

2010 No. 1228

MARINE POLLUTION

**The Merchant Shipping (Ship-to-Ship Transfers) Regulations
2010**

Made - - - - - *8th April 2010*

Laid before Parliament *9th April 2010*

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 130 of the Merchant Shipping Act 1995(a):

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010.

(2) Subject to paragraph (3), regulations 3(2), 4, 5 and 7(2), and regulation 7(1) insofar as it relates to any of those provisions, come into force on 1st April 2011.

(3) Where a harbour authority has made an application under regulation 5(1)(b) within two months starting on 1st October 2010, the provisions mentioned in paragraph (2) do not come into force in respect of the harbour authority waters regulated or managed by that harbour authority until—

- (a) 1st April 2011, or
- (b) the making of the licence decision,

whichever is the later.

(4) The other provisions of these Regulations come into force on 1st October 2010.

Interpretation

2. In these Regulations—

“application” means, except as provided otherwise by regulation 6(4) and in regulation 7(3), an application for an oil transfer licence submitted by a harbour authority to the Secretary of State under regulation 5(1);

“bunkering operation” means the transfer between ships of a substance consisting wholly or mainly of oil for consumption by the engines of the ship receiving the substance;

“cargo transfer” means the transfer between two ships of a substance consisting wholly or mainly of oil which is transported by either or both of the ships for reward, but does not include—

(a) 1995 c.21.

(a) a bunkering operation, or

(b) a transfer of—

(i) cargo residues, or

(ii) ship-generated waste,

as defined by regulation 2 of the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003^(a);

“consolidation operation” means a cargo transfer carried out—

(a) in harbour authority waters,

(b) between two ships which normally carry out bunkering operations in the harbour authority waters in which the operation takes place,

(c) with the prior consent of the harbour authority which regulates or manages the waters in which the operation takes place, and

(d) for the purpose of rationalising cargo capacity;

“the consultation bodies” means—

(a) such of—

(i) Natural England,

(ii) the Countryside Council for Wales,

(iii) Scottish Natural Heritage, and

(iv) the Council for Nature Conservation and the Countryside,

as the Secretary of State considers likely to have an interest in an application by reason of their responsibilities, and

(b) any authority or other body the Secretary of State considers likely to have an interest in an application (whether by virtue of having specific environmental responsibilities under any enactment or otherwise);

“European site” means a “European site” as defined in regulation 8 of the Conservation of Habitats and Species Regulations 2010^(b) and a “European offshore marine site” as defined in regulation 15 of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007^(c);

“general lighthouse authority” has the meaning given to it in section 193 of the Merchant Shipping Act 1995^(d);

“the Habitats Directive” means Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora^(e);

“harbour authority” has the meaning given to it in section 57(1) of the Harbours Act 1964^(f);

“harbour authority waters” means waters regulated or managed by a harbour authority, excluding any areas outside a harbour over which a harbour authority exercises control in accordance with the Pilotage Act 1987^(g) by virtue of an order of the Secretary of State made under section 1(3)(a) of that Act;

“licence decision” means the decision of the Secretary of State whether to grant an oil transfer licence or an amended oil transfer licence and, if so, as to the terms on which to do so;

“lightening operation” means a cargo transfer carried out—

(a) in harbour authority waters,

(a) S.I. 2003/1809; the definition of “ship-generated waste” was amended by regulation 2(2)(b) of the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) (Amendment) Regulations 2009 (SI 2009/1176).

(b) S.I. 2010/490.

(c) S.I. 2007/1842.

(d) 1995 c.21.

(e) O.J. No. L 206, 22.7.92, p.7.

(f) 1964 c.40.

(g) 1987 c.21.

