

1999 No. 1957

MERCHANT SHIPPING

**The Merchant Shipping (Marine Equipment) Regulations
1999**

<i>Made - - - -</i>	<i>6th July 1999</i>
<i>Laid before Parliament</i>	<i>15th July 1999</i>
<i>Coming into force</i>	<i>5th August 1999</i>

The Secretary of State for the Environment, Transport and the Regions, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972^(a) in relation to measures relating to maritime transport^(b), and having consulted the persons referred to in section 86(4) of the Merchant Shipping Act 1995^(c) in so far as the following Regulations are made in exercise of the powers conferred by sections 85 and 86^(d) of that Act, in exercise of the powers conferred by—

- (i) section 2(2) of the European Communities Act 1972, and
 - (ii) sections 85(1)(a) and (b), (3), (5) to (7) and 86(1) of the Merchant Shipping Act 1995,
- and all other powers enabling him in that behalf, hereby makes the following Regulations:

PART I: PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Marine Equipment) Regulations 1999 and shall come into force on 5th August 1999.

Interpretation

2.—(1) In these Regulations—

“applicable international standards” means the requirements of the relevant international convention which the equipment must satisfy, as specified in Merchant Shipping Notice MSN 1734;

“the Directive” means Council Directive 96/98/EC on Marine Equipment^(e);

“EC declaration of conformity to type procedure” means the procedure specified in regulation 13 below;

“EC design-examination certificate” means the certificate issued by a notified body in respect of equipment pursuant to regulation 17(7) below;

^(a) 1972 c. 68.

^(b) S.I. 1994/757.

^(c) 1995 c. 21.

^(d) Sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 8 and are applied to hovercraft by the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350).

^(e) O.J. No. L46, 17.2.97, p. 26, as amended by Commission Directive 98/85/EC, O.J. No. L315, 25.11.98, p. 14.

“EC full quality assurance procedure” means the procedure specified in regulation 17 below;

“EC production quality assurance procedure” means the procedure specified in regulation 14 below;

“EC product quality assurance procedure” means the procedure specified in regulation 14 below;

“EC product verification procedure” means the procedure specified in regulation 15 below;

“EC type-examination certificate” means the certificate issued by the notified body in respect of equipment pursuant to regulation 12(5) below;

“EC type-examination procedure” means the procedure specified in regulation 12 below;

“EC unit verification conformity-assessment procedure” means the procedure specified in regulation 16 below;

“international voyage” means a voyage from a port in one country to a port in another country, either of the countries being a country to which the 1974 International Convention for the Safety of Life at Sea**(a)** applies;

“mark of conformity” means the mark referred to in regulation 18 below;

“Maritime and Coastguard Agency” means the executive agency so named of the Department of the Environment, Transport and the Regions;

“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 any such document amending or replacing that notice;

“notified body” means a body designated by the Secretary of State under regulation 5 below as a notified body for the purposes of these Regulations;

“relevant international conventions” means—

- (i) the 1966 International Convention on Load Lines**(b)**;
- (ii) the 1972 Convention on the International Regulations for Preventing Collisions at Sea**(c)**;
- (iii) the 1973 International Convention for the Prevention of Pollution from Ships**(d)**;
- (iv) the 1974 International Convention for the Safety of Life at Sea,

including their Protocols, annexes and amendments thereto as at 1st January 1999;

“scheduled service” means an advertised service at specified intervals along specified routes.

(2) Unless given a different meaning in these Regulations, words and expressions specifically given a meaning by article 2 of the Directive shall have that meaning in these Regulations.

(3) For the purposes of these Regulations ships shall be arranged in Classes as defined in the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998**(e)**.

(4) Where a ship is managed by a person other than the owner (whether on behalf of the owner, of some other person or on his own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that person.

(a) Cmnd. 7874.

(b) Cmnd. 3708.

(c) The international Regulations are set out in Merchant Shipping Notice No. 1642/COL REG 1.

(d) Cmnd. 5748 and Cmnd. 7347.

(e) S.I. 1998/1012 amended by S.I. 1999/992.

(5) Any approval, direction, prohibition or restriction given pursuant to these Regulations shall be given in writing and shall specify the date on which it takes effect and the conditions (if any) on which it is given.

Amendment of Regulations

3. The Regulations specified in Schedule 1 shall be amended as specified therein.

Application

4. These Regulations shall apply to—

- (a) any United Kingdom ship; and
 - (b) as respects equipment other than marine pollution equipment which is not also equipment for securing the safety of ships and persons on them, any other ship being—
 - (i) a Class II(A) or IX ship;
 - (ii) a Class II ship operating on a scheduled service from any port in the United Kingdom to any port in another member State, or vice versa; or
 - (iii) a high-speed craft operating on—
 - (aa) a scheduled service from any port in the United Kingdom to any port in another member State, or vice versa; or
 - (bb) a voyage which is not an international voyage,
- to which the Merchant Shipping (High-Speed Craft) Regulations 1996 apply^(a).

Designation of notified bodies

5.—(1) If it appears to the Secretary of State that—

- (a) the Maritime and Coastguard Agency, or
- (b) any other body,

satisfies the minimum criteria specified in Annex C of the Directive, he may designate that Agency or other body to carry out the procedures specified in Article 10 of the Directive.

(2) Any such designation may be made—

- (a) for the purposes of all or any of the functions to be performed by notified bodies under these Regulations;
- (b) in relation to all equipment to which these Regulations apply or only such equipment as may be specified;
- (c) for an unlimited period, or for a specified period, or for specified purposes; and
- (d) subject to conditions (including conditions which are to apply upon or following withdrawal of the designation).

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

- (a) the designated body so requests;
- (b) the body ceases to comply with the minimum criteria specified in Annex C of the Directive; or
- (c) the body fails to comply with any condition imposed under paragraph (2) above.

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

- (a) the designated body so requests; or
- (b) having regard to these Regulations or the Directive, it appears to him necessary or expedient to do so.

