

2011 No. 2601

MERCHANT SHIPPING

The Merchant Shipping (Port State Control) Regulations 2011

Made - - - - *31st October 2011*

Laid before Parliament *2nd November 2011*

Coming into force - - *24th November 2011*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the safety of ships and the health and safety of persons on them(b).

The Secretary of State has consulted such persons in the United Kingdom as she considers will be affected by these Regulations in accordance with section 86 of the Merchant Shipping Act 1995(c).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for references to Annexes to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control(d) to be construed as references to those Annexes as amended from time to time.

The Secretary of State, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and sections 85 and 86 of the Merchant Shipping Act 1995, makes the following Regulations.

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Merchant Shipping (Port State Control) Regulations 2011.

(2) These Regulations come into force on 24th November 2011.

(a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (cm 2183)..

(b) S.I. 1993/595.

(c) 1995 c.21. Section 85 was amended by sections 8 and 29 of and Schedule 7 to the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 2 of the British Overseas Territory Act 2002 (c. 8) and section 5 of the Health Act 2006 (c.28); section 86 was amended by sections 8 and 29 of and Schedule 7 to the Merchant Shipping and Maritime Security Act 1997.

(d) OJ No. L131, 28.05.2009 p.57.

(3) The Merchant Shipping (Port State Control) Regulations 1995^(a) are revoked.

PART 1

IMPLEMENTATION OF DIRECTIVE 2009/16/EC

Interpretation of Part 1

2.—(1) In Part 1 of these Regulations—

“the Act” means the Merchant Shipping Act 1995;

“British ship” has the meaning given by section 1 of the Act;

“the Commission” means the Commission of the European Union;

“Conventions” means—

- (a) the International Convention on Load Lines, 1966 (LL 66);
 - (b) the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);
 - (c) the International Convention for the Prevention of Pollution from Ships, 1973, and the 1978 Protocol relating thereto (MARPOL 73/78);
 - (d) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78/95);
 - (e) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);
 - (f) the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69);
 - (g) the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No 147); and
 - (h) 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 27th October 2011, 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 Act;
 - (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;

“Convention enactments” means—

- (a) the Act; and
- (b) statutory instruments made under the Act (including statutory instruments made under an order made under the Act) which implement the Conventions;

“the Directive” means Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control;

“expanded inspection” means an inspection which covers at least the items listed in Annex VII to the Directive;

“fishing vessel” means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;

(a) S.I. 1995/3128 amended by S.I. 1998/1433, S.I. 1998/2198, S.I. 2001/2349, S.I. 2003/1636 and S.I. 2009/1604.

“flag administration” in relation to a ship means the administration of the State whose flag the ship is entitled to fly;

“IMO” means the International Maritime Organisation;

“initial inspection” means a visit on board a ship by an inspector in order to check compliance with the relevant Conventions including at least the checks set out in Article 13.1 of the Directive;

“the inspection database” means the information system developed, maintained and updated by the Commission in accordance with Article 24 of the Directive;

“inspector” means a person duly authorised by the Secretary of State to carry out inspections required by these Regulations;

“Maritime and Coastguard Agency” means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

“Member State” includes an EEA State;

“Merchant Shipping Notice” means a Notice described as such, issued by the Maritime and Coastguard Agency, and reference to a specific Merchant Shipping Notice includes a reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“more detailed inspection” means an inspection where the ship, its equipment and crew as a whole or parts thereof are subjected to an in-depth examination covering the ship’s construction, equipment, manning, living and working conditions and compliance with on-board operational procedures;

“owner” includes, in relation to a ship, any operator, manager, charterer or agent of the ship;

“port authority” means a harbour authority within the meaning of the Harbours Act 1964^(a) or, in Northern Ireland, of the Harbours Act (Northern Ireland) 1970^(b), or if there is no such authority, the person having control of the operation of the port;

“refusal of access notice” means a decision issued by the Secretary of State or the competent authority of another Member State to the master of the ship, to the company responsible for the ship and to the flag State notifying them that the ship will be refused access to all ports and anchorages in the territory of any Member State;

“ship” means a seagoing vessel to which one or more of the Conventions applies and includes hovercraft;

“United Kingdom waters” has the meaning given in section 313(2) (a) of the Act; and the following expressions have the meanings given in Article 2 of the Directive—

- (a) classification certificate;
- (b) company;
- (c) complaint;
- (d) Paris MOU;
- (e) Paris MOU region;
- (f) recognised organisation;
- (g) ship at anchorage;
- (h) ship/port interface;
- (i) statutory certificate; and
- (j) stoppage of an operation.

