009 (O.J. L 87, 31.3.2009, p.109). Added to Annex III of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 159/2003 of 7th November 2003 (O.J. No. L 41, 12.2.2004, p.57).

(7) Section 85(2) has been amended by section 2(3) of the British Overseas Territories Act 2002 (c.8).

- (b) a platform, a reference to the master of a ship includes a reference to the manager of that platform; and
- (c) a fishing vessel, a reference to the master of a ship includes a reference to the skipper of that vessel.

### **Application**

3.—(1) Subject to paragraph (2) and to the provisions of individual regulations, these Regulations apply to any ship which—

- (a) is a United Kingdom ship;
  - (b) is registered in another EEA State and is in United Kingdom waters or controlled waters;
  - (c) is neither a United Kingdom ship nor registered in an EEA State, but which operates under the authority of the United Kingdom in United Kingdom waters or in controlled waters; or
  - (d) does not fall within sub-paragraph (a), (b) or (c), but which is in a port in the United Kingdom or at an offshore terminal in United Kingdom waters or controlled waters.
- (2) These Regulations do not apply to—
- (a) a warship;
  - (b) a naval auxiliary; or
  - (c) a ship owned or operated by a State and used, for the time being, only on government non-commercial service.

## **PART 2**

### **SURVEY AND CERTIFICATION**

#### **Surveyors and the issue of certificates**

4.—(1) For the purposes of paragraph 1.3 of Annex I (which Annex sets out survey and certification requirements for anti-fouling systems on ships flying the flag of a Member State), in relation to a United Kingdom ship—

- (a) an officer “duly authorised by the administration of the Member State” means a surveyor of ships; and
- (b) “a surveyor nominated for the purpose by one of those administrations, or by a recognised organisation acting on behalf of the administration” means a surveyor appointed by a Certifying Authority.

(2) For the purposes of paragraph 2.1 of that Annex, in relation to the United Kingdom the function of issuing or endorsing an AFS-Certificate or other certificate referred to in that paragraph is to be carried out by a Certifying Authority.

#### **AFS-Certificates: ships of 400 gross tonnage or above**

- 5.—(1) This regulation applies in relation to a ship which—
- (a) is referred to in regulation 3(1), and
  - (b) is of 400 gross tonnage or above,

but does not apply in relation to a fixed or floating platform, a floating storage unit or a floating production storage and off-loading unit.

(2) A ship must not be put into service for the first time unless the requirements set out in paragraph (4) are met.

(3) Where—

(a) a ship was put into service for the first time on or after 1st July 2003 but before the date on which these Regulations come into force, or

(b) a ship's anti-fouling systems have been changed or replaced on or after 1st July 2003, the ship must not proceed on any voyage, or (if it is already on a voyage) continue on a voyage, unless the requirements set out in paragraph (4) are met.

(4) The requirements referred to in paragraphs (2) and (3) are that—

(a) the ship has been surveyed in accordance with Annex I,

(b) there is in force in relation to the ship an AFS-Certificate or other certificate referred to in paragraph 2.1 of that Annex, and

(c) that AFS-Certificate or other certificate is carried on board the ship.

#### **AFS-Declarations: ships of less than 400 gross tonnage**

6.—(1) This regulation applies in relation to a ship which—

(a) is referred to in regulation 3(1), and

(b) is of less than 400 gross tonnage but of 24 metres or more in length,

but does not apply in relation to a fixed or floating platform, a floating storage unit or a floating production storage and off-loading unit.

(2) A ship must not proceed on any voyage, or (if it is already on a voyage) continue on a voyage, unless there is carried on board the ship an AFS-Declaration, and that AFS-Declaration—

(a) is accompanied by appropriate documentation (such as a paint receipt or a contractor's invoice), or

(b) contains an appropriate endorsement.