(5) The Secretary of State may from time to time carry out inspections of the functions performed by a designated body under these Regulations with a view to verifying whether the

(a) S.I. 1996/3188.

body complies with the provisions of its designation and the provisions of these Regulations and the Directive; in particular the inspection shall verify that the body still complies with the minimum criteria specified in Annex C of the Directive.

(6) Where the Secretary of State—

- (a) refuses an application for designation under paragraph (1) above or imposes any condition more onerous than those proposed by the body;
- (b) withdraws a designation under paragraph (3)(b) or (c) above; or
- (c) varies or amends a designation under paragraph (4)(b) above,

he shall inform the body in writing of the grounds for his decision.

(7) If for any reason a designated body ceases to be a designated body under this regulation, the Secretary of State may designate another designated body to take over its functions in respect of such cases as he may specify.

PART II: REQUIREMENTS FOR EQUIPMENT

6.—(1) Subject to paragraph (3) and regulations 7 to 10 below, equipment specified in Merchant Shipping Notice MSN 1734 which is placed on board either—

- (a) a new ship; or
- (b) an existing ship, unless it is placed on board the ship to replace equipment carried on the ship and the relevant international convention which requires that such equipment be carried makes different provision as to the standard of performance or assessment for such replacement equipment,

on or after 5th August 1999, shall comply with the applicable international standards as specified in Merchant Shipping Notice MSN 1734.

(2) Equipment shall not be taken to comply with the applicable international standards referred to in paragraph (1) above unless—

- (a) it satisfies the testing standards of the relevant international convention, as specified in Merchant Shipping Notice MSN 1734; and
- (b) it has been manufactured in accordance with the EC conformity-assessment procedure as set out in regulation 11 below and the mark of conformity, identification and last two digits of the year in which the mark was affixed have been affixed pursuant to regulation 18 below.

(3) Notwithstanding paragraph (1) above, equipment manufactured before 1st January 1999 in accordance with the procedures for type-approval in force in a member State before 20th December 1996 may be—

- (a) placed on the market, supplied for use or exposed or offered for supply within the UK; and
- (b) placed on board a ship the relevant safety certificate of which was issued by or on behalf of that member State in accordance with the relevant international convention,

before 1st January 2001.

Exception for technical innovation

7.—(1) Notwithstanding regulation 6 above, in exceptional circumstances of technical innovation, the Secretary of State may allow equipment which does not comply with the EC conformity-assessment procedures set out in regulation 11 below to be placed on board a ship if he is satisfied, by trial or otherwise, that such equipment is at least as effective as equipment which does comply with those procedures.

(2) The Secretary of State shall only allow radiocommunications equipment to be placed on board a ship in the circumstances set out in paragraph (1) above if he is satisfied that such equipment does not unduly affect the requirements of the radio-frequency spectrum.

(3) The Secretary of State shall issue a certificate in respect of any equipment which he allows to be placed on board a ship pursuant to paragraph (1) above which certificate shall—

- (a) record the Secretary of State's approval of the equipment;
- (b) specify any restrictions or conditions on the use of the equipment; and
- (c) be carried on board the ship with the equipment at all times.

(4) If a ship registered in a country other than the United Kingdom, with equipment on board which has received the approval of its flag State pursuant to article 14 of the Directive, is transferred to the United Kingdom register, the Secretary of State may take the necessary measures, including carrying out, or having carried out, such tests and practical demonstrations as he considers necessary, to ensure that the equipment is at least as effective as equipment which does comply with the EC conformity-assessment procedures.

Exception for testing or evaluation

8.—(1) Notwithstanding regulation 6 above, the Secretary of State may allow equipment which does not comply with either the EC conformity-assessment procedures set out in regulation 11 below or regulation 7 above to be placed on board a ship to facilitate the testing or evaluation of such equipment if—

- (a) the Secretary of State issues a certificate in respect of the equipment which complies with the conditions specified in paragraph (2) below;
- (b) the permission in respect of the equipment is limited to a short period of time; and
- (c) the equipment is not relied on in place of equipment which satisfies the requirements of regulation 6 above or used to replace any such equipment.

(2) The conditions referred to in paragraph (1) above in respect of a certificate issued under that paragraph are:

- (a) it shall record the Secretary of State's approval for the equipment to be placed on board;
- (b) it shall specify any restrictions or conditions on the use of the equipment; and
- (c) it shall be carried with the equipment at all times.

(3) The Secretary of State shall only allow radiocommunications equipment to be placed on board a ship in the circumstances set out in paragraph (1) above if he is satisfied that such equipment does not unduly affect the requirements of the radio-frequency spectrum.

Transfer of new ship

9.—(1) Where a new ship is transferred to the United Kingdom register the Secretary of State shall inspect, or have inspected, the equipment on board to which these Regulations apply to verify that the condition of such equipment corresponds to its safety certificates and that it complies with either regulation 6 above or is equivalent.

(2) If the Secretary of State is not satisfied that equipment on a new ship transferred to the United Kingdom register complies with regulation 6 or is equivalent, he shall direct in writing that the owner replace the equipment.

(3) Notwithstanding regulation 6 above, if, in respect of a new ship transferred to the United Kingdom register, the Secretary of State considers that any equipment on board does not comply with regulation 6 above but is equivalent he shall issue a certificate in respect of such equipment which shall—

- (a) record the Secretary of State's approval of the equipment;
- (b) specify any restrictions or conditions on the use of the equipment; and
- (c) be carried on board the ship with the equipment at all times.

(4) Any radiocommunications equipment on board a new ship transferred to the United Kingdom register shall not unduly affect the requirements of the radio-frequency spectrum.

Replacement of equipment outside European Community

10.—(1) Notwithstanding regulation 6 above, if equipment to which these Regulations apply must be replaced in a port outside the European Community and it is not practicable for reasons of time, delay or cost to replace the equipment with equipment which complies with the requirements of regulation 6 above, equipment which does not comply with that regulation may be placed on board the ship if the conditions specified in paragraph (2) below are complied with.