- (b) at the direction of a harbour authority which regulates or manages the waters in which the operation takes place, and
- (c) in order to reduce the draught of a ship, enabling it to move to shallower waters regulated or managed by that harbour authority;

“Natura 2000” has the meaning given to it by regulation 2(1) of the Conservation (Natural Habitats, &c) Regulations 1994(a);

“offshore installation” means—

- (a) an offshore installation within the meaning of section 44 of the Petroleum Act 1998(b), which is not a ship, or
- (b) a renewable energy installation within the meaning of section 104 of the Energy Act 2004(c);

“oil” has the meaning given to it by section 151 of the Merchant Shipping Act 1995; and

“oil transfer licence” means a licence granted to a harbour authority by the Secretary of State, enabling the harbour authority to authorise cargo transfers—

- (a) of a substance or substances specified in the licence,
- (b) in a specified location or locations, and
- (c) subject to any conditions specified in the licence.

Prohibited transfers

3.—(1) Subject to paragraph (3) and regulation 6, a cargo transfer or bunkering operation must not be carried out in United Kingdom waters unless the ships carrying out the cargo transfer or bunkering operation are within harbour authority waters.

(2) Subject to paragraph (3) and (4) and regulation 8, a cargo transfer must not be carried out in harbour authority waters, except in accordance with an authorisation of the harbour authority which regulates or manages the waters in which the cargo transfer is carried out.

(3) Paragraphs (1) and (2) do not apply to a cargo transfer or bunkering operation—

- (a) between a ship and an offshore installation;
- (b) to or from a warship, naval auxiliary ship or other ship owned or operated by a State and used solely, for the time being, on government non-commercial service; or
- (c) carried out by or on behalf of a general lighthouse authority.

(4) Paragraph (2) does not apply to a cargo transfer which is—

- (a) a lightening operation; or
- (b) a consolidation operation.

Authorisation of cargo transfers

4.—(1) A harbour authority may only authorise a cargo transfer which is within the scope permitted by an oil transfer licence.

(2) The authorisation of a cargo transfer by a harbour authority is valid only if given—

- (a) on receipt of a written application for authorisation,
- (b) in advance of the cargo transfer, and
- (c) in writing.

(a) S.I. 1994/2716.
(b) 1998 c.17.
(c) 2004 c.20.

Oil transfer licences

5.—(1) Before a harbour authority may obtain an oil transfer licence the harbour authority must—

- (a) determine, in accordance with the procedure in Schedule 1, whether the cargo transfers to be authorised pursuant to the licence would be likely to have a significant effect on any European site; and
- (b) apply for the licence to the Secretary of State in accordance with the procedure in Schedule 2.

(2) In harbour authority waters where—

- (a) an oil transfer licence has effect, and
- (b) the harbour authority which regulates or manages those harbour authority waters becomes aware of circumstances which render the information provided in the application inaccurate to what is or may be a material extent,

the harbour authority must apply to the Secretary of State for an amended oil transfer licence.

(3) The harbour authority must make the application under paragraph (2) within 3 months of becoming aware of the circumstances referred to in that paragraph.

(4) A harbour authority applying for an amended oil transfer licence must use the procedure in Schedules 1 and 2, and for this purpose—

- (a) references in Schedules 1 and 2 to the oil transfer licence are to be taken as references to the amended oil transfer licence;
- (b) references in Schedules 1 and 2 to the application are to be taken as references to the application for the amended oil transfer licence; and
- (c) references in Schedules 1 and 2 to the licence decision are to be taken as references to the decision whether to issue an amended oil transfer licence.

(5) Where a harbour authority applies for an amended oil transfer licence under paragraph (2) the Secretary of State may—

- (a) issue an amended oil transfer licence in such terms as the Secretary of State considers appropriate;
- (b) decline to issue an amended oil transfer licence, leaving the existing oil transfer licence to continue in effect; or
- (c) decline to issue an amended oil transfer licence and revoke the existing oil transfer licence.

Exemptions

6.—(1) Subject to paragraph (3), the Secretary of State may exempt a cargo transfer or bunkering operation from the provisions of regulation 3(1).

(2) The Secretary of State may make any such exemption subject to such conditions as the Secretary of State considers appropriate.