(a) 1964 c.40.

(b) 1970 c.1.

(2) References in these Regulations to an Annex to the Directive are references to that Annex as amended from time to time.

(3) References in these Regulations to the United Kingdom include United Kingdom waters.

Application of Part 1

3.—(1) Part 1 of these Regulations applies to any ship and its crew calling at a port or anchorage in the United Kingdom to engage in a ship/port interface.

(2) These Regulations do not apply to—

- (a) a British ship;
- (b) a fishing vessel;
- (c) a warship;
- (d) a naval auxiliary;
- (e) a wooden ship of primitive build;
- (f) a government ship used for non-commercial purposes; or
- (g) a pleasure yacht not engaged in trade.

(3) An inspector must, when exercising functions in respect of a ship below 500 gross tonnage—

- (a) have regard to Annex 1 to the Paris MOU;
- (b) to the extent a Convention applies to the ship, apply the requirements of that Convention; and
- (c) to the extent a Convention does not apply to the ship, take such action as may be necessary to ensure that the ship is not clearly hazardous to safety, health or the environment.

(4) An inspection in the United Kingdom of a ship, while not in a port, is considered an inspection for the purposes of these Regulations.

(5) Where—

- (a) a ship is detained under a Convention enactment; or
- (b) the master of such a ship is served with a detention notice under such an enactment;

section 284 of the Act (enforcing detention of a ship) applies in relation to the ship as if any reference to proceeding to sea were a reference to proceeding contrary to the detention notice and references to sending or taking to sea were construed accordingly.

Inspection commitment

4.—(1) The Secretary of State must in each calendar year ensure the carrying out of the United Kingdom's share of the total number of inspections to be carried out annually within the European Union and the Paris MOU region.

(2) The United Kingdom's share of the total number of inspections is that determined pursuant to Article 5 of the Directive.

(3) An inspection is—

- (a) an initial inspection;
- (b) a more detailed inspection; or
- (c) an expanded inspection.

Initial inspections and more detailed inspections

5.—(1) Subject to paragraph (2), in carrying out an inspection of a ship the inspector must as a minimum carry out an initial inspection.

(2) If—

- (a) after an inspection complying with Article 13.1 of the Directive has been carried out in any Member State, deficiencies to be rectified in the ship's next port of call have been recorded in the inspection database; and
- (b) that next port of call is in the United Kingdom;

the inspector must, if carrying out an inspection of that ship, as a minimum comply with the requirements of Article 13.1(b).

(3) A more detailed inspection must be carried out when there are clear grounds for believing, after an initial inspection, that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention.

(4) For the purposes of paragraph (3) and regulation 6(3)—

- (a) clear grounds exist when the inspector finds evidence which in the inspector's professional judgement warrants a more detailed inspection of the ship, its equipment or its crew; and
- (b) examples of clear grounds are set out in Annex V to the Directive.

Expanded inspection of certain ships

6.—(1) This regulation applies to ships in the categories set out in Article 14.1 of the Directive.

(2) If such a ship is eligible for an expanded inspection in accordance with paragraphs 3A and 3B in Part II of Annex I to the Directive and is to call at a port or anchorage in the United Kingdom, its owner or master must—

- (a) notify the Secretary of State of that intention;
- (b) include in that notification the information prescribed by Annex III to the Directive;
- (c) use electronic means whenever possible to make that notification;
- (d) make that notification—
 - (i) at least three days before the expected time of arrival at the port or anchorage; or
 - (ii) if the voyage to the port or anchorage is expected to take less than three days, before leaving the previous port or anchorage.

(3) An expanded inspection may include a more detailed inspection whenever there are clear grounds for believing that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention, as described in regulation 5(4).

(4) The ship's owner or master must ensure that sufficient time is available in the operating schedule to allow the expanded inspection to be carried out.

(5) Without prejudice to control measures required for security purposes, the ship must not leave the port or anchorage until the inspection is completed.