(2) The conditions referred to in paragraph (1) are:

- (a) if an agreement has been concluded between the European Community and the country in which the port is located on the mutual recognition of such organisations, the replacement equipment shall be accompanied by documentation issued by a recognised organisation equivalent to a body designated under regulation 5 above; or
- (b) if it is impossible to comply with sub-paragraph (a) above, the equipment shall be accompanied by documentation issued by a member State of the International Maritime Organisation which is a party to the relevant international convention certifying that the equipment complies with the applicable international standards.

(3) If equipment is replaced on a ship in accordance with paragraph (1) above the owner of the ship shall inform the Secretary of State immediately of the nature and characteristics of the equipment and the circumstances rendering it impracticable to place equipment on board which complied with the requirements of regulation 6 above.

(4) The Secretary of State shall ensure that equipment replaced outside the European Community pursuant to paragraph (1) above complies with the requirements of regulation 6 above and may carry out, or have carried out, such tests on the equipment as he considers necessary for this purpose.

(5) If the equipment which is replaced in a port outside the Community pursuant to paragraph (1) above is radiocommunications equipment, such equipment shall not unduly affect the requirements of the radio-frequency spectrum.

PART III: EC CONFORMITY-ASSESSMENT PROCEDURE

EC conformity-assessment procedure

11.—(1) Subject to paragraph (2) below, the EC conformity-assessment procedure in accordance with which equipment shall be manufactured is—

- (a) the EC type-examination procedure and, subject to the limitations specified in Merchant Shipping Notice MSN 1734, one of the following:
 - (i) the EC declaration of conformity to type procedure;
 - (ii) the EC production quality assurance procedure;
 - (iii) the EC product quality assurance procedure; or
 - (iv) the EC product verification procedure; or
- (b) the EC full quality assurance procedure.

(2) Equipment produced individually or in small quantities and not in series or in mass may be manufactured in accordance with the EC unit verification conformity-assessment procedure.

EC type-examination

12.—(1) An application for EC type-examination made to a notified body in respect of equipment may be made in writing by the manufacturer or his authorised representative within the Community (in this regulation referred to as “the applicant”).

(2) An application under paragraph (1) above shall include—

- (a) the name and address of the manufacturer and, if the application is lodged by the manufacturer’s authorised representative, the name and address of that person;
- (b) a written declaration that the same application has not been lodged simultaneously with any other notified body; and
- (c) the technical documentation specified in Schedule 2.

(3) The applicant shall place at the disposal of the notified body a specimen representative of the product envisaged and shall provide further specimens if so requested by the notified body.

(4) On an application made to it under paragraph (1) above a notified body shall—

- (a) examine the technical documentation submitted by the applicant and verify that the specimen has been manufactured in accordance with the technical documentation;

- (b) agree with the applicant where the examinations and tests shall be carried out; and
- (c) carry out, or have carried out, the appropriate examinations and tests to check whether the applicable international standards are satisfied.

(5) Where the notified body is satisfied, after performing its functions under paragraph (4) above, that the specimen satisfies the applicable international standards, it shall issue an EC type-examination certificate to the applicant.

(6) An EC type-examination certificate issued pursuant to paragraph (5) above shall include—

- (a) the name and address of the manufacturer;
- (b) details of the equipment to which it relates;
- (c) the results of the examinations and tests carried out;
- (d) the conditions (if any) of its validity; and
- (e) the information necessary to identify the approved specimen,

and a list of the relevant parts of the technical documentation shall be annexed to the certificate and a copy kept by the notified body.

(7) Where a notified body refuses to issue an EC type-examination certificate, it shall give in writing detailed reasons for its decision to the applicant, and if that notified body is a body other than the Maritime and Coastguard Agency it shall provide a copy of such reasons to the Maritime and Coastguard Agency.

(8) If an applicant applies for an EC type-examination for equipment in respect of which an EC type-examination certificate has been refused, he shall, in his application to the notified body, include all relevant documentation, including—

- (a) the original examination and test results;
- (b) the detailed reasons provided by the notified body for the previous refusal; and
- (c) details of all modifications made to the equipment since the previous application.

(9) If any modifications are made to equipment in respect of which an EC type-examination certificate has been issued, the applicant shall inform the notified body which issued the certificate.

(10) If any modifications notified under paragraph (9) above are such that they may affect the equipment's compliance with applicable international standards, the notified body shall satisfy itself, by further examinations and tests if necessary, that the equipment as modified complies with the applicable international standards and, if so satisfied, shall—

- (a) approve the modifications to the equipment; and
- (b) issue an addition to the original EC type-examination certificate in respect thereof.

(11) A notified body shall—

- (a) on request, provide flag member States and other notified bodies with all relevant information concerning the EC type-examination certificates and additions thereto it has issued, including any it has withdrawn;
- (b) on request, provide other notified bodies with copies of the EC type-examination certificates and additions thereto it has issued; and
- (c) keep at the disposal of other notified bodies the annexes to the EC type-examination certificates it has issued.

(12) A manufacturer, or his authorised representative established within the Community, shall, in respect of an EC type-examination certificate issued to him, keep a copy of the technical documentation submitted with the application and the EC type-examination certificate, and any additions thereto, for at least 10 years after the last item of equipment to which the certificate relates has been manufactured.

EC declaration of conformity to type

13.—(1) If a manufacturer decides, in accordance with the requirements of Merchant Shipping Notice MSN 1734, to apply the EC declaration of conformity to type procedure to

equipment in respect of which an EC type-examination certificate has been issued, the manufacturer or his authorised representative established within the Community shall—

- (a) ensure and declare that the items of equipment—
 - (i) conform to the specimen in respect of which the EC type-examination certificate was issued; and
 - (ii) satisfy the applicable international standards;
- (b) affix the mark referred to in regulation 18 below to each item of equipment to which it relates; and
- (c) draw up a written declaration of conformity.

(2) A manufacturer applying the EC declaration of conformity to type procedure to equipment shall take all measures necessary to ensure that the equipment's manufacturing process ensures that the equipment—

- (a) conforms to the specimen in respect of which the EC type-examination certificate was issued; and
- (b) satisfies the applicable international standards.

