

**1999 No. 2205**

**MERCHANT SHIPPING**

**The Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999**

<i>Made - - - -</i>	<i>3rd August 1999</i>
<i>Laid before Parliament</i>	<i>12th August 1999</i>
<i>Coming into force</i>	<i>25th October 1999</i>

Whereas the Secretary of State is a Minister designated**(a)** for the purpose of section 2(2) of the European Communities Act 1972**(b)** in relation to measures relating to the safety of ships, and the health and safety of persons on them;

And whereas, in so far as the following Regulations are made in the exercise of the powers conferred by section 85 of the Merchant Shipping Act 1995**(c)**, the Secretary of State has in pursuance of subsection (4) of section 86 of that Act consulted persons he considers will be affected as mentioned in that subsection:

Now, therefore, the Secretary of State, in exercise of the powers conferred by the said section 2(2) of the European Communities Act 1972, and by sections 85(1)(a) and (b), (3), (5), (7) and 86(1) of the Merchant Shipping Act 1995 and of all other powers enabling him on that behalf, hereby makes the following Regulations:

**Citation, commencement and revocations**

**1.**—(1) These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999 and shall come into force on 25th October 1999.

(2) The Merchant Shipping (Protective Clothing and Equipment) Regulations 1985**(d)** are hereby revoked.

**Interpretation**

**2.**—(1) In these Regulations, except where the context otherwise requires, any reference to—

- (a) a numbered regulation is a reference to the regulation bearing that number in these Regulations; and
- (b) a numbered paragraph or sub-paragraph is a reference to the paragraph or, as the case may be, sub-paragraph bearing that number in the regulation in which the reference appears.

(2) In these Regulations—

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**(a)** S.I. 1993/595.  
**(b)** 1972 c. 68; by virtue of the amendment of section 1(2) of the European Communities Act by section 1 of the European Economic Area Act 1993 (c. 5) regulations may be made under section 2(2) of the European Communities Act 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).  
**(c)** 1995 c. 21; 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 and Enactments) Order 1989 (S.I. 1989/1350).  
**(d)** S.I. 1985/1664.

“the Act” means the Merchant Shipping Act 1995;

“the Code” means the Code of Safe Working Practices for Merchant Seamen**(a)**;

“contract of employment” means a contract of employment, whether express or implied, and if express, whether oral or in writing;

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

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

“master” includes the skipper of a fishing vessel;

“Merchant Shipping Notice” means a Notice described as such, issued by the Maritime and Coastguard Agency, an executive agency of the Department of the Environment, Transport and the Regions, and reference to Merchant Shipping Notice MSN 1731 (M + F) includes reference to any Merchant Shipping Notice amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time;

“personal protective equipment” means all clothing and equipment designed to be worn or held by the worker for protection against one or more hazards likely to endanger his health or safety at work, and any addition or accessory designed for this purpose, with the exception of–

- (i) ordinary working clothes and uniforms which are not specifically designed to protect the health and safety of the worker,
- (ii) equipment provided for the purposes of fire-fighting or lifesaving,
- (iii) personal protective equipment worn or used by the military, the police and other public order agencies,
- (iv) personal protective equipment required for road transport,
- (v) sports equipment,
- (vi) self-defence or deterrent equipment, or
- (vii) portable devices for detecting and signalling risk and nuisances;

“public service vessel” means any vessel operated by and on behalf of a public body while it is carrying out the authorised functions of that body;

“relevant inspector” means a person mentioned in paragraphs (a), (b) or (c) of section 258 (1) of the Act;

“sail training vessel” means a sailing vessel which is being used either–

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

and is operating under a statutory code;

“statutory code” means–

The Code of Practice for the Safety of Small Commercial Sailing Vessels**(b)**;

The Code of Practice for the Safety of Small Commercial Motor Vessels**(c)**; or

The Code of Practice for Safety of Large Commercial Sailing and Motor Vessels**(d)**;

“trainees and apprentices” does not include persons who are training in a sail training vessel;

“United Kingdom ship” means a ship which–

- (a) is a United Kingdom ship within the meaning of section 85(2) of the Act;
- (b) is a Government ship within the meaning of section 308(4) of the Act; or
- (c) is a hovercraft registered under the Hovercraft Act 1968**(e)**;

“worker” means any person employed by an employer under a contract of employment, including trainees or apprentices.