(6) On receipt of the notification by the Secretary of State, if an expanded inspection of the ship will not be carried out, an inspector must notify the ship's master or owner of that.

Report of inspection to the master

7. On completion of an initial inspection, a more detailed inspection or an expanded inspection, the inspector must draw up a report in accordance with Annex IX to the Directive and must provide the ship's master with a copy of the report.

Professional profile of inspectors

8.—(1) Subject to paragraph (2), inspections under these Regulations must not be carried out by persons who do not fulfil the qualification criteria specified in Annex XI to the Directive.

(2) Where an inspector with the required professional expertise cannot be provided by the Secretary of State, the inspector may be assisted by any person with the required professional expertise.

(3) An inspector and any person assisting an inspector must have no commercial interest either in the port of inspection or in the ships inspected, nor must the inspectors be employed by, or undertake work on behalf of, non-governmental organisations which issue statutory and classification certificates or which carry out surveys necessary for the issue of those certificates to ships.

Rectification and detention

9.—(1) A ship's owner must satisfy the Secretary of State that any deficiencies which are confirmed or revealed by an initial inspection, more detailed inspection or expanded inspection, are or will be rectified in accordance with the Conventions.

(2) Where such deficiencies are clearly hazardous to safety, health or the environment, the inspector must detain the ship, or require the stoppage of the operation in the course of which the deficiencies have been revealed, using powers of detention in Convention enactments as appropriate, or issuing a prohibition notice under section 262 of the Act, as the case may be.

(3) A detention notice issued in the circumstances described in paragraph (2) may:

- (i) include a direction that a ship must remain in a particular place, or must move to a particular anchorage or berth; and
- (ii) specify circumstances when the master of the ship may move that ship from a specified place for reasons of safety or prevention of pollution.

(4) Measures imposed by an inspector in the circumstances described in paragraph (2) must not be lifted until the Secretary of State has established that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

(5) Without prejudice to any other requirement in the Convention enactments, when exercising professional judgement as to whether or not a ship should be detained the inspector must apply the criteria set out in Annex X to the Directive.

(6) A ship must be detained if it is not equipped with a functioning voyage data recorder system, when its use is compulsory in accordance with Directive 2002/59/EC of the European Parliament and of the Council of 23 June 2002 establishing a Community vessel traffic monitoring and information system^(a).

(7) If the deficiency mentioned in paragraph (6) cannot readily be rectified in the port of detention, the inspector may either allow the ship to proceed to the appropriate repair yard nearest to the port of detention where it is capable of being rectified and is to be so rectified, or require that the deficiency be rectified within a maximum period of 30 days.

(8) In exceptional circumstances, where the overall condition of a ship is obviously substandard, the inspector may, in addition to detaining the ship, suspend the inspection of that ship until the responsible parties have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

(9) If a ship is detained following an initial inspection, a more detailed inspection or an expanded inspection, the Secretary of State must 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 the Consul's absence,
- (iii) the nearest diplomatic representative of the State of the flag administration.

(a) OJ No. L208, 5.08.2002, p.10, amended by Directive 2009/17/EC OJ No. L131, 28.5.2009 p.101 and by Directive 2011/15/EU OJ No. L 49, 24.2.2011, p.33.

(10) The written information referred to in paragraph (9) must set out all the circumstances relating to the decision to detain the ship and must include the report of inspection.

(11) Where paragraph (9) applies the Secretary of State must also notify all relevant—

- (i) nominated surveyors; or
- (ii) recognised organisations;

responsible for the issue of classification certificates or statutory certificates.

(12) The provisions of these Regulations do not prejudice the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

(13) When carrying out an inspection under these Regulations, the inspector must make all possible efforts to avoid a ship being unduly detained or delayed.

(14) The risk of port congestion must not be a consideration in a decision to detain a ship or to release a ship from detention.

Refusal of access

10.—(1) A ship—

- (a) which is described in paragraph (2), or
- (b) in respect of which a refusal of access notice has been issued,

must not enter any port or anchorage in the United Kingdom.

(2) (a) A ship which—

- (i) flies the flag of a State whose detention rate falls on the black list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and published annually by the Commission; and
- (ii) has been detained, or issued with a prevention of operation order under Directive 1999/35/EC on a system of mandatory surveys for regular ro-ro ferry and high-speed passenger craft services^(a), more than twice in the course of the preceding 36 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU.