(3) The manufacturer or his authorised representative established within the Community shall keep a copy of the declaration of conformity referred to in paragraph (1)(c) above for at least 10 years after the last item of equipment to which it relates has been manufactured.

EC production quality assurance and product quality assurance procedures

14.—(1) A manufacturer who decides, in accordance with Merchant Shipping Notice MSN 1734, to apply either the EC production quality assurance procedure or the EC product quality assurance procedure to equipment in respect of which an EC type-examination certificate has been issued, may apply to a notified body for approval of his quality assurance system; and such an application shall be made in writing and shall include—

- (a) all relevant information for the equipment category envisaged;
- (b) the documentation concerning the system;
- (c) the technical documentation of the specimen of the equipment and a copy of the EC type-examination certificate issued in respect of it; and
- (d) an undertaking by the manufacturer—
 - (i) to fulfil the obligations arising from the approved system; and
 - (ii) to maintain the system as approved so that it remains adequate and efficient.

(2) On an application made to it under paragraph (1) above, the notified body shall evaluate the manufacturer's quality assurance system to determine whether—

- (a) on an application for approval of a system to be used in a production quality assurance procedure, it satisfies the requirements referred to in paragraph 3.2, of the section entitled "Production-Quality Assurance (Module D)", in Annex B of the Directive and set out in Merchant Shipping Notice 1734; or
- (b) on an application for approval of a system to be used in a product quality assurance procedure, it satisfies the requirements referred to in paragraph 3.2, of the section entitled "Product-Quality Assurance (Module E)", in Annex B of the Directive and set out in Merchant Shipping Notice 1734,

and, if the system implements the relevant harmonised standard, it shall be taken to satisfy the said requirements.

(3) When determining whether a manufacturer's quality assurance system satisfies the requirements referred to in paragraph (2) above, the notified body shall—

- (a) include on the relevant auditing team at least one person with experience of assessment in the equipment technology concerned; and
- (b) include within the assessment procedure at least one visit to the manufacturer's premises.

(4) Where the notified body is satisfied, on an application made to it under paragraph (1) above and after evaluating the manufacturer's quality assurance system, that the system satisfies the relevant requirements referred to in paragraph (2) above it shall grant to the manufacturer an approval of the system.

(5) In its approval under paragraph (4) above the notified body shall include the conclusions of any examinations and the evaluation carried out by it.

(6) A manufacturer to whom an approval has been granted in respect of a quality assurance system under paragraph (4) above shall have authority to make EC declarations of conformity in accordance with paragraph (13) below.

(7) Where the notified body is not satisfied as is mentioned in paragraph (4) above, it shall inform the manufacturer in writing—

- (a) of its decision to refuse to grant an approval in respect of the system; and
- (b) the conclusions of any examinations and the evaluation carried out by it.

(8) Where a notified body has granted an approval under paragraph (4) above, it shall periodically carry out audits of the approved system to ensure that the manufacturer maintains and applies the approved system and fulfils his obligations arising out of the approved system.

(9) The notified body shall provide the manufacturer with an audit report in respect of each periodic audit undertaken in accordance with paragraph (8) above.

(10) In addition to the periodic audits referred to in paragraph (8) above, the notified body may make unannounced visits to the manufacturer's premises for the same purposes, and in the course of such visits may carry out tests, or cause tests to be carried out, if such tests are necessary to check whether the approved system is functioning correctly.

(11) The notified body shall provide the manufacturer—

- (a) if it performs a visit as is mentioned in paragraph (10) above, with a visit report; and
- (b) if it performs such tests as are mentioned in paragraph (10) above, with a test report.

(12) Where a manufacturer has been granted an approval by a notified body in respect of his quality assurance system, he shall—

- (a) ensure and declare that the items of equipment concerned conform to the specimen in respect of which the EC type-examination certificate was issued;
- (b) allow the notified body access for purposes of inspection to his premises where the equipment is manufactured, inspected, tested and stored;
- (c) provide the notified body with all necessary information to enable it to perform its surveillance functions under these Regulations, in particular:
 - (i) the documentation relating to the system; and
 - (ii) the relevant quality records, such as inspection reports and test data, calibration data and qualification reports in relation to the personnel involved in the system; and

(d) maintain, at the disposal of the Secretary of State, for at least 10 years after the last item of equipment to which the system relates has been manufactured, the documentation referred to in—

- (i) paragraph (1)(b) above;
- (ii) paragraph (13)(c) below; and
- (iii) paragraphs (4), (7), (9) and (11) above.

(13) Where a manufacturer has been granted an approval under paragraph (4) above by a notified body, the manufacturer or his authorised representative established within the Community shall—

- (a) affix the mark referred to in regulation 18 below to each item of equipment; which mark shall be accompanied by the identification symbol and number of the notified body responsible for the auditing referred to in paragraph (8) above;
 - (b) draw-up a written declaration of conformity; and
 - (c) inform the notified body in writing of any intended modification of the system.
- (14) Where a notified body is informed under paragraph (13)(c) above that a manufacturer intends to modify an approved system, it shall—
- (a) assess the modifications proposed and determine whether the modified system would still satisfy the relevant requirements referred to in paragraph (2) above or whether a reassessment is required; and
 - (b) inform the manufacturer of its decision in writing, including the conclusions of any examinations and the evaluation carried out.
- (15) A notified body shall, on request, provide the flag member State and the other notified bodies with the relevant information concerning the approvals granted by it, including those withdrawn, under paragraph (4) above.

EC product verification procedure

15.—(1) A manufacturer who decides, in accordance with Merchant Shipping Notice MSN 1734, to apply the EC product verification procedure to equipment in respect of which an EC type-examination certificate has been issued, may apply to a notified body for the carrying out of the appropriate examinations; and such an application shall be made in writing and shall include—

- (a) a copy of the EC type-examination certificate in conformity with which the equipment is to be manufactured; and
- (b) a statement as to whether the manufacturer requires the notified body to examine each item of equipment or only such batches of equipment as are selected by the body on a random basis.