#### **Arbitration**

7.—(1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out for the purposes of paragraph 1 of Annex I, the applicant may serve a written notice on the responsible person within 21 days 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) a 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 of competency as—

(i) a Class 1 Deck Officer, or

- (ii) a Class 1 Marine Engineer Officer;
  - (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 the fishing industry, 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 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 (2) to appointment by agreement between the parties is to be construed as a reference to appointment by such agreement or, in default of agreement, appointment by a sheriff.
- (7) The rules for arbitration set out in Merchant Shipping Notice No. M. 1613 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 a survey required by the EC Regulation;
  - (b) “Merchant Shipping Notice No. M. 1613” means the notice described as such and issued by the Maritime and Coastguard Agency, an executive agency of the Department for Transport;
  - (c) “qualified person” means—
    - (i) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis<sup>(8)</sup>;
    - (ii) a person who is an advocate or solicitor in Scotland of at least 7 years’ standing; or
    - (iii) a person who is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland of at least 7 years’ standing;
  - (d) “responsible person” means the Certifying Authority responsible under paragraph 2.1 of Annex I for the issue or endorsement of the AFS-Certificate or other certificate in connection with which the survey is carried out.

### **Cancellation of a certificate**

**8.—(1)** This regulation applies in relation to an AFS-Certificate or other certificate issued by, or at the request of, the Government of the United Kingdom pursuant to Annex I.

(2) The Secretary of State may cancel a certificate where the Secretary of State has reason to believe that—

- (a) the certificate was issued on the basis of false or erroneous information; or
- (b) since any survey required under the EC Regulation, any coating referred to in Article 5 of the EC Regulation (which refers to coatings forming a barrier to organotin compounds

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<sup>(8)</sup> The meaning of “a person who satisfies the judicial-appointment eligibility condition on an N-year basis” (where N is the number stated in the provision) is defined in section 50 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

leaching from underlying non-compliant anti-fouling systems) and borne by the ship has sustained damage or is otherwise deficient.

(3) The Secretary of State may require that a certificate which has expired or has been cancelled is to be surrendered within such time and in such manner as the Secretary of State may in writing direct.

(4) No person may—

- (a) intentionally alter a certificate;
- (b) intentionally make a false certificate;
- (c) knowingly or recklessly provide false information in connection with any survey required by the EC Regulation;
- (d) with intent to deceive, use or lend a certificate or permit a certificate to be used by another person;
- (e) fail to surrender a certificate when required to do so pursuant to paragraph (3); or
- (f) in Scotland, forge a certificate.

#### **Availability of certificates and other documents**

9.—(1) An AFS-Certificate or other certificate referred to in paragraph 2.1 of Annex I must be readily available for examination at all times on board every ship to which regulation 5 applies.

(2) An AFS-Declaration and the appropriate documentation or endorsement referred to in regulation 6(2) must be readily available for examination at all times on board every ship to which regulation 6 applies.

## PART 3

### INSPECTIONS, DETENTIONS, OFFENCES AND FEES

#### **General provisions on inspection of ships**

10.—(1) Subject to paragraph (6), for the purposes of checking compliance with the provisions of the EC Regulation and these Regulations, the following persons, namely—

- (a) a surveyor of ships,
- (b) a superintendent,
- (c) any person appointed by the Secretary of State, either generally or in a particular case, to exercise powers under section 258 of the 1995 Act<sup>(9)</sup>,

may at all reasonable times go on board a ship to which these Regulations apply and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of the EC Regulation.

(2) Section 258(1A), (3) and (5) of the 1995 Act (supplementary provisions relating to powers to inspect ships and their equipment) applies in relation to paragraph (1), and as if references in that section to “subsection (1) above” and “this section” were to paragraph (1).

(3) Subject to paragraph (6), the powers conferred by paragraph (1) are, if the ship is a United Kingdom ship, also exercisable outside United Kingdom waters and controlled waters, and may be so exercised by a proper officer as well as the persons mentioned in that paragraph.