(b) A ship which—

- (i) flies the flag of a State whose detention rate falls on the grey list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and published annually by the Commission; and
- (ii) has been detained, or issued with a prevention of operation order under Directive 1999/35/EC, more than twice in the course of the preceding 24 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU.

Power to issue refusal of access notice

11.—(1) The Secretary of State must issue a refusal of access notice in respect of a ship described in paragraph (2) or paragraph (3).

(2) A ship described in regulation 10(2) which is the subject of a third or subsequent detention when within a port or anchorage in the United Kingdom.

(3) A ship which is subject to a detention, after two or more refusal of access notices have been served in respect of it by the Secretary of State or any Member State, when within a port or anchorage in the United Kingdom.

(a) OJ No. L 138, 1.06.1999, p.1.

Effect of refusal of access notice

12.—(1) A refusal of access notice takes effect when the ship to which it applies leaves the port or anchorage where the refusal of access notice was issued.

(2) A first or second refusal of access notice ceases to have effect when—

- (a) the requirements of paragraphs 3 to 9 of Annex VIII to the Directive have been met; and
- (b) (i) if it is the first refusal of access notice in respect of that ship, three months have passed from the date of issue of the notice; or
(ii) if it is the second refusal of access notice in respect of that ship, twelve months have passed from the date of issue of the notice.

(3) A third refusal of access notice ceases to have effect if—

- (a) 24 months have passed from the date of issue of the notice;
- (b) the ship in respect of which it was served is not entitled to fly the flag of a State whose detention rate falls into the black list or the grey list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and published annually by the Commission;
- (c) the statutory and classification certificates of that ship are issued by an organisation recognised under Regulation (EC) No 391/2009 of the European Parliament and the Council of 23 April 2009^(a) on common rules and standards for ship inspection and survey organisations;
- (d) that ship is managed by a company with a high performance determined in accordance with paragraph 1.1 of Annex I to the Directive; and
- (e) the requirements of paragraphs 3 to 9 of Annex VIII to the Directive have been met.

(4) If, after 24 months, the requirements of paragraph (3) (b), (c), (d) and (e) have not been complied with in respect of a ship, the refusal of access notice becomes permanent.

(5) A ship which is detained in a port or anchorage within the European Union after a third refusal of access notice has been issued in respect of it must not enter any port or anchorage in the United Kingdom.

Power to permit prohibited ships to enter port

13.—(1) Notwithstanding regulations 10, 12 and 17, if this regulation applies the Secretary of State may allow a ship access to a specific port or anchorage in the United Kingdom.

(2) This regulation applies if the Secretary of State—

- (a) considers that a circumstance in paragraph (3) applies in relation to the ship; and
- (b) is satisfied that adequate measures to ensure safe entry have been implemented by the owner or master of the ship.

(3) The circumstances are —

- (a) force majeure;
- (b) overriding safety considerations;
- (c) the need to reduce or minimise the risk of pollution; or
- (d) the need to have deficiencies rectified.

^(a) OJ No. L131, 28.5.2009, p.11.

Rights of appeal and compensation

14.—(1) Regulations 15 and 16 apply in relation to the exercise of the power of detention or refusal of access in any Convention enactment except the Act and the Merchant Shipping (Survey and Certification) Regulations 1995(a).

(2) Section 96 of the Act (references of detention notices to arbitration)(b) applies in relation to a refusal of access notice issued under this Part of these Regulations as it applies to a detention notice under section 95(3) of that Act, as if it were modified as follows—

- (a) the references to “relevant inspector” were to a person making an inspection under this Part of these Regulations; and
- (b) the following words were 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”.

(3) Section 97 of the Act (compensation in connection with invalid detention of ship) applies in relation to a ship to which this Part of these Regulations applies as if, for subsection (1), there were substituted—

“(1) If on a reference under section 96 relating to a detention notice or refusal of access notice issued in relation to a ship, the owner of the ship shows to the satisfaction of the arbitrator that—

- (a) any matter did not constitute a valid basis for the relevant inspector’s opinion, and
- (b) there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may award the owner such compensation in respect of any loss suffered by him in consequence of the detention of the ship or the service of the refusal of access notice as the arbitrator thinks fit.”.