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**(a)** Published by Her Majesty’s Stationery Office in 1998 (ISBN No. 0–11–551836–3).

**(b)** Published by The Stationery Office in 1993 (ISBN 0–11–551184–9).

**(c)** Published by The Stationery Office in 1993 (ISBN 0–11–551185–7).

**(d)** Published by The Stationery Office in 1997 (ISBN 0–11–551911–4).

**(e)** 1968 c. 59.

### **Application and exemption**

3.—(1) These Regulations shall apply to all activities of workers on United Kingdom ships except when the activity of a worker—

- (a) is on a public service vessel or a vessel engaged in search and rescue; and
- (b) characteristics of that activity inevitably conflict with a provision of these Regulations,

and in such a case there shall be a duty on the employer so far as is reasonably practicable to ensure the health and safety of the worker when performing that activity.

(2) Regulations 2, 3(1) and (3), 15, 16 and 17 apply to ships other than United Kingdom ships which are in United Kingdom waters.

(3) These Regulations shall not apply to or in relation to the activities of a worker which are covered by the Personal Protective Equipment at Work Regulations 1992(a) or the Personal Protective Equipment at Work Regulations (Northern Ireland) 1993(b).

### **Persons on whom duties are imposed**

4. Where a person on whom a duty is imposed by any provision of these Regulations does not have control of the matter to which the regulation relates because he does not have responsibility for the operation of the ship, then any duty imposed by that regulation shall also extend to any person who has control of that matter.

### **General rule**

5. Personal protective equipment shall be used when risks cannot be avoided or reduced to an acceptable level by means of systems of work that are safe and without risk to health or by means of collective protection or by other means which are in use equally or more effective.

### **Duties of employers**

6.—(1) The employer shall ensure that the personal protective equipment required to be used under regulation 5 is provided, and such personal protective equipment shall be suitable.

(2) For the purpose of paragraph (1), “suitable” means—

- (a) in relation to any work activity described in Merchant Shipping Notice MSN 1731 (M + F) of the kind and to the standard specified in that Merchant Shipping Notice, in relation to that work activity;
- (b) appropriate for the risks to which the worker is exposed, to the task which he is performing and to the existing conditions at the work place, without itself leading to any increased risk;
- (c) correctly fitting the worker, or capable of being adjusted to fit;
- (d) taking into account ergonomic requirements and the worker’s state of health; and
- (e) compatible with any other equipment the worker has to use at the same time, so that it continues to be effective against the risk.

(3) Personal protective equipment shall be provided free of charge to the worker except that where use of the equipment is not exclusive to the work place, workers may be required to contribute towards the cost of personal protective equipment.

### **Assessment of personal protective equipment**

7.—(1) Before personal protective equipment is provided under these Regulations, the employer shall ensure that an assessment is made to identify—

- (a) those circumstances where risk to the health and safety of individual workers at work cannot be avoided or reduced by other means;
- (b) the characteristics required of personal protective equipment in order to provide protection to workers from that risk;

and, in accordance with the findings of such an assessment, personal protective equipment which complies with the characteristics identified in sub-paragraph (b) and which meets the standards specified as suitable under regulation 6(2) shall be provided.

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(a) S.I. 1992/2966.

(b) S.R. 1993 No. 20.

(2) The assessment in paragraph (1) shall be reviewed to take account of any changes to the factors on which it was based.

### **Storage, issue and maintenance**

**8.**—(1) Subject to paragraph (2), the employer shall ensure that personal protective equipment is provided under regulation 6(1) to a worker for his individual use.