(4) Subject to paragraph (6), sections 259(1), (2), (5), (7) and (9) to (12) and 260(1) and (2) of the 1995 Act (powers of inspectors in relation to premises and ships, and supplementary provisions)

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(9) 1995 c.21; section 258(1) was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1.

apply in relation to the inspection of a ship to which these Regulations apply for the purposes of checking compliance with the provisions of the EC Regulation and these Regulations, as they apply in relation to the inspection of a ship for the purposes of checking compliance with the 1995 Act, and as if—

- (a) references in those sections to “this Act” were to these Regulations;
- (b) for section 259(1)(b) there were substituted a reference to any ship to which these Regulations apply;
- (c) in section 259(2)(h)(iii), “or any instrument made under it” were omitted; and
- (d) in section 259(5), the reference to “subsections (2) and (4) above for the purposes of Chapter II of Part VI” were to “subsection (2) above”, and the reference to “those subsections” were to “that subsection”.

(5) Sections 261 to 266 of the 1995 Act (improvement notices and prohibition notices)(**10**) apply in relation to improvement notices and prohibition notices to be served in relation to a ship to which these Regulations apply, as they apply in relation to improvement notices and prohibition notices to be served in relation to other ships, and as if—

- (a) references in those sections to “the relevant statutory provisions” were to Articles 4 and 5(2), and regulations 5(2) and (3) and 6(2); and
- (b) subsection (4) of section 261 were omitted.

(6) The relevant powers to inspect a ship and its equipment, any part of the ship, any articles on board and any document carried in the ship, are limited to one or both of the following—

- (a) verifying whether the ship holds a valid AFS-Certificate or an AFS-Declaration,
- (b) a brief sampling of the ship’s anti-fouling system that does not affect the integrity, structure or operation of the anti-fouling system,

except where there are clear grounds for believing that the ship is in violation of the EC Regulation or these Regulations.

(7) In this regulation—

- (a) “proper officer” has the same meaning as in section 313(1) of the 1995 Act;
- (b) “relevant powers” means the powers conferred by paragraph (1) or (3), or by section 259 of the 1995 Act as applied by paragraph (4); and
- (c) “superintendent” means a mercantile marine superintendent appointed under section 296 of the 1995 Act.

### **Inspection of ships following a Government request**

**11.** Where a ship to which these Regulations apply is inspected under regulation 10, following receipt by the Secretary of State of a request for an investigation of the ship from the Government of a Party to the AFS-Convention, the Secretary of State must send a report of the inspection—

- (a) to the Government who requested the investigation; and
- (b) where the ship operates under the authority of the Government of a State other than the United Kingdom, to that Government.

### **General provisions on detention**

**12.—**(1) Subject to paragraph (2), where a surveyor of ships has clear grounds for believing that, in relation to a ship to which these Regulations apply—

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(10) Section 261 has been amended, but the amendments are not relevant to these Regulations.

- (a) an AFS-Certificate, or other certificate referred to in paragraph 2.1 of Annex I, is required to have been issued in respect of the ship but has not been issued, or has been issued but is not valid;
  - (b) an AFS-Declaration is required to be carried on board the ship, but is not carried;
  - (c) where an AFS-Declaration is required to be carried, appropriate documentation referred to in regulation 6(2)(a) is not carried on board the ship, and the AFS-Declaration does not contain an appropriate endorsement; or
  - (d) an offence under regulation 14 is being committed in respect of the ship,
- the ship is liable to be detained until a surveyor of ships is satisfied that it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.
- (2) A person having powers 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 proceeding to the nearest appropriate repair yard available.
- (3) Where a surveyor of ships has clear grounds for believing that an offence under regulation 14(2) has been committed in respect of a ship (but paragraph (1) does not apply), the ship is liable to be detained.
- (4) The power under this regulation to detain a ship may only be exercised if the ship in question is—
- (a) a United Kingdom ship;
  - (b) in a port or shipyard in the United Kingdom;
  - (c) at an offshore terminal in United Kingdom waters or controlled waters;
  - (d) a fixed platform in United Kingdom waters or controlled waters; or
  - (e) a floating platform, a floating storage unit or a floating production storage and off-loading unit, in United Kingdom waters or controlled waters, other than a platform or unit which is in transit.
- (5) Section 284 of the 1995 Act(11) (enforcing detention of a ship) applies where a ship is liable to be detained under this regulation as if—
- (a) references to detention of a ship under the Act were references to detention of the ship in question under this regulation; and
  - (b) subsection (7) were omitted.
- (6) Where a ship is liable to be detained under 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.
- (7) Where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.
- (8) Where a ship is detained under paragraph (3), a person having power to detain the ship must, at the request of the owner or master, immediately release the ship—
- (a) if no proceedings for an offence under regulation 14(2) 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 that regulation, having been instituted within that period, are concluded without the owner or master being convicted;

