

**2003 No. 1636**

**MERCHANT SHIPPING**

**The Merchant Shipping (Port State Control) (Amendment) Regulations 2003**

<i>Made</i> - - - - -	<i>24th June 2003</i>
<i>Laid before Parliament</i>	<i>26th June 2003</i>
<i>Coming into force</i> - -	<i>22nd July 2003</i>

The Secretary of State, after consulting the persons referred to in section 86(4) of the Merchant Shipping Act 1995(a), in exercise of the powers conferred upon him by section 85(1)(a) and (b), (3) and (5) to (7) and section 86(1) of that Act, and being a Minister designated(b) for the purpose of section 2(2) of the European Communities Act 1972(c) in relation to measures relating to the safety of ships and the health and safety of persons on them, in exercise of the powers conferred upon him by the said section 2(2), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Merchant Shipping (Port State Control) (Amendment) Regulations 2003 and shall come into force on 22nd July 2003.

**Amendment of Merchant Shipping (Port State Control) Regulations 1995**

2. The Merchant Shipping (Port State Control) Regulations 1995(d) shall be further amended as follows.

3. For regulation 2(1) there shall be substituted:

“(1) This Part of these Regulations implements in the United Kingdom Directive 95/21/EC(e) of the Council of 19th June 1995 on port State control of shipping as amended by:

- (a) Commission Directive 96/40/EC(f);
- (b) Council Directive 98/25/EC(g);
- (c) Commission Directive 98/42(h);
- (d) Commission Directive 1999/97/EC(i);

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(a) 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 of Enactments) Order 1989 (S.I. 1989/1350).

(b) S.I. 1993/595.

(c) 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. 51) 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 (Cmnd. 2073) as adjusted by the Protocol signed at Brussels on 17th March 1993 (Cmnd. 2183).

(d) S.I. 1995/3128, amended by S.I. 1998/1433, S.I. 1998/2198 and S.I. 2001/2349.

(e) OJ No. L157, 7.7.95, p. 1.

(f) OJ No. L196, 7.8.96, p. 8.

(g) OJ No. L133, 7.5.98, p. 19.

(h) OJ No. L184, 27.6.98, p. 40.

(i) OJ No. L331, 23.12.99, p. 67.

(e) Directive 2001/106/EC of the European Parliament and of the Council<sup>(a)</sup>; and  
(f) Directive 2002/84/EC of the European Parliament and of the Council<sup>(b)</sup>  
(in these Regulations referred to as the “Council Directive”).”.

4.—(1) Regulation 2(2) (interpretation of Part 1) shall be amended as follows.

(2) In the definition of “clear grounds”, for the words “MSN 1725” there shall be substituted the words “MSN 1775”.

(3) In the definition of “Conventions”, for the words after “(COLREG 72),” there shall be substituted the following—

“the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69),  
the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No. 147) and  
the International Convention on Civil Liability for Oil Pollution Damage, 1992  
(CLC 92),

together with the Protocols and amendments to these Conventions and related Codes  
of mandatory status, in force at 22nd July 2003, and thereafter in their up-to-date  
versions in so far as those versions:

(a) relate to all or any of the purposes set out in section 85(1) of the Merchant  
Shipping Act 1995,

(b) are considered by the Secretary of State to be relevant from time to time, and

(c) are specified in a Merchant Shipping Notice; and

a reference to a Convention is a reference to any of the Conventions;”.

(4) In the definition of “Maritime and Coastguard Agency”<sup>(c)</sup>, for the words “Department  
of the Environment, Transport and the Regions” there shall be substituted the words  
“Department for Transport”.

(5) In the definition of “member State”, for the words “a State Party to the European Free  
Trade Association” there shall be substituted the words “an EEA State”.

(6) In the definition of “MOU”, for the words “as it stands on 1st July 1999” there shall be  
substituted the words “as it stands on 22nd July 2003, and thereafter in its up-to-date version  
in so far as that version:

(a) relates to all or any of the purposes set out in section 85(1) of the Merchant Shipping  
Act 1995,

(b) is considered by the Secretary of State to be relevant from time to time, and

(c) is specified in a Merchant Shipping Notice”.

(7) For the definition of “MSN 1725” there shall be substituted the following—

““MSN 1775” means Merchant Shipping Notice No. MSN 1775”.