(2) On an application under paragraph (1) above, the notified body shall carry out appropriate examinations and tests in accordance with paragraphs 3, 4.1 and 5.2 (as appropriate), of the section entitled “Product Verification (Module F)”, in Annex B of the Directive and set out in Merchant Shipping Notice MSN 1734 to check that the equipment complies with the applicable international standards.

(3) Where, after conducting the appropriate examinations and tests, the notified body is satisfied that an item of equipment has been manufactured in conformity with the EC type-examination certificate it shall affix, or cause to be affixed, to the item its identification control symbol and number and draw-up a written certificate of conformity relating to the examinations and tests carried out.

(4) Where a notified body carries out the appropriate examinations and tests in relation to a batch of equipment, it shall not affix its identification control symbol or number to any item of equipment in the batch which is not manufactured in accordance with the EC type-examination certificate.

(5) Where, after conducting the appropriate examinations and tests in relation to a batch of equipment, the notified body is not satisfied as is mentioned in paragraph (3) above it shall inform the manufacturer in writing—

- (a) of its decision;
- (b) of the conclusions of the examinations and tests carried out;
- (c) that the batch of equipment shall not be placed on the market, supplied for use or exposed or offered for supply within the United Kingdom.

(6) Where a manufacturer’s equipment is examined and tested by a notified body under this regulation, the manufacturer or his authorised representative established within the Community shall—

- (a) ensure and declare that the items of equipment conform to the specimen in respect of which the EC type-examination certificate was issued;
- (b) affix the mark referred to in regulation 18 below to each item of equipment to which it relates;

- (c) draw-up a written declaration of conformity;
 - (d) keep a copy of the declaration of conformity referred to in sub-paragraph (c) above for at least 10 years after the last item of equipment to which it relates has been manufactured; and
 - (e) when the equipment has been placed on board a ship, ensure that he is able to supply the notified body's certificate of conformity referred to in paragraph (3) above, on request, to the ship's flag State.
- (7) The manufacturer shall—
- (a) take all measures necessary to ensure that the manufacturing process ensures that the equipment conforms to the specimen in respect of which the EC type-examination certificate was issued; and
 - (b) if the equipment is to be examined in batches—
 - (i) present the equipment to the notified body in homogeneous batches; and
 - (ii) take all measures necessary to ensure that the manufacturing process ensures the homogeneity of each batch manufactured.
- (8) Where the examinations are carried out on batches of equipment the manufacturer may, with the authority of the notified body conducting the examinations and tests, affix the body's identification control symbol and number to the items of equipment during the manufacturing process.

EC unit verification

16.—(1) A manufacturer who decides, in accordance with regulation 11(2) above, to apply the EC unit verification procedure to equipment may apply to a notified body for the carrying out of the appropriate examinations; and such an application shall be made in writing and include the technical documentation specified in Schedule 2 relating to the equipment to enable the notified body to perform its functions under paragraph (2) below.

(2) On an application under paragraph (1) above, the notified body shall carry out appropriate examinations and tests in accordance with paragraph 2, of the section entitled "Unit Verification (Module G)", in Annex B of the Directive and set out in Merchant Shipping Notice MSN 1734 to establish whether the equipment complies with the applicable international standards.

(3) Where, after conducting the appropriate examinations and tests, the notified body is satisfied that an item of equipment has been manufactured in conformity with the applicable international standards it shall affix, or cause to be affixed, to the item its identification control symbol and number and draw-up a written certificate of conformity relating to the examinations and tests carried out.

(4) Where a manufacturer's equipment is examined and tested by a notified body under this regulation, the manufacturer or his authorised representative established within the Community shall—

- (a) ensure and declare that the items of equipment satisfy the applicable international standards;
- (b) affix the mark referred to in regulation 18 below to each item of equipment to which it relates;
- (c) draw-up a written declaration of conformity;
- (d) keep a copy of the declaration of conformity referred to in sub-paragraph (c) above for at least 10 years after the last item of equipment to which it relates has been manufactured; and
- (e) when the equipment has been placed on board a ship, ensure that he is able to supply the notified body's certificate of conformity referred to under paragraph (3) above, on request, to the ship's flag State.

EC full quality assurance

17.—(1) A manufacturer who decides, in accordance with regulation 11(1) above, to apply the EC full quality assurance procedure to equipment, may apply to any notified body for

approval of his quality assurance system (in this regulation referred to as “the system”); and such an application shall be made in writing and shall include–

- (a) all relevant information for the equipment category envisaged; and
- (b) the documentation concerning the system.

(2) On an application made to it under paragraph (1) above, the notified body shall evaluate the system to determine whether it satisfies the requirements referred to in paragraph 3.2, of the section entitled “Full-Quality Assurance (Module H)”, in Annex B of the Directive and set out in Merchant Shipping Notice MSN 1734 and, if the system implements the relevant harmonised standard, it shall be taken to satisfy the said requirements.

(3) Paragraphs (3) to (15) of regulation 14 above shall apply in relation to a system which is the subject of an application under this regulation as they apply to the production quality assurance system and product quality assurance system under that regulation, as if for paragraph (12)(a) there were substituted the following:

“(a) ensure and declare that the items of equipment concerned satisfy the applicable international standards;”.

(4) In addition to the application under paragraph (1) above, the manufacturer shall apply to a notified body for an approval of the design of the equipment which is to be subject to the EC full quality assurance procedure.

(5) An application under paragraph (4) above shall include all documentation necessary to enable the notified body to understand the design, manufacture and operation of the equipment and to assess its compliance with the applicable international standards; and in particular–

- (a) the technical design specifications, including standards, that have been applied to the design; and
- (b) the necessary supporting evidence, including the results of any tests carried out in an appropriate laboratory by the manufacturer, or on his behalf, for the adequacy of the technical design specifications, in particular where the standards specified in regulation 6 above have not been applied in full.

(6) On an application made to it under paragraph (4) above, the notified body shall examine the design to determine whether it satisfies the applicable international standards.