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(11) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1.



- (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 or master;
  - (d) where the owner or master is convicted of an offence under that regulation, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
  - (e) the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982<sup>(12)</sup>, and any bond or other financial security ordered by such court or tribunal is posted.
- (9) The Secretary of State must repay any sum paid in pursuance of paragraph (8)(c) or release any security so given—
- (a) if no proceedings for an offence under regulation 14(2) are instituted within the period of seven days beginning with the day on which the sum is paid; or
  - (b) if proceedings for that offence, having been instituted within that period, are concluded without the owner or master being convicted.
- (10) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (8)(c) and the owner or master is convicted of an offence under regulation 14(2), 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 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.
- (11) Section 145 of the 1995 Act<sup>(13)</sup> (interpretation of section 144) applies for the purposes of paragraphs (8) to (10) as if references to an offence under section 131 were references to an offence under regulation 14(2).

### **Right of appeal and compensation**

**13.**—(1) Regulations 11 and 12 (right of appeal and compensation) of the Merchant Shipping (Port State Control) Regulations 1995<sup>(14)</sup> (which by virtue of regulation 19 of those Regulations apply in relation to the exercise of powers of detention contained in safety regulations) apply in relation to a detention notice served under these Regulations as if these Regulations were made under section 85 of the 1995 Act, 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; and
  - (b) references to “access refusal notice”, “service of an access refusal notice” and “refusal of access” are omitted.

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<sup>(12)</sup> Cmnd. 8941.

<sup>(13)</sup> Section 145 was amended by the Criminal Justice Act 2003 (c.44), Schedule 36.

<sup>(14)</sup> S.I. 1995/3128, amended by S.I. 1998/1433, 1998/2198, 2001/2349 and 2003/1636.

**Offences**

14.—(1) Paragraphs (2) and (3) apply in relation to a ship referred to in regulation 3(1), except that paragraph (3) does not apply in relation to—

- (a) a fixed or floating platform;
- (b) a floating storage unit; or
- (c) a floating production storage and off-loading unit,

which was constructed before 1st July 2003 and has not been in dry-dock on or after 1st July 2003.

(2) Where a contravention of Article 4 (which prohibits the application on ships of organotin compounds which act as biocides) occurs on or after the date on which these Regulations come into force, the owner and master of the ship in question are each guilty of an offence.

(3) Where a contravention of Article 5(2) (which prohibits ships from bearing organotin compounds, unless they have a barrier coating) occurs or continues after the date on which these Regulations come into force, the owner and master of the ship in question are each guilty of an offence.

(4) Any contravention of—

- (a) regulation 5(2) or (3), 6(2), or 9(1) or (2) is an offence by the owner and the master of the ship;
- (b) regulation 8(4) is an offence by the person in question.

(5) An offence under this regulation is punishable—

- (a) on summary conviction by a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment by a fine.

**Service of documents on foreign companies**

15. Section 143(6) of the 1995 Act (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 regulation 14 as it applies to proceedings for an offence under section 131, and as if the reference in section 143(6) to section 131 were to regulation 14.