(8) The following definitions shall be inserted in the appropriate places in alphabetical order:

““access refusal notice” means a notice served in accordance with the procedures set  
out in Annex XII, Section B of MSN 1775 by the Maritime and Coastguard Agency  
or other competent authority of the port in which the ship is detained”;

““class certificate” means a certificate from the classification society which has the  
ship in class showing that the ship conforms to the class standards stipulated by that  
society”;

““EEA Agreement” means the Agreement on the European Economic Area signed  
at Oporto on 2nd May 1992<sup>(d)</sup> as adjusted by the Protocol signed at Brussels on 17th  
March 1993<sup>(e)</sup>;

““EEA State” means a State which is a Contracting Party to the EEA Agreement;

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(a) OJ No. L19, 22.1.2002, p. 17.

(b) OJ No. L324, 29.11.2002, p. 53.

(c) This wording was substituted by S.I. 1998/1433.

(d) Cmnd 2073.

(e) Cmnd 2183.

““Equasis information system” means the European information system for quality and safety related information on the world merchant fleet”;

““Sirenac information system” means the central information system for port state inspection records established in accordance with the MOU”;

““target factor” means the sum of the applicable target factor values as defined within the framework of the MOU”;

5. For regulation 5 there shall be substituted—

**“Inspection Commitments**

5.—(1) The total number of inspections of the ships referred to in paragraph (2) and regulation 7 which shall be carried out annually by the Maritime and Coastguard Agency shall correspond to at least 25% of the average annual number of individual ships which entered United Kingdom ports, calculated on the basis of the three most recent calendar years for which statistics are available.

(2) (a) The Maritime and Coastguard Agency shall, subject to the provisions of regulation 7A, ensure that an inspection in accordance with regulation 6 is carried out on any ship which is not subject to an expanded inspection and has a target factor greater than 50 in the Sirenac information system, provided that a period of at least one month has elapsed since the last inspection carried out in a port in the MOU region.

(b) In selecting other ships for inspection, the Maritime and Coastguard Agency shall determine the order of priority as follows:

(i) the first ships to be selected for inspection shall be those listed in Annex 1, Part I of MSN 1775, irrespective of their target factor;

(ii) the ships listed in Annex I, Part II of MSN 1775 shall be selected in decreasing order, depending on the order of priority resulting from the value of their target factor ranges as referred to in the Sirenac information system.

(3) For the purposes of carrying out any inspection referred to in paragraph (2), the inspector shall consult the public and private databases relating to ship inspection accessible through the Equasis information system.

(4) The Maritime and Coastguard Agency shall refrain from inspecting a ship which has been inspected by the competent authority of any member State in accordance with the Council Directive within the previous six months, provided that—

(a) the ship is not in a category listed in Annex 1 of MSN 1775; and

(b) no deficiencies have been reported following a previous inspection; and

(c) no clear grounds exist for carrying out an inspection; and

(d) the ship is not covered by paragraph (2)(a).

(5) The provisions of paragraph (4) shall not apply to any of the operational controls specifically provided for in the Convention enactments.”.

6. In regulations 6 (inspection procedure) and 14 (professional profile of inspectors), for words “M. 1639” wherever they appear, there shall be substituted the words “MSN 1775”.

7. For regulation 7 there shall be substituted:

**“Mandatory expanded inspection of certain ships**

7.—(1) A ship in one of the categories in Annex V, section A of MSN 1775, may be subject to an expanded inspection after a period of 12 months following the last expanded inspection carried out in a port of a State signatory to the MOU.

(2) If such a ship is selected for inspection in accordance with regulation 5(2)(b)—

(a) an expanded inspection shall be carried out; and

(b) an inspection in accordance with regulation 6 may be carried out in the period between two expanded inspections.

- (3) (a) After a period of 12 months since the last expanded inspection of a ship, the owner or master of a ship to which paragraph (1) applies shall communicate to the Maritime and Coastguard Agency all the information listed in Annex V, section B of MSN 1775 before each call at a port in the United Kingdom.
- (b) This information shall be provided at least three days before the expected time of arrival in the port or before leaving the previous port if the voyage is expected to take fewer than three days.
- (c) Any ship not complying with the requirements of sub-paragraph (a) shall be subject to an expanded inspection at the port of destination.

(4) Subject to regulation 7A, the Maritime and Coastguard Agency shall ensure that an expanded inspection is carried out in respect of a ship to which paragraph (1) applies and which has a target factor of 7 or more at its first visit to a port in the United Kingdom after a period of 12 months since the last expanded inspection carried out in a port of a State signatory to the MOU.