(4) In the operation of sections 264 and 265 of the Act, as applied by regulation 25 of the Merchant Shipping (Survey and Certification) Regulations 1995, as those sections apply in relation to a detention notice or order served under that regulation on the master of a ship which is not a British ship—

- (i) notwithstanding paragraph (2)(d) of that regulation, the giving of a notice under section 264 (as applied by those Regulations) does not operate to suspend the operation of the detention notice or order; and
- (ii) on a reference under section 264 (as applied by those Regulations) the burden of satisfying the arbitrator as to the matters specified in section 265(1) (a) and (b) lies with the person on whom the notice was served.

Arbitration

15.—(1) Any question as to whether a matter falling within paragraph (2) constituted a valid basis for the inspector’s opinion must, if the master or owner of the ship so requires by a notice given to the inspector within 21 days from the service of the detention notice or refusal of access notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by the arbitrator.

(2) A matter falls within this paragraph if it is specified in relation to a ship in a detention notice or refusal of access notice in pursuance of a power of detention or refusal of access to which this regulation applies in connection with any opinion formed by the inspector.

(a) S.I. 1995/1210, amended by S.I.1996/2418 and S.I.2000/1334.

(b) Sections 96 and 264 were amended by section 7 of and Schedule 4 to the Arbitration Act 1996 (c.23), section 59 of the Constitutional Reform Act 2005 (c.4) and section 50 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

(3) Where a notice is given by the master or owner of the ship in accordance with paragraph (1), the giving of the notice does not suspend the operation of the detention notice or refusal of access notice.

(4) The arbitrator must have regard to any matter not specified in the detention notice or refusal of access notice which appears to the arbitrator to be relevant as to whether the ship was or was not liable to be detained or served with a refusal of access notice.

(5) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion, the arbitrator must—

- (a) cancel the detention notice or refusal of access notice, as the case may be; or
- (b) affirm it with such modifications as the arbitrator may in the circumstances think fit.

(6) In any case other than one described in paragraph (5) the arbitrator must affirm the detention notice or refusal of access notice in its original form.

(7) The arbitrator must include in his decision a finding whether there was or was not a valid basis for the detention of the ship or for the service of a refusal of access notice.

(8) A person is not qualified for appointment as an arbitrator under this regulation unless he is:

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a person falling within paragraph (9); or
- (d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

(9) For the purposes of paragraph (8)(c) a person falls within this subsection if that person—

- (a) satisfies the judicial-appointment eligibility condition on a 7 year basis within the meaning of section 50 of the Tribunals, Courts and Enforcement Act 2007^(a);
- (b) is an advocate or solicitor in Scotland of at least 7 years' standing; or
- (c) is a member of the bar of Northern Ireland or solicitor of the Court of Judicature of Northern Ireland of at least 7 years' standing.

(10) In connection with functions under this regulation an arbitrator has the powers conferred on an inspector by section 259 of the Act.

(11) In the application of this regulation to Scotland any reference to an arbitrator is to be construed as a reference to an arbiter, and the reference in paragraph (1) above to a single arbitrator appointed by agreement between the parties is to be construed as a reference to a single arbiter so appointed or, in default of agreement, appointed by the sheriff.

Compensation for unjustified detention

16.—(1) If on a reference under regulation 15 relating to a detention notice or refusal of access notice, the arbitrator decides that the owner has proved—

- (a) that the matter complained of did not constitute a valid basis for the inspector's opinion; and
- (b) that there were no reasonable grounds for the issue of the detention notice or refusal of access notice;

the arbitrator must award the owner of the ship such compensation in respect of any loss suffered in consequence of, as the case may be, the detention of the ship or the issue of a refusal of access notice, as the arbitrator thinks fit.

(2) Any compensation awarded under this regulation is payable by the Secretary of State.

(a) 2007 c.15.

(3) In the application of this regulation to Scotland any reference to an arbitrator is to be construed as a reference to an arbiter.