(3) Where the Secretary of State considers that a cargo transfer or bunkering operation is likely to have a significant effect on a European site, the Secretary of State must, before granting an exemption under paragraph (1), require the person applying for the exemption to provide sufficient information to enable the Secretary of State to carry out an appropriate assessment of the implications of the cargo transfer or bunkering operation for the European site, in view of the conservation objectives of the site.

(4) The procedure for the assessment referred to in paragraph (3) is the procedure for assessment of an application for an oil transfer licence in Schedules 1 and 2, and for this purpose—

- (a) references in Schedules 1 and 2 to the harbour authority are to be taken as references to the person who applied for the exemption;

- (b) references in Schedules 1 and 2 to the application are to be taken as references to the application for the exemption;
- (c) references in Schedules 1 and 2 to the oil transfer licence are to be taken as references to the proposed exempt cargo transfer or bunkering operation; and
- (d) references in Schedules 1 and 2 to the licence decision are to be taken as references to the decision whether to grant the exemption.

Offences

7.—(1) If a cargo transfer or bunkering operation is carried out in contravention of these Regulations, the owner, the manager and the master of each ship carrying out the cargo transfer or bunkering operation is guilty of an offence.

(2) A harbour authority which—

- (a) authorises a cargo transfer without an oil transfer licence;
- (b) fails to take all reasonable steps to prevent a cargo transfer which is neither—
 - (i) authorised under an oil transfer licence, nor
 - (ii) exempted under regulation 3(3) or (4); or
- (c) knowingly or recklessly provides false information in an application,

is guilty of an offence.

(3) A person who knowingly or recklessly provides false information to the Secretary of State in relation to an application for an exemption under regulation 6 is guilty of an offence.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding £25,000 and on conviction on indictment to a fine.

(5) Where a person is charged with an offence under paragraph (1), (2)(a) or (2)(b), it is a defence for the person charged to prove that the cargo transfer or bunkering operation was for one or more of the following purposes—

- (a) securing the safety of any ship;
- (b) preventing damage to any ship or cargo;
- (c) saving life;
- (d) preventing pollution,

unless the court is satisfied that the cargo transfer or bunkering operation was not necessary for any of those purposes and was not a reasonable step to take in the circumstances.

Transitional provision

8. Where at least six cargo transfers have been carried out within the same harbour authority waters during the twelve months prior to 1st October 2010, regulation 3(2) does not apply in respect of cargo transfers in those harbour authority waters until either—

- (a) a licence decision has been made in respect of that harbour authority's application; or
- (b) the expiry of two years starting on 1st October 2010,

whichever is sooner.

Signed by authority of the Secretary of State for Transport

8th April 2010

Paul Clark
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE 1 Regulations 5(1)(a) and (4) and 6(4)

Initial determination of likely effects on European sites

1. The harbour authority must—

- (a) determine, and
- (b) provide to the Secretary of State a written statement with reasons stating,

whether the cargo transfers to be carried out under the requested oil transfer licence are likely to have a significant effect on any European site, either individually or in combination with other plans or projects.

2.—(1) If the harbour authority determines that the cargo transfers are not likely to have a significant effect on any European site the Secretary of State must, on receipt of the harbour authority's application, review that determination in the light of the environmental statement and any further information provided.

(2) If, following such review, the Secretary of State determines that the cargo transfers are likely to have a significant effect on any European site, the Secretary of State must give notice to the harbour authority to that effect.

3.—(1) If the harbour authority or the Secretary of State has determined that the cargo transfers are likely to have a significant effect on any European site, the procedure set out in Schedule 2 shall be modified as follows.

(2) Having considered the environmental statement provided in accordance with paragraph 1(1)(c) of Schedule 2, the Secretary of State must make an appropriate assessment of the implications of the proposed cargo transfers for the European site, in view of the conservation objectives of the site, for the purposes of Article 5 of the Habitats Directive.