(7) Where a notified body is satisfied, after examining the design pursuant to paragraph (6) above, that the design satisfies the applicable international standards it shall issue to the manufacturer an EC design-examination certificate.

(8) A certificate issued under paragraph (7) above shall include–

- (a) the conclusions of the examination;
- (b) the conditions of its validity;
- (c) the data necessary to identify the approved design; and
- (d) if relevant, a description of the equipment’s functioning.

(9) Where the notified body is not satisfied as is mentioned in paragraph (7) above, it shall inform the manufacturer in writing–

- (a) of its decision to refuse to grant an approval in respect of the design; and
- (b) the conclusions of any examinations and the evaluation carried out by it.

(10) If any modification is made to a design in respect of which an EC design-examination certificate has been issued, the applicant shall inform the notified body which issued the certificate.

(11) If a modification such as is referred to in paragraph (10) above is such that it may affect the equipment’s compliance with the applicable international standards or any prescribed

conditions for the use of the equipment, the notified body shall satisfy itself, by further examinations and tests if necessary, that the design as modified complies with the applicable international standards and, if so satisfied, shall—

- (a) approve the modifications to the design; and
- (b) issue an addition to the original EC design-examination certificate in respect thereof.

(12) A notified body shall on request, provide flag member States and other notified bodies with all relevant information concerning—

- (a) EC design-examination certificates, and additions thereto, it has issued, including any it has withdrawn; and
- (b) EC design approvals, and additions thereto, it has granted, including any it has withdrawn.

Affixing of mark of conformity

18.—(1) Subject to paragraph (2) below, the mark to be affixed by the manufacturer or his authorised representative within the Community in accordance with the relevant EC conformity-assessment procedure shall be affixed—

- (a) to each item of equipment to which it relates; or
- (b) to a data plate attached to the equipment,

and shall satisfy the requirements of paragraph (3) below.

(2) If it is not possible or warranted due to the nature of the item of equipment to affix the mark as required by paragraph (1) above, the mark shall be affixed to—

- (a) the packaging of the item of equipment;
- (b) a label on the item of equipment or its packaging; or
- (c) a leaflet distributed with the item of equipment.

(3) The requirements referred to in paragraph (1) above are that the mark shall be affixed to the item of equipment or data plate so as to be visible, legible and indelible throughout the anticipated life of the equipment.

(4) The form of the mark to be affixed shall be that set out in Schedule 3.

(5) The mark as affixed shall be followed by—

- (a) the identification symbol and number of the notified body which carried out, or had carried out, the EC conformity-assessment procedure if that body is involved in the production control phase; and
- (b) the last two digits of the year in which the mark was affixed.

(6) Where the identification symbol and number of the notified body is to be affixed under paragraph (5)(a) above, it shall be affixed under the responsibility of the notified body either by that body itself or by the manufacturer or his authorised representative established in the Community.

(7) No marks or inscriptions which are likely to mislead any person with regard to the meaning or the graphics of the mark shall be affixed.

(8) The mark shall be affixed at the end of the production phase.

PART IV: ENFORCEMENT

Withdrawal of approval of quality system

19.—(1) If it appears to a notified body, in relation to any quality assurance system approved by it pursuant to these Regulations, that—

- (a) an undertaking given under regulation 14(1)(d) has not been complied with; or
- (b) regulation 14(12)(b) or (c) (including those provisions as applied by regulation 17(3)) has not been complied with,

it may, after giving the manufacturer the opportunity of making representations to it as to why its approval should not be withdrawn, by notice given to the manufacturer withdraw approval for the quality system concerned.

(2) The notice given under paragraph (1) above shall—

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

(3) The notified body shall send to the Secretary of State a copy of any notice given under paragraph (1) above.

Unauthorised use of mark of conformity

20.—(1) Subject to paragraph (2) below, any person who, in respect of any item of equipment—

- (a) save as provided under regulations 13 to 17 above, affixes to it the mark of conformity or identification number or symbol referred to in the said regulations;
- (b) affixes a mark of conformity in contravention of regulation 18 above;
- (c) forges or counterfeits or in any other manner alters or defaces any mark of conformity or identification number or symbol affixed in accordance with these Regulations;
- (d) removes any mark of conformity or identification number or symbol affixed in accordance with these Regulations; or
- (e) makes any alteration to the equipment after a mark of conformity or identification number or symbol has been affixed to it in accordance with these Regulations so that the equipment no longer complies with the applicable international standards,

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under paragraph (1) above by reason solely of the alteration, defacement or removal of a mark of conformity or identification symbol or number in the course of the adjustment or repair of any item of equipment by, or by the duly authorised agent of, a person who is a manufacturer of such equipment or is regularly engaged in the business of the repair of such equipment.

(3) Any person who places on the market, supplies, or exposes or offers for supply, an item of equipment which to his knowledge—

- (a) bears a mark of conformity or identification number or symbol which is a forgery or counterfeit, or which has been transferred from another item of equipment, or which has been altered or defaced otherwise than in accordance with these Regulations; or
- (b) does not comply with the applicable international standards by reason of any alteration made to it after any mark of conformity or identification number or symbol was affixed to it in accordance with these Regulations,

shall be guilty of an offence.

(4) Any equipment in respect of which an offence under this regulation has been committed shall be liable to be forfeited.

(5) References in this regulation to other provisions of these Regulations include references to corresponding provisions under the laws of a member State other than the United Kingdom.

Sample checks on equipment

21.—(1) Notwithstanding that equipment bears the mark of conformity, the Secretary of State may carry out, or have carried out, sample checks on such equipment placed on the market, supplied for use or exposed or offered for supply in the United Kingdom but not yet placed on board a ship to ensure that the equipment complies with the requirements of these Regulations.

(2) Subject to paragraph (3), notwithstanding that equipment placed on board a UK ship bears the mark of conformity, the Secretary of State may, if the applicable international instruments

require that operational performance tests be performed for safety or pollution prevention purposes, carry out, or have carried out, such tests.