(5) For the purposes of calculating the target factor in paragraph (4) the target factor does not include the value applicable to ships of the categories referred to in Annex V, section A of MSN 1775.

(6) An expanded inspection shall be carried out in accordance with the procedures set out in Annex V, section C of MSN 1775.

(7) For the purposes of carrying out an expanded inspection, the inspector shall consult the public and private databases relating to ship inspection accessible through the Equasis information system.

(8) This regulation shall not apply to a ship which to the satisfaction of the Maritime and Coastguard Agency has within the previous 12 months been subject to an initial specific survey in accordance with Article 6 of Council Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services(a) or a specific survey in accordance with Article 8 of that Directive.”.

8. After regulation 7 there shall be inserted the following—

**“Procedure in case certain ships cannot be inspected**

7A—(1) In cases where, for operational reasons, the Maritime and Coastguard Agency is unable to carry out an inspection of a ship with a target factor of more than 50 as referred to in regulation 5(2)(a) or a mandatory expanded inspection as referred to in regulation 7(4), it shall, without delay, inform the Sirenac information system that such inspection did not take place.

(2) The Maritime and Coastguard Agency shall, at intervals of six months, notify the cases referred to in paragraph (1) to the European Commission together with the reasons for not inspecting the ships concerned.

(3) During any calendar year, such cases of non-inspection shall not exceed 5% of the average annual number of individual ships eligible for the inspections referred to in paragraph (1) calling at ports in the United Kingdom, calculated on the basis of the three most recent calendar years for which statistics are available.

(4) Where a ship, which for operational reasons was not subject to an inspection of the type referred to in regulation 5(2)(a) or a mandatory expanded inspection of the type referred to in regulation 7(4) at its previous call at a port in a member State, including the United Kingdom, visits a port in the United Kingdom, it shall be inspected, as appropriate, by the Maritime and Coastguard Agency.

**Access refusal measures concerning certain ships**

7B—(1) This regulation applies to a ship falling within one of the categories of Annex XII, section A of MSN 1775.

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(a) OJ No. L138/1, 1.6.1999, p. 1.

- (2) Subject to paragraph (6) below, where a ship to which this regulation applies—
- (a) flies the flag of a State appearing in the black list as published in the annual report of the MOU and has been detained more than twice in the preceding 24 months in a port of a State signatory to the MOU; or
  - (b) flies the flag of a State described as “high risk” or “very high risk” in the black list referred to in paragraph (a) above and has been detained more than once in the preceding 36 months in a port of a State signatory to the MOU

and an access refusal notice has previously been served on it, the ship shall not enter any port in the United Kingdom.

(3) The prohibition referred to in paragraph (2) above shall apply at any time after the ship has been authorised to leave the port where it has been the subject of a second or third detention as the case may be.

(4) Subject to paragraph (6) below, where a ship to which this regulation applies calls at a United Kingdom port and is detained there—

- (a) for the third time in the preceding 24 months if it is a ship which flies the flag of a State appearing in the black list referred to in paragraph (2)(a) above; or
- (b) for the second time in the preceding 36 months if it is a ship which flies the flag of a State described as “high risk” or “very high risk” in the said black list

the Maritime and Coastguard Agency shall serve an access refusal notice on it.

(5) Notwithstanding the provisions of paragraphs (2) and (3) above, access to a specific port in the United Kingdom may be permitted in situations referred to in regulation 13(8).

(6) In applying this regulation the Maritime and Coastguard Agency shall take into account only detentions imposed from 22nd January 2002.”.

9. For regulation 8 there shall be substituted—

**“Report of inspection to the master**

8. On completion of an inspection, a more detailed inspection or an expanded inspection, the inspector shall draw up a report in accordance with the requirements of Annex X of MSN 1775 and a copy of such report shall be provided to the ship’s master.”.

10.—(1) Regulation 9 (rectification and detention) shall be modified as follows.

(2) In paragraph (1), for the words “regulation 6 or 7” there shall be substituted the words “regulation 5(2), 6 or 7”.

(3) For paragraph (3) there shall be substituted:

“(3)(a) Subject to paragraph (b) and without prejudice to any other requirement in the Convention enactments, when exercising his professional judgement as to whether or not a ship should be detained the inspector shall apply the criteria set out in Annex VI of MSN 1775.

(b) A ship shall be detained if it is not equipped with a functioning voyage data recorder system, when its use is compulsory in accordance with Annex XIII of MSN 1775.