Prohibition on detained ships requiring repair from entering port

17.—(1) A ship which falls within paragraph (2) and proceeds to sea from any port or anchorage in any Member State—

- (a) without complying with the conditions determined by the competent authority of the Member State in the port of inspection; or
- (b) without calling into the indicated repair yard;

must not enter any port or anchorage within the United Kingdom until the owner has provided evidence to the satisfaction of the competent authority referred to in sub-paragraph (a) that the ship fully complies with all applicable requirements of the Conventions.

(2) A ship falls within this paragraph if it—

- (a) was detained in a port in a Member State after an inspection revealed deficiencies clearly hazardous to safety, health or the environment; or
- (b) was so detained and was allowed by the competent authority of the Member State to proceed to the appropriate repair yard nearest to the port of detention.

Power to permit detained ships to proceed to repair yard

18.—(1) Where deficiencies referred to in regulation 9(2) cannot be rectified in the port of inspection, an inspector may allow the ship to proceed without undue delay to the appropriate repair yard nearest to the port of detention, as chosen by the master and authorities concerned, where follow-up action can be taken, provided that the conditions determined by the competent authority of the flag administration and agreed by the inspector are complied with.

(2) Such conditions must ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

Duty on pilots and port authorities to report anomalies

19.—(1) This regulation applies to a pilot falling within paragraph (2) who is—

- (a) engaged in the berthing or unberthing of a ship to which this Part of these Regulations applies in the United Kingdom; or
- (b) engaged on such a ship—
 - (i) bound for a port in the United Kingdom; or
 - (ii) in transit through United Kingdom waters.

(2) A pilot falls within this paragraph if—

- (a) the pilot is authorised under the Pilotage Act 1987(a); or
- (b) the pilot boards the ship in the United Kingdom.

(3) If a pilot learns, in the course of their normal duties, that there are apparent anomalies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment, the pilot must immediately inform—

- (a) if the pilot falls within paragraph (2)(a), the port authority which authorised the pilot;
- (b) in any other case,
 - (i) the Secretary of State; or
 - (ii) the competent authority of a coastal Member State.

(a) 1987 c.21.

- (4) If a port authority—
- (a) receives information from a pilot in accordance with paragraph (3)(a); or
 - (b) learns, in the course of its normal duties, that a ship within its port has apparent anomalies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment;

that authority must immediately inform the Secretary of State.

(5) The information provided in accordance with paragraph (3) or (4) must be in electronic format whenever possible and must include—

- (a) the ship's name, IMO number and call sign;
- (b) the flag under which the ship is sailing;
- (c) the previous port of call;
- (d) the port of destination; and
- (e) a description of the apparent anomalies.

Duty on port authorities to report ship arrivals and departures, etc

20.—(1) A port authority must provide the information specified in paragraph (2) in respect of each ship calling at its port or anchorage to the Secretary of State, in a reasonable time and, whenever possible, in electronic format.

(2) The information is—

- (a) the identifier of the port concerned;
- (b) the ship's name, IMO number and call sign; and
- (c) the ship's actual time of arrival or departure as appropriate.

(3) A port authority must also provide the Secretary of State with information in its possession about—

- (a) a ship which fails to notify any information in accordance with—
 - (i) Directive 2000/59/EC (port reception facilities) **(a)**;
 - (ii) Directive 2002/59/EC (vessel traffic monitoring);
 - (iii) Regulation (EC) No 725/2004**(b)**;
- (b) a ship which proceeds to sea without having complied with Article 7 or 10 of Directive 2000/59/EC;
- (c) a ship which has been denied entry or expelled from port on security grounds;

whether such information or compliance is required by United Kingdom law or not.

(4) The information provided in accordance with paragraph (3) must include the ship's name, IMO number and call sign.

Complaints

21.—(1) If a complaint relating to a ship is submitted to the Secretary of State, the Secretary of State must make an assessment of it as quickly as possible to determine whether it is justified.

(2) If the complaint is determined to be justified, the Secretary of State must—

- (a) inform the complainant of that conclusion and of any follow-up action taken with regard to the complaint;
- (b) ensure that anyone directly concerned by that complaint can make their views known;

(a) OJ No. L332, 28.12.2000, p.81, as amended by Directive 2002/84/EC OJ No.L 324, 29.11.2002, p.53; Directive 2007/71/EC OJ No.L 329, 14.12.2007, p.33; and Regulation (EC)1107/2008 OJ No.L 299, 8.11.2008, p.13.