(3) The Secretary of State shall not carry out or have carried out any test referred to in paragraph (2) above if such test duplicates the EC conformity-assessment procedure with which the equipment complies under the Directive.

(4) If the Secretary of State carried out or has carried out any test referred to in paragraph (2) above on an item of equipment he may require that the manufacturer, his authorised representative established within the Community or the person responsible for marketing the equipment within the Community provide an inspection or testing report on the equipment.

Defective equipment

22.—(1) If the Secretary of State is satisfied, after carrying out, or having carried out, sample checks or performance tests on the equipment, or otherwise, that equipment which bears the mark of conformity, when correctly installed on board a ship, maintained and used for its intended purpose, may compromise the health or safety of the ship's crew, passengers, or other persons or adversely affect the marine environment, he may—

- (a) direct that the equipment be withdrawn from the market;
- (b) prohibit the equipment being placed on the market, or restrict the extent to which it can be so placed; or
- (c) prohibit the equipment being used on board ships for which he issues safety certificates in accordance with the relevant international conventions, or restrict the extent to which it may be so used.

(2) Before issuing any direction, prohibition or restriction under paragraph (1) above in respect of equipment, the Secretary of State shall serve a written notice of his intention to do so on the manufacturer of the equipment, or his authorised representative in the Community, and shall provide the manufacturer or his authorised representative (as appropriate) with an opportunity to make representations to him on the proposed direction, prohibition or restriction.

(3) Any direction, prohibition or restriction issued by the Secretary of State under paragraph (1) above in respect of equipment shall be given in writing to the manufacturer of the equipment, or his authorised representative in the Community.

(4) The Secretary of State may withdraw or vary any direction, prohibition or restriction issued under paragraph (1) above if he is satisfied that the equipment in relation to which the direction, prohibition or restriction was issued, when correctly installed on board a ship, maintained and used for its intended purpose, no longer compromises the health or safety of the ship's crew, passengers, or other persons or adversely affects the marine environment.

(5) A manufacturer who fails to comply with a direction, prohibition or restriction given to him under paragraph (1) above shall be guilty of an offence.

Offences and penalties

23.—(1) If equipment is carried on a ship otherwise than in compliance with regulation 6(1) above, the owner and master of the ship shall each be guilty of an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

(2) If equipment which the Secretary of State has allowed to be placed on board a ship under regulation 7 or 8 above, or in respect of which he has issued a certificate under regulation 9(3) above, is being used otherwise than in compliance with any restriction or condition imposed under regulation 7(3)(b), 8(2)(b) or 9(3)(b) (as appropriate) the owner and master of the ship shall each be guilty of an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

(3) A manufacturer guilty of an offence under regulation 19(4) or 22(5) above shall be punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

(4) Any person guilty of an offence under regulation 20(1) or (3) shall be punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

Defence to offences

24. In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove that he took all reasonable steps to avoid the commission of the offence.

Power to detain

25. In any case where equipment on board a ship does not comply with the requirements of these Regulations, or the owner of a ship has not complied with a direction under regulation 9(2) to replace equipment on board the ship, the ship shall be liable to be detained and section 284(1) to (6) and (8) of the Merchant Shipping Act 1995^(a) (which relates to the detention of a ship) shall have effect in relation to the ship as if for the words “the Act” wherever they appear there were substituted the words “the Merchant Shipping (Marine Equipment) Regulations 1999”.

Signed by authority of the Secretary of
State of the Environment, Transport and the Regions

Glenda Jackson
Parliamentary Under-Secretary of State
Department of the Environment, Transport and the Regions

6th July 1999

(a) 1995 c. 21.

AMENDMENT OF REGULATIONS

1. In the Merchant Shipping (Radio Installations) Regulations 1998**(a)**, in regulation 6
 - (a) in paragraph (1), at the beginning, there shall be inserted the words “Subject to paragraph (4) below,”; and
 - (b) after paragraph (3), there shall be added the following paragraph:

“(4) Equipment required to be provided under these Regulations to which the Merchant Shipping (Marine Equipment) Regulations 1999 apply shall comply with the requirements of those Regulations.”.

2. In the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998**(b)**, in regulation 1(2), for the definition of “approved” there shall be substituted the following definition:

“ “approved”–

 - (a) in relation to any equipment other than that mentioned in sub-paragraph (b) below, means approved by the Secretary of State or, in relation to any equipment or arrangement mentioned in Merchant Shipping Notice MSN 1734 or MSN 1735, by any persons specified in that Notice in relation to such equipment or arrangement; or
 - (b) in relation to equipment to which the Merchant Shipping (Marine Equipment) Regulations 1999 apply, means manufactured and tested in accordance with the requirements of those Regulations;”.

3. In the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998**(c)**, in regulation 1(2), for the definition of “approved” there shall be substituted the following definition:

“ “approved”–

 - (a) in relation to any equipment other than that mentioned in sub-paragraph (b) below, means approved by the Secretary of State or, in relation to any equipment or arrangement mentioned in Merchant Shipping Notice MSN 1734 or MSN 1735, by any persons specified in that Notice in relation to such equipment or arrangement; or
 - (b) in relation to equipment to which the Merchant Shipping (Marine Equipment) Regulations 1999 apply, means manufactured and tested in accordance with the requirements of those Regulations;”.

4. In the Merchant Shipping (High-Speed Craft) Regulations 1996**(d)**, in regulation 4, for paragraph (2) there shall be substituted the following paragraph:

“(2) In complying with paragraph (1) above–

 - (a) United Kingdom high-speed craft shall, in so far as it relates to construction or maintenance relating to hull, machinery, electrical installations and control installations, comply with the approved standards listed in Merchant Shipping Notice No. 1672 relevant to them; and
 - (b) United Kingdom high-speed craft and other high-speed craft operating on a scheduled service from any port in the United Kingdom to any port in another member State, or vice versa, or operating on a voyage which is not an international voyage shall, in so far as it relates to equipment to which the Merchant Shipping (Marine Equipment) Regulations 1999 applies, comply with the requirements of those Regulations.”.

(a) S.I. 1998/2070.