(2) Equipment may be provided for the use of more than one person if it is—

- (i) adjustable to fit all sizes,
- (ii) easily accessible and kept in clearly marked places, and
- (iii) maintained in a hygienic condition and repaired, decontaminated and replaced as necessary, so that it will not create any health or hygiene problems.

(3) The employer shall ensure that appropriate instructions for the proper use and maintenance of any personal protective equipment provided under regulation 6 shall be readily available to any worker required to use that equipment, and shall be comprehensible to him.

(4) The employer shall ensure that personal protective equipment provided under regulation 6(1) is—

- (a) properly stored and maintained, having due regard to any recommendations made by the manufacturers, so that it can immediately be used when required to be used under regulation 5;
- (b)
  - (i) in the case of respiratory protective equipment, which provides protection against dust (either nuisance or toxic), toxic gases or atmospheres or lack of oxygen, inspected and checked that it is in satisfactory working order before and after use, or
  - (ii) in other cases regularly inspected in accordance with the manufacturer's instructions or the guidance in the Code, and, where appropriate, checked that it is in satisfactory working order.

### **Training and Instruction**

**9.**—(1) The employer shall ensure that workers are provided with adequate and appropriate information, training and instruction, which may include the organisation of demonstrations in the wearing of personal protective equipment, in respect of—

- (a) the risks against which the personal protective equipment is designed to provide protection;
- (b) the circumstances in which it shall be used; and
- (c) the correct use, maintenance and storage of the equipment.

(2) The information, training and instruction provided in accordance with paragraph (1) is not adequate and appropriate unless it is comprehensible to the persons to whom it is provided.

### **Use of personal protective equipment**

**10.**—(1) The employer shall take all reasonably practicable steps to ensure that any personal protective equipment provided to workers under regulation 6(1) is used as instructed.

(2) Every worker shall—

- (a) use any personal protective equipment provided to him under regulation 6(1); and
- (b) shall follow any training in the use of the personal protective equipment which has been received by him and the instructions respecting that use, which have been provided under regulation 9.

### **Penalties**

**11.**—(1) Any contravention of regulations 6, 7, 8 or 9 shall be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(2) Any contravention of regulation 10 shall be an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

### **Offences by body corporate**

12.—(1) Where a body corporate is guilty of an offence under any of these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been 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, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under any of these Regulations 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, he as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.

### **Onus of proving what is reasonably practicable**

13. In any proceedings for an offence under any of these Regulations consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

### **Inspection and Detention of a United Kingdom Ship**

14. A relevant inspector may inspect any United Kingdom ship and if he is satisfied that there has been a failure to comply in relation to that ship with the requirements of these Regulations may detain the ship until the health and safety of all workers and other persons aboard ship is secured, but shall not in the exercise of these powers detain or delay the ship unreasonably.

### **Inspection detention and other measures in respect of ships registered outside the United Kingdom**

15.—(1) A relevant inspector may inspect any ship which is not a United Kingdom ship when the ship is in a United Kingdom port, and if satisfied that the ship does not conform to the standards required of United Kingdom ships by these Regulations, may—

- (a) send a report to the government of the country in which the ship is registered, and a copy thereof to the Director General of the International Labour Office; and
- (b) where conditions on board are clearly hazardous to health and safety—
  - (i) take such measures as are necessary to rectify those conditions, or
  - (ii) detain the ship,

provided that the measures specified in sub-paragraph (a) and (b) may be taken only when the ship has called at a United Kingdom port in the normal course of business for operational reasons.

(2) If either of the measures specified in paragraphs (1)(b) are taken, the relevant inspector shall forthwith notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(3) The relevant inspector shall not in exercise of his power under this regulation detain or delay the ship unreasonably.