(b) OJ No .L129, 29.04.2004, p.6, as amended by Directive 2009/83/EC OJ No. L 196, 28.7.2008, p.14; and by Regulation (EC) 219/2009 OJ No.L 87, 31.3..2009, p.109.

- (c) take such action as the Secretary of State considers necessary;
 - (d) inform the administration of the ship's flag State, and the International Labour Organisation if appropriate, of the complaint and action taken.
- (3) If the complaint is determined not to be justified, the Secretary of State must inform the complainant of the reasons for this conclusion.
- (4) The identity of the complainant must not be revealed to the master or owner of the ship concerned by the Secretary of State or by an inspector.
- (5) An inspector interviewing any members of the crew of the ship concerning the complaint must—
- (a) ensure confidentiality during such interviews; and
 - (b) report on such interviews to the Secretary of State.

Costs

22.—(1) All costs relating to any inspection for the purposes of, or in connection with, a refusal of access notice (including the lifting of a refusal of access notice) for which this Part of these Regulations provides are recoverable from the owner or their representative in the United Kingdom.

(2) If a ship is detained pursuant to a Convention enactment for deficiencies in relation to the requirements of a Convention warranting the detention of the ship, or to regulation 9(6)—

- (a) all costs of inspections which confirm or reveal—
 - (i) deficiencies in relation to the requirements of a Convention warranting the detention of the ship; or
 - (ii) that the ship is not equipped with a functioning voyage data recorder system when its use is compulsory in accordance with Directive 2002/59/EC; and
- (b) all costs relating to the detention in port or anchorage;

are recoverable from the owner or their representative in the United Kingdom.

(3) Any detention made pursuant to this Part of these Regulations or a Convention enactment for those deficiencies must not be lifted until any fees payable under the Merchant Shipping (Fees) Regulations 2006^(a) in respect of an inspection leading to it or arising from it and any other costs payable under paragraphs (1) and (2) have been paid, or the person to whom they are due has been provided with sufficient security for them.

Offences

23.—(1) Subject to regulation 18, if there is any contravention of a direction made pursuant to regulation 9(3) in respect of a ship, the owner and master are each guilty of an offence, and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment not exceeding two years, or a fine, or both.

- (2) Where a ship—
- (a) enters a port or anchorage in breach of regulation 10 or 17;
 - (b) is permitted to leave a port pursuant to regulation 18(1) but fails to proceed to the repair yard specified; or
 - (c) is a ship to which regulation 9(7) applies and which, as applicable—
 - (i) fails to proceed to the repair yard specified; or
 - (ii) fails to comply with the requirement that the deficiency be rectified within 30 days;

^(a) S.I. 2006/2055, amended by S.I.2006/3225.

the owner and master are each guilty of an offence, and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment not exceeding two years, or a fine, or both.

(3) Where a ship—

- (a) fails to give notification in breach of regulation 6(2);
- (b) leaves a port or anchorage in breach of regulation 6(5);

the owner and master are each guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A person who obstructs an inspector or any person assisting the inspector is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) A pilot who contravenes regulation 19(3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) A port authority which contravenes regulation 19(4) or 20 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) It is a defence—

- (a) for a person charged under this regulation to prove that they took all reasonable steps to avoid committing the offence; and
- (b) for a port authority charged under paragraph (6) with contravention of regulation 20 to prove that it had been informed by the Secretary of State that the Secretary of State was not ready to receive the information to which regulation 20 applies.

PART 2

RIGHTS OF APPEAL AND COMPENSATION IN RESPECT OF DETAINED SHIPS

24.—(1) Subject to paragraph (2) below, regulations 15 and 16 apply in relation to the exercise of the power of detention contained in—

- (a) any regulations made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983(a);
- (b) any regulations made under the Merchant Shipping (Prevention and Control of Pollution) Order 1987(b); or
- (c) in safety regulations made, or treated as made, under section 85 of the Merchant Shipping Act as they apply in relation to the exercise of a power of detention in accordance with Part 1 of these Regulations.

(2) Paragraph (1) above does not apply in relation to a ship which is not a United Kingdom ship in relation to—

- (a) the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997(c) and
- (b) the Merchant Shipping (Ro-Ro Passenger Ships)(Stability) Regulations 2004(d).