(c) If the deficiency mentioned in paragraph (b) cannot readily be rectified in the port of detention, the Maritime and Coastguard Agency may either allow the ship to proceed to the nearest appropriate port where it is capable of being rectified and shall be so rectified, or require that the deficiency be rectified within a maximum period of 30 days.

(d) For the purposes of this paragraph the procedures set out in regulation 13 shall apply.”.

(4) For paragraph (5) there shall be substituted:

“(5)(a) Without prejudice to any other requirement in the Convention enactments, in the event that a ship is detained following an inspection referred to in regulation 5(2), 6 or 7, the Maritime and Coastguard Agency shall immediately inform, in writing—

- (i) the ship’s flag administration; or, if this is not possible,
- (ii) the Consul of the State of the flag administration; or, in his absence,
- (iii) the nearest diplomatic representative of the State of the flag administration.

- (b) The written information referred to in paragraph (a) above shall set out all the circumstances relating to the Maritime and Coastguard Agency's decision to detain the ship and shall include the report of inspection.
- (c) The Maritime and Coastguard Agency shall, where relevant, also notify—
  - (i) nominated surveyors; or
  - (ii) recognized organisations

responsible for the issue of class certificates or other ship's certificates issued on behalf of the State of the flag administration.”.

**11.—**(1) Regulation 10 (right of appeal and compensation) shall be modified as follows.

(2) In paragraph (1), after the words “power of detention” there shall be inserted the words “or refusal of access”.

(3) For paragraph (2) there shall be substituted—

“(2) Section 96 of the Act (arbitration) shall apply in relation to an access refusal notice under this Part of these Regulations as it applies to a detention notice under section 95(3) of that Act subject to the following modifications—

- (a) references to “relevant inspector” mean a person making an inspection under this Part of these Regulations;
- (b) the following words shall be deemed to be omitted—
  - (i) in subsection (1), “in pursuance of section 95(3)(b)”;
  - (ii) in subsection (2), from “unless” to the end;
  - (iii) in subsection (3), “to whether the ship was or was not a dangerously unsafe ship”; and
  - (iv) in subsection (5), “as a dangerously unsafe ship”.

(4) In paragraph (3)—

- (a) after the words “detention notice” there shall be inserted the words “or access refusal notice”; and
- (b) after the words “detention of the ship” there shall be inserted the words “or the service of the access refusal notice”.

**12.—**(1) Regulation 11 shall be modified as follows.

(2) In paragraph (1)—

- (a) after the words “detention notice” wherever they appear there shall be inserted the words “or access refusal notice”; and
- (b) after the words “power of detention” there shall be inserted the words “or refusal of access”.

(3) At the end of paragraph (2), there shall be added the words “or access refusal notice”.

(4) In paragraph (3), after the words “detention notice” there shall be inserted the words “or access refusal notice” and at the end there shall be added the words “or served with an access refusal notice”.

(5) In paragraph (4)—

- (a) after the words “detention notice” there shall be inserted the words “or access refusal notice, as the case may be,”; and
- (b) for the words “the notice” there shall be substituted the words “such notice”.

(6) At the end of paragraph (5), there shall be added the words “or for the service of an access refusal notice”.

**13.—**(1) Regulation 12 shall be modified as follows.

(2) In paragraph (1)—

- (a) after the words “detention notice” there shall be inserted the words “or access refusal notice”; and

- (b) for the words after “in consequence of” there be substituted the words “, as the case may be, the detention of the ship or the service of an access refusal notice, as the arbitrator thinks fit.”.

**14.** In regulation 16 (release of information), for the words “MSN 1725” there shall be substituted the words MSN 1775”.

**15.—**(1) Regulation 18 (offences) shall be modified as follows.

(2) In paragraph (2), for sub-paragraphs (a) and (b) there shall be substituted:

- “(a) fails to communicate the necessary information in contravention of regulation 7(3);
- (b) fails to proceed to the nearest appropriate port in accordance with regulation 9(3)(c) or fails to comply with a requirement that any deficiency be rectified within 30 days, as specified in that regulation;
- (c) fails to proceed to the yard specified in regulation 13(1); or
- (d) enters a port in contravention of regulation 7B, 9A(3) or 13(5);”.