(b) S.I. 1998/1012, to which there is an amendment not relevant to these Regulations.

(c) S.I. 1998/1011, to which there is an amendment not relevant to these Regulations.

(d) S.I. 1996/3188.

5. In the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996(a), in regulation 1(2) for the definition of “approved” there shall be substituted the following definition:

“ “approved”–

- (a) in relation to any equipment or arrangement other than those mentioned in sub-paragraph (b) below, means approved by the Secretary of State or, in relation to any equipment or arrangement mentioned in Merchant Shipping Notice MSN 1734 or MSN 1735, by a Certifying Authority specified in that Notice in relation to such equipment or arrangement; or
- (b) in relation to any equipment or arrangement to which the Merchant Shipping (Marine Equipment) Regulations 1999 apply, means manufactured and tested in accordance with the requirements of those Regulations;”.

6. In the Merchant Shipping (Navigational Equipment) Regulations 1993(b), in regulation 10, after paragraph (2) there shall be added the following paragraph:

“(3) Navigational equipment required by these Regulations to which the Merchant Shipping (Marine Equipment) Regulations 1999 apply shall comply with the requirements of those Regulations.”.

7. In the Electromagnetic Compatibility Regulations 1992(c), in regulation 6–

(a) in paragraph (1), for “paragraph (2)” there shall be substituted “ paragraphs (2) and (3)”;

and

(b) after paragraph (2), there shall be added the following paragraph:

“(3) These Regulations do not apply to electrical apparatus to which the Merchant Shipping (Marine Equipment) Regulations 1999 apply.”.

Schedule 2

Regulation 12(2)(c) and 16(1)

TECHNICAL DOCUMENTATION

1. The technical documentation shall comprise all relevant data and means used by the manufacturer to ensure that equipment complies with the applicable international standards. The documentation shall make it possible to understand the design, manufacture and operation of the product, and to assess compliance with the applicable international standards.

2. The technical documentation shall, so far as relevant to the particular assessment, include:

- (1) a general description of the specimen;
- (2) conceptual design, build standard and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.;
- (3) descriptions and explanations necessary for the understanding of the drawings and schemes referred to in (2) above, including any necessary descriptions and explanations of the equipment;
- (4) the results of design calculations made, impartial examinations carried out, etc.;
- (5) impartial test reports;
- (6) manuals for installation, use and maintenance.

3. Where appropriate, the design documentation shall contain the following:

- (1) attestations relating to other items of equipment incorporated into the specimen;
- (2) attestations and certificates relating to the methods of manufacture or inspection or monitoring of the specimen;

(a) S.I. 1996/2154, to which there are amendments not relevant to these Regulations.

(b) S.I. 1993/69.

(c) S.I. 1992/2372, amended by S.I. 1994/1080.

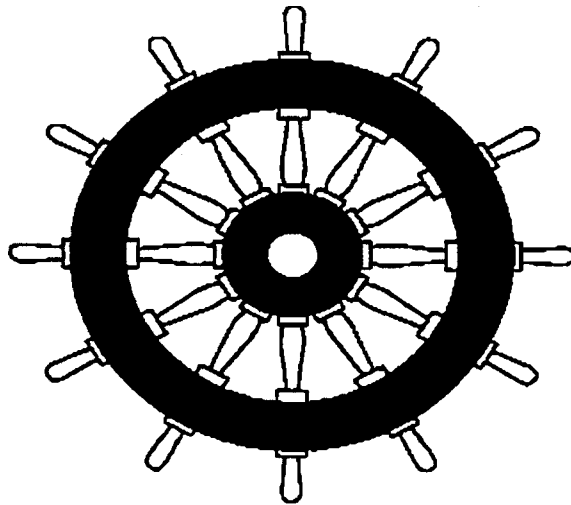
- (3) any other document that makes it possible for the notified body to better perform its assessment.
4. A specimen may cover several versions of the equipment provided that the differences between the versions do not affect the level of safety or the other applicable international standards.

Schedule 3

Regulation 18(4)

MARK OF CONFORMITY

The mark of conformity referred to in regulation 18(4) must take the following form:



If the mark is reduced or enlarged the proportions given in the above graduated drawing must be respected.

The various components of the mark must have substantially the same vertical dimension, which may not be less than 5mm.

That minimum dimension may be waived for small devices.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 96/98/EC on Marine Equipment (O.J. No. L46, 17.2.97, p. 26 as amended by Commission Directive 98/85/EC, O.J. No. L315, 25.11.98, p. 14).

The principal provisions of the Regulations are as follows:

- (i) equipment to be placed on board UK ships and other ships of specified Classes on or after 5th August 1999 shall comply with the applicable international standards of relevant international conventions (regulation 6(1));
- (ii) compliance with the applicable international standards shall be assessed solely by reference to the testing standards specified in Merchant Shipping Notice MSN 1734 and to the EC conformity-assessment procedures specified in the Regulations (regulation 6(2));
- (iii) requirements of the EC conformity-assessment procedures (regulations 11 to 18);
- (iv) the creation of a criminal offence of affixing the mark of conformity to equipment (*see* regulation 18) otherwise than in conformity with the Regulations, tampering with or altering such a mark or placing on the market, supplying or exposing or offering for supply any equipment which bears a mark affixed otherwise than in conformity with the Regulations or which no longer complies with the applicable international standards (regulation 20);
- (v) the creation of a criminal offence (as respects both the owner and master of the ship) of the breach of the provisions of the Regulations in respect of the placing on board ships of equipment which does not comply with the Regulations (regulation 21).

A compliance cost assessment has been produced and a copy placed in the library of both Houses of Parliament. Copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone number: 01703 329186).

Copies of the relevant international conventions can be obtained from the International Maritime Organisation, 4 Albert Embankment, London SE1 7SR. Copies of Merchant Shipping Notices can be obtained from Eros Marketing Support Services Ltd., Unit B, Imber Court Trading Estate, Orchard Lane, East Molesey, Surrey KT8 0BN (telephone number: 0181 957 5028).

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