(a) S.I. 1983/1106, amended by S.I. 1985/2002, S.I. 1991/2885 and S.I. 1993/1580.

(b) S.I. 1987/470, amended by S.I. 1990/2595.

(c) S.I. 1997/1320.

(d) S.I. 2004/2884.

PART 3

FAMILIARITY OF CREW WITH OPERATIONAL PROCEDURES

25.—(1) Ships when in ports in the United Kingdom, and in the case of United Kingdom ships when elsewhere, are subject to inspection for the purpose of checking that the master and crew are familiar with essential procedures and operations relating to the safety of the ship.

(2) Section 258 of the Act^(a) applies in relation to a ship in a port in the United Kingdom as if, in subsection (1), after “articles on board” there were inserted “the familiarity of the crew with essential procedures and operations relating to the safety of the ship”.

PART 4

REVIEW

26.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Transport

31st October 2011

Mike Penning
Parliamentary Under Secretary of State
Department for Transport

(a) Section 258 was amended by S.I. 1997/1082.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2009/16/EC of the European Parliament and of the Council on port State control (OJ No. L131, 28.05.2009 p.57.). The Directive provides a regime for the enforcement, in respect of shipping using ports in Member States of the European Union and their waters, of international standards for ship safety, pollution prevention and shipboard living and working conditions. The Directive is extended to the EEA.

In addition to the provisions implementing the Directive, the Regulations also provide, in Part 2, for similar rights of appeal and compensation in respect of any ship detained under other specified Regulations and, in Part 3, for checking the familiarity of the master and crew with operational procedures.

Part 1 of the Regulations applies to ships which are not British ships calling at a UK port or anchorage.

The Secretary of State is required to carry out the United Kingdom's share of European Union and Paris MOU inspections (*regulation 4*).

The minimum requirements for an initial inspection and more detailed inspections are set (*regulation 5*) and an expanded inspection regime is applied to specified categories of ships (*regulation 6*). A report of an inspection must be given to the master (*regulation 7*). The qualifications for inspectors are prescribed (*regulation 8*).

A ship's deficiencies must be rectified and, if hazardous to safety, health or the environment will caused the ship to be detained pending rectification (*regulation 9*).

Access to UK ports and anchorages is prohibited to prescribed ships which have been subject to detention, subject to force majeure or other specified circumstances (*regulations 10-13*).

There is provision for rights of appeal and compensation (*regulations 14-16*) and provision for movement of detained ships to repair yards (*regulation 17 and 18*).

Pilots and port authorities are required to report anomalies prejudicing safe navigation (*regulation 19*). Port authorities must also report on ship movements (*regulation 20*).

The Secretary of State must deal with complaints, but not reveal the identity of complainants to the master or owner (*regulation 21*).

The shipowner is liable for costs relating to refusal of access and when a ship is detained (*regulation 22*).

Offences and penalties for the breach of requirements are prescribed by (*regulation 23*).

The rights of appeal and compensation in respect of detained ships under Part 1 are applied in respect of the detention of any ship (including a British ship) which is detained by virtue of specified powers in merchant shipping legislation. (*regulation 24*)

The familiarity of the master and crew of any ship in the United Kingdom, and of any ship registered in the United Kingdom elsewhere, with operational procedures may be checked (*regulation 25*)

The Secretary of State is required to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether these Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them. (*regulation 26*)

An impact assessment and a transposition table have been prepared and a copy of each has been placed in the Library of each House of Parliament. Copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG. The impact

assessment and transposition note are also published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

Merchant Shipping Notices are published by the MCA. Copies are available from M-Notices subscriptions, P.O.Box 362 Europa Park, Grays, Essex RM17 9AY (telephone number 01375 484548; fax 01375 484556; email orders mnotices@ecgroup.co.uk). They may also be found on the MCA's website www.dft.gov.uk/mca, which also has details of any amendments or replacements.

The Conventions referred to in regulation 3(1) can be obtained from the International Maritime Organisation, 4 Albert Embankment, London SE1.

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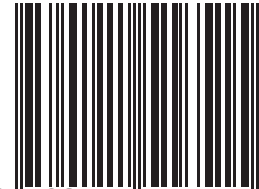
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