Signed by authority of the Secretary of State for Transport

*David Jamieson*  
Parliamentary Under-Secretary of State  
Department for Transport

24th June 2003

## EXPLANATORY NOTE

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

These Regulations further amend the Merchant Shipping (Port State Control) Regulations 1995 (“the principal Regulations”) to implement:

- (a) Parliament and Council Directive 2001/106/EC of 19th December 2001 (O.J. L 19, 22.1.2002, p. 17) (“the 2001 Directive”), amending Council Directive 95/21/EC of 19th June 1995, now known as the Directive of that date on port State control of shipping (O.J. L 157, 7.7.95, p. 1) (“the 1995 Directive”); and
- (b) Parliament and Council Directive 2002/84/EC of 5th November 2002 (O.J. L 324, 29.11.2002, p. 53), amending the Directives on maritime safety and the prevention of pollution from ships, in so far as it amends the 1995 Directive.

The purpose of the 2001 Directive is to strengthen the existing regime for the inspection of ships using Community ports.

The Regulations introduce revised selection criteria for inspection, determined in order of priority. First are high risk ships which are subject to mandatory inspection, secondly ships for which certain overriding factors are laid down and last, overall target factors appearing in the Sirenac information system are applied. The Sirenac information system is the central information system for port state inspection records of the Paris Memorandum of Understanding (“MOU”). *Regulation 5* also sets out the circumstances in which the Maritime and Coastguard Agency shall refrain from inspecting ships which have been inspected in another member State within the previous 6 months.

A mandatory inspection regime for categories of ships presenting higher risks to safety or the environment has been introduced in conjunction with Merchant Shipping Notice 1775, which sets out detailed technical requirements. Provision is made for mandatory expanded inspection of certain categories of ships, based on type and age criteria and by reference to the ship’s target factor in the Sirenac information system (*regulation 7*).

The Regulations set out the procedure applicable in cases where the Maritime and Coastguard Agency is unable to carry out a mandatory inspection of a ship with a target factor of more than 50, or a mandatory expanded inspection, and impose a requirement that such non-inspection shall not exceed 5% of the average annual number of ships eligible for inspections of this kind (*regulation 7A*).

Provision is made (*regulation 7B*) for access to be refused to certain high risk categories of ships that fly the flag of a State appearing in the black list of the annual report of the MOU and have been detained a certain number of times. An access refusal order may have been served in the port of another State signatory of the MOU in accordance with the applicable criteria, or where the appropriate conditions for access refusal are satisfied whilst the vessel is in a United Kingdom port, an access refusal notice shall be served by the Maritime and Coastguard Agency.

The Regulations require a report to be drawn up of any inspection carried out, in conjunction with requirements set out in MSN 1775, and for a copy to be provided to the master (*regulation 8*).

*Regulation 9* has been modified to apply new criteria for detention of a ship (in conjunction with Annex VI of MSN 1775) and to make it mandatory to detain a ship which is not equipped with a functioning voyage data recorder in cases where use of such a recorder is compulsory.

Various consequential amendments are made to *regulations 10, 11 and 12 (right of appeal and compensation)* and to *regulation 16 (release of information)*.

The offences set out in *regulation 18* are modified to provide for penalties for breach of requirements relating to the 2001 Directive.

Parliament and Council Directive 2002/84/EC provides that references in the 1995 Directive to various international Conventions together with the Protocols and amendments to these Conventions and related codes of mandatory status, as well as references to the MOU, shall be references to those Conventions etc. and the MOU in their up to date versions. These Regulations provide, as required by the Directives, that references to “Conventions” (*r.2(2)* of the principal Regulations) shall be taken to be to the version thereof in force on 22nd July 2003, and thereafter, to the up to date versions of those Conventions etc. in so far as those up



to date versions (a) relate to the purposes for which regulations may be made under section 85(1) of the Merchant Shipping Act 1995 (c. 22), (b) are considered by the Secretary of State to be relevant from time to time and (c) are specified in a Merchant Shipping Notice. References to the MOU are dealt with similarly.

A Regulatory Impact Assessment and Transposition Note (relating to Parliament and Council Directive 2001/106/EC) have been produced and a copy placed in the library of both Houses of Parliament. Copies may be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 IEG, (telephone number 02380 329217).

Merchant Shipping Notices may be obtained from Mail Marketing (Scotland), Unit 6, Blooms Grove Industrial Estate, Norton Street, Nottingham NG7 5MG (telephone 0115 901 3336; fax 0115 901 3334; e-mail orders [mca@promo-solution.com](mailto:mca@promo-solution.com)). They may also be accessed via the MCA's website <http://www.mcga.gov.uk>.





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**MERCHANT SHIPPING**

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