(3) Before the Secretary of State may grant an oil transfer licence without having concluded that the proposed cargo transfers will not adversely affect a European site, the Secretary of State must be satisfied that—

- (a) there is no appropriate alternative to granting the oil transfer licence in the proposed terms, and
- (b) the oil transfer licence must be granted in view of imperative reasons of overriding public interest which, subject to sub-paragraph (4), may be of a social or economic nature.

(4) Where the European site referred to in sub-paragraph (3) hosts a priority natural habitat type or a priority species as defined in Article 1 of the Habitats Directive, the reasons referred to in that sub-paragraph must be either—

- (i) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (ii) reasons which are, in the opinion of the European Commission, imperative reasons of overriding public interest,

and the Secretary of State may seek the opinion of the European Commission in connection with sub-paragraph (4)(ii).

(5) Where the Secretary of State considers that any adverse effects of the proposed cargo transfers on the integrity of a European site would be avoided by granting an oil transfer licence subject to conditions, the Secretary of State may not grant the licence except subject to those conditions.

(6) If, in spite of a negative assessment of the environmental implications for the European site and in the absence of alternative solutions, the Secretary of State decides to grant the oil transfer licence for imperative reasons of overriding public interest, the Secretary of State must—

- (a) ensure that all compensatory measures necessary to ensure that the overall coherence of Natura 2000 are taken; and
- (b) inform the European Commission of the compensatory measures adopted.

SCHEDULE 2 Regulations 5(1)(b) and (4) and 6(4)

Procedure for grant of oil transfer licence

Application

1.—(1) — The application must contain—

- (a) a chart or map (or both) sufficient to identify the locations of the proposed cargo transfers to be carried out under the oil transfer licence and the extent of any onshore infrastructure alterations which the cargo transfers would involve;
- (b) a description of the proposed cargo transfers, including—
 - (i) the types of substances to be transferred;
 - (ii) the maximum quantities of each substance to be transferred in any single operation and/or within any specified time period;
 - (iii) the frequency of transfers; and
 - (iv) the types of ship to be used to carry out the transfers; and
- (c) an environmental statement in respect of the cargo transfers which—
 - (i) is in writing; and
 - (ii) contains the information specified in paragraph 2.

(2) The harbour authority must comply with any reasonable request made by the Secretary of State as to—

- (a) the format in which the harbour authority must provide the material referred to in sub-paragraph (1);
- (b) the number of copies of the material in that format that the harbour authority must provide to the Secretary of State.

(3) Until this has been done the Secretary of State need not deal further with, or exercise any functions under these Regulations in relation to, the application.

Environmental statement

2.—(1) The environmental statement must contain—

- (a) a description of any aspects of the environment likely to be significantly affected by the proposed cargo transfers, including—
 - (i) human beings, fauna and flora;
 - (ii) soil, water, air, climate and the landscape;
 - (iii) material assets and the cultural heritage; and
 - (iv) the interaction between any two or more of the things mentioned in sub-paragraphs (i) to (iii);
- (b) a description, complying with sub-paragraph (2), of any significant effects the proposed cargo transfers are likely to have on the environment resulting from—
 - (i) the nature of the activities to be carried out and the manner in which they are to be carried out;
 - (ii) the use of natural resources;
 - (iii) the emission of pollutants;

- (iv) the creation of nuisances; or
 - (v) the elimination of waste;
 - (c) a description of the forecasting methods used by the harbour authority to assess any effects that the proposed cargo transfers are likely to have on the environment;
 - (d) a description of the measures envisaged to prevent or reduce, and where possible offset, any significant effects of the proposed cargo transfers on the environment, including, if appropriate, any changes proposed to the harbour authority's oil pollution emergency plan maintained in accordance with regulation 4 of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation) Regulations 1998^(a);
 - (e) if applicable, an outline of the main alternatives to the proposed cargo transfers studied by the harbour authority and an indication of the main reasons for its choice, taking into account the environmental effects of those alternatives and the proposed cargo transfers;
 - (f) a non-technical summary of the information provided under paragraphs (a) to (e); and
 - (g) a description of any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any information specified in paragraphs (a) to (e).
- (2) The description referred to in sub-paragraph (1)(b) must cover—
- (a) direct and indirect effects;
 - (b) secondary effects;
 - (c) cumulative effects;
 - (d) short-term, medium-term and long-term effects;
 - (e) permanent and temporary effects; and
 - (f) positive and negative effects.