### **Enforcement of Detention**

16. Where a ship is liable to be detained under these Regulations, section 284(1) to (5) and (8) of the Act (which relates to the detention of the ship) shall apply as if for the words “this Act”, wherever they appear, there were substituted “the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999”.

### **Compensation**

17. Sections 96 and 97 of the Act (Arbitration and Compensation) shall apply in relation to a detention notice or order under these Regulations as they apply to a detention notice under

section 95(3) of the Act, and in such application, “relevant inspector” means a person making an inspection under these Regulations.

**Miscellaneous amendments**

**18.** The Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998<sup>(a)</sup> shall be amended as follows—

- (a) regulation 1(2)(a) shall be deleted;
- (b) in regulation 13 the words “or order” shall be deleted.

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

*Keith Hill*  
Parliamentary Under-Secretary of State,  
Department of the Environment, Transport  
and the Regions

3rd August 1999

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<sup>(a)</sup> S.I. 1998/2857.

## EXPLANATORY NOTE

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

These Regulations, which revoke the Merchant Shipping (Protective Clothing and Equipment) Regulations 1985 (SI 1985/1664), give effect with respect to activities on United Kingdom ships to Council Directive 89/656/EEC on the minimum health and safety requirements for the use by workers of personal protective equipment in the workplace (O.J. L393, 30.12.89, p. 18), and with respect to activities on non-United Kingdom ships which are in United Kingdom waters to The Merchant Shipping (Minimum Standards) Convention 1976 (*International Labour Organisation Convention 147*) (*Cmnd 7183*).

The Regulations apply to all United Kingdom ships (*regulation 3(1)*), and ships which are not United Kingdom ships when in United Kingdom waters are subject to regulations covering inspection and detention (*regulations 3(2) and 15–17*). The Regulations do not apply if the Personal Protective Equipment at Work Regulations 1992 (S.I. 1992/2966) or the Personal Protective Equipment at Work Regulations (Northern Ireland) 1993 (S.R. 1993/20) cover the matter (*regulation 3(3)*).

The general rule is that personal protective equipment as defined (*regulation 2(2)*) shall be used when risks cannot be avoided or reduced (*regulation 5*) and an obligation is placed on the employer to ensure that suitable personal protective equipment is provided free of charge (unless the equipment is not exclusive to the work place) (*regulation 6*). Before providing the personal protective equipment the employer should ensure that an assessment is carried out to identify the characteristics required of personal protective equipment (*regulation 7*).

The employer is required to ensure that:

- personal protective equipment is either given to the worker for individual use (*regulation 8(1)*) or adjustable to fit all sizes, easily accessible and kept in a hygienic condition (*regulation 8(2)*);
- instructions for use and maintenance of the personal protective equipment are available and comprehensible (*regulation 8(3)*);
- personal protective equipment is properly stored, maintained and inspected (*regulation 8(4)*);
- workers are provided with training and instruction as regards the use and maintenance of the personal protective equipment (*regulation 9*); and

to take reasonably practicable steps to ensure the personal protective equipment is used as instructed (*regulation 10(1)*).

The worker is required to use personal protective equipment provided by the employer and follow any training and instruction provided to him (*regulation 10(2)*).

Contravention of each separate duty provided for in these Regulations is a criminal offence with a maximum penalty of £5000 in the case of a duty imposed on the employer and with a maximum penalty of £500 in the case of a duty imposed on the worker (*regulation 11*).

Provision is made for corporate and partnership offences (*regulation 12*) and the burden of showing that compliance with a duty in these Regulations was not reasonably practicable is on the defendant (*regulation 13*).

Inspection and detention of United Kingdom and non-United Kingdom ships are separately provided for (*regulations 14 and 15*), and sections in the Merchant Shipping Act 1995 dealing with arbitration and compensation are applied (*regulation 17*).

These regulations are made under powers contained in the Merchant Shipping Act 1995, except in respect of their application to Government ships.

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**The Merchant Shipping and Fishing Vessels (Personal  
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