**Enforcement and application of fines**

16. Section 146(1) of the 1995 Act (enforcement of fines) applies to any fine for an offence under regulation 14, and as if 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 or master for an offence under regulation 14.

**Offences committed due to the act or default of another person**

17. Where an offence under regulation 14 is committed, or would be committed but for the operation of regulation 19, by any person due to the act or default of some other person, that other person is also guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this regulation whether or not proceedings are taken against the first mentioned person.

**Offences by officers of bodies corporate**

18.—(1) Where a body corporate is guilty of an offence under regulation 14 and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate

or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that person's functions of management as if that person were a director of the body corporate.

(3) Where an offence under regulation 14 committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of that offence and liable to be proceeded against and punished accordingly.

### **Defences**

**19.** In any proceedings for an offence under regulation 14, it is a defence for the person charged to prove that that person took all reasonable steps and exercised all due diligence to ensure that the requirement in question was complied with.

### **Fees**

**20.** Section 302(1) and (3) of the 1995 Act (power of the Secretary of State, with the consent of the Treasury, to make regulations prescribing fees to be charged) applies in relation to the making of regulations to prescribe fees to be charged in respect of the doing of anything in pursuance of the EC Regulation or these Regulations, and as if—

- (a) in paragraphs (a) and (b) of section 302(1), the references to “this Act” were to the EC Regulation or these Regulations; and
- (b) in section 302(3), the reference to “this Act” were to the regulations prescribing those fees.

Signed by authority of the Secretary of State for Transport

19th October 2009

*Paul Clark*  
Parliamentary Under Secretary of State  
Department for Transport

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

In so far as it is necessary to do so, these Regulations give effect in the United Kingdom to Regulation (EC) No 782/2003 (O.J. No. L 115, 9.5.2003, p.1) of the European Parliament and of the Council of 14th April 2003 on the prohibition of organotin compounds on ships (“the EC Regulation”), as amended.

The Regulations make supplementary provision in relation to Annex I of the EC Regulation (which concerns survey and certification of ships for anti-fouling purposes) (*Part 2*). In particular, they prohibit certain ships from proceeding on a voyage without the anti-fouling certificates or other documentation specified in the Regulations.

The Regulations make provision in relation to inspection and detention of UK ships and other ships, for non-compliance with anti-fouling requirements (*Part 3*). The Regulations also provide for the creation of offences and penalties where organotin compounds which act as biocides are applied or re-applied, or where a ship bears such compounds without also bearing a coating to act as a barrier to prevent leaching. They also provide for the creation of offences and penalties relating to certificates and declarations (*regulation 14*).

Section 2(2) of the European Communities Act 1972 is relied upon as the enabling power for these Regulations, since the powers in existing merchant shipping legislation are insufficiently wide to cover all the matters requiring to be dealt with in connection with the EC Regulation.

An Impact Assessment has been prepared and copies may be obtained from the Maritime and Coastguard Agency (“the MCA”), Spring Place, 105 Commercial Road, Southampton SO15 1EG. A copy has also been placed in the library of each House of Parliament. The Impact Assessment is also annexed to the Explanatory Memorandum which is available alongside these Regulations on the OPSI website [www.opsi.gov.uk](http://www.opsi.gov.uk).

The MCA is issuing a Marine Guidance Note in relation to these Regulations, and copies of that Note and of Merchant Shipping Notice No. M. 1613 (referred to in regulation 7) may be obtained from M-Notices Subscriptions, PO Box 362, Europa Park, Grays, Essex RM17 9AY (telephone number 01375 484548; fax 01375 484556; e-mail orders [mnotices@ecgroup.co.uk](mailto:mnotices@ecgroup.co.uk)). Copies may also be accessed via the MCA’s website <http://www.mcga.gov.uk>.

Copies of the AFS-Convention may be obtained from the International Maritime Organization at 4 Albert Embankment, London SE1 7SR.