Provision of further information

- 3.—(1) Where the Secretary of State reasonably considers that—
- (a) further information is required for the proper consideration of the likely environmental effects of the proposed cargo transfers, and
 - (b) the harbour authority is or should be able to provide such information,

the Secretary of State must notify the harbour authority in writing of the matters on which further information is required.

(2) The Secretary of State need not deal further with, or exercise any functions under these Regulations in relation to, the application until any further information required in accordance with sub-paragraph (1) has been provided to the Secretary of State.

Consultation and publicity

- 4.—(1) The Secretary of State must either—
- (a) supply the documents set out in sub-paragraph (2) to the consultation bodies, or
 - (b) direct the harbour authority to supply them to the consultation bodies.
- (2) The documents referred to in sub-paragraph (1) are—
- (a) a copy of the application;
 - (b) a copy of any further information supplied by the harbour authority to the Secretary of State under paragraph 3; and
 - (c) a letter stating that any representations regarding the application should be made in writing to the Secretary of State, at an address specified in the letter, within 42 days from

(a) S.I.1998/1056.

the date of the letter (or such longer period as may be agreed between the consultation bodies and the Secretary of State).

- (3) The Secretary of State must either—
- (a) publicise the application by the method set out in sub-paragraph (4), or
 - (b) direct the harbour authority to publicise the application by the method set out in sub-paragraph (4).
- (4) The method referred to in sub-paragraph (3) is—
- (a) the publication, in two successive weeks, of a notice containing the information set out in sub-paragraph (5) in such newspapers or other publications as the Secretary of State considers appropriate, and
 - (b) such other steps as the Secretary of State considers appropriate.
- (5) The information referred to in sub-paragraph (4) is—
- (a) the harbour authority's name and correspondence address;
 - (b) a statement that an environmental statement has been submitted in connection with an application for an oil transfer licence and that further information (if any) has been provided to the Secretary of State;
 - (c) a description of the proposed cargo transfers, including—
 - (i) the types of substances to be transferred;
 - (ii) the maximum quantities of each substance to be transferred in any single operation and/or within any specified time period;
 - (iii) the anticipated frequency of transfers; and
 - (iv) the types of ship to be used to carry out the transfers;
 - (d) the address of an office of the Secretary of State, or other place nominated by the Secretary of State, at which copies of the application and the further information (if any) may be inspected free of charge at all reasonable hours, within 42 days beginning with the date of publication of the notice;
 - (e) the address from which copies of the application and the further information (if any) may be obtained from the Secretary of State and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying), of the charge; and
 - (f) a statement that any person wishing to make representations regarding the application and the further information (if any) should make them in writing to the Secretary of State at an address specified in the notice, within 42 days beginning with the date of publication of the notice.
- (6) The Secretary of State need not deal further with, or exercise any functions under these Regulations in relation to, the application until—
- (a) the harbour authority has complied with any directions given in accordance with sub-paragraph (1)(b) or (3)(b); and
 - (b) the expiry of—
 - (i) the consultation period, including any extension agreed in accordance with sub-paragraph (2)(c); and
 - (ii) the period for the making of representations in accordance with sub-paragraph (5)(f).

Licence decision, notification and publication

- 5.—(1) In reaching a licence decision, the Secretary of State must—
- (a) have regard to—
 - (i) the application for the oil transfer licence;
 - (ii) any further information provided by the harbour authority pursuant to a notification under paragraph 3;

- (iii) any representations received in accordance with the letter referred to in paragraph 4(2)(c); and
- (iv) any representations received in accordance with the statement referred to in paragraph 4(5)(f); and
- (b) take into account the direct and indirect effects of the proposed cargo transfers on—
 - (i) human beings, fauna and flora;
 - (ii) soil, water, air, climate and the landscape;
 - (iii) material assets and the cultural heritage; and
 - (iv) the interaction between any two or more of the things mentioned in sub-paragraphs (i) to (iii).
- (2) The Secretary of State must send written confirmation of the licence decision to—
 - (a) the harbour authority;
 - (b) any consultation body which responded to the consultation in accordance with the letter referred to in paragraph 4(2)(c); and
 - (c) any person from whom the Secretary of State received representations in accordance with the statement referred to in paragraph 4(5)(f).
- (3) The written confirmation must include—
 - (a) the main reasons and considerations on which the licence decision was based, including any opinion of the European Commission on matters of overriding public interest obtained under paragraph 3(4) of Schedule 1;
 - (b) if the licence decision involves granting the oil transfer licence, a description of any measures that must be taken in consequence of the grant to avoid or reduce, and where possible offset, any environmental effects of the cargo transfers; and
 - (c) such maximum duration of the oil transfer licence, if any, as the Secretary of State considers appropriate.
- (4) The Secretary of State must ensure, as soon as possible after written confirmation is sent to the harbour authority pursuant to sub-paragraph (2)(a), that the licence decision is publicised in such manner as the Secretary of State considers appropriate.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern transfers consisting wholly or mainly of oil between ships, known as ship to ship transfers, within the seaward limits of the territorial sea of the United Kingdom.

Regulation 1(2) and (3) provide that the regulation of cargo transfers under *regulation 3(2)* takes effect either on 1st April 2011, or, if later, on the making of a licence decision where a harbour authority has applied for an oil transfer licence within two months of the coming into force of the Regulations and the licence decision has not been made by 1st April 2011.

Regulation 3(1) prohibits ship to ship transfers consisting wholly or mainly of oil unless they are carried out within harbour authority waters.

Under *regulation 3(2)* ship to ship transfers of cargo consisting wholly or mainly of oil are subject to prior authorisation by the relevant harbour authority under an oil transfer licence granted by the Secretary of State, having considered the programme's likely impact on the environment by the procedure set out in *Schedules 1 and 2*. Where cargo transfers are likely to have a significant effect on a European site, the procedure implements Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (O.J. No. L 206, 22.7.92, p.7).

Regulation 3(3) excludes from the Regulations ship to ship transfers involving ships engaged in certain offshore activities, ships engaged at the relevant time on government non-commercial service and general lighthouse authorities.

Regulation 3(4) excludes from regulation 3(2) two categories of cargo transfers: transfers to lighten a ship to enable it to move to shallower waters and to consolidate cargo for bunkering operations.

Regulation 4 sets out requirements for the authorisation of regulated transfers pursuant to an oil transfer licence.

Regulation 5 sets out the procedure for an application for an oil transfer licence and for an amended oil transfer licence and requires a harbour authority to apply for an amendment to an existing licence within three months of becoming aware of a material change in circumstances.

Regulation 6 confers on the Secretary of State the power to grant exemptions from regulation 3(1).

Regulation 7 makes the contravention of certain provisions of the Regulations an offence.

Regulation 8 provides transitional arrangements under which, in respect of a harbour in which at least six ship to ship cargo transfer operations have taken place during the year prior to 1st October 2010, regulation 3(2) does not apply to the relevant harbour authority for a maximum period of two years starting from that date, pending the obtaining of such a licence.

An impact assessment of the effect of these Regulations on the cost of business has been prepared and copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG. A copy has been placed in the library of each House of Parliament.

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STATUTORY INSTRUMENTS

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2010

£5.75