

2011 No. 2616

MERCHANT SHIPPING

The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements)(Amendment) Regulations 2011

<i>Made</i>	- - - -	<i>1st November 2011</i>
<i>Laid before Parliament</i>		<i>3rd November 2011</i>
<i>Coming into force</i>	- -	<i>25th November 2011</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and sections 85 and 86 of the Merchant Shipping Act 1995(b).

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

In accordance with section 86(4) of the Merchant Shipping Act 1995 the Secretary of State has consulted the persons referred to in that section.

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements)(Amendment) Regulations 2011 and come into force on 25th November 2011.

Amendments to the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004

2. The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004(d) are amended in accordance with the provisions in Schedule 1.

(a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and 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 by 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) 1995 c.21; sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c.28) section 8, section 85 was also amended by Schedule 7, Part I, the British Overseas Territories Act 2002 (c.8), section 2 and the Health Act 2006 (c.28), section 5.

(c) S.I. 1993/595.

(d) S.I.2004/2110, amended by S.I. 2005/1092 and S.I. 2008/3145.

Amendments to the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997

3. The Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997(a) are amended in accordance with the provisions in Schedule 2.

Signed by authority of the Secretary of State for Transport

1st November 2011

Mike Penning
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE 1

Regulation 2

Amendments to the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004

1. The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 are amended as follows.

2. In regulation 2 (interpretation), in paragraph (1)—

(a) delete the definition of “the BC Code”;

(b) at the end of the definition of “the Directive” add—

“; as amended by Directive 2009/17/EC(b) of the European Parliament and of the Council of 23 June 2009 and by Commission Directive 2011/15/EU of the 23rd February 2011(c);”;

(c) in the definition of “the IBC Code” for “1998” substitute “2007”(d);

(d) in the definition of “IMDG Code” for “2002” substitute “2010/11”(e);

(e) for the definition of the “ISM Code” substitute—

“the ISM Code” means the 2010 edition of the International Safety Management (ISM) Code for the Safe Operation of Ships and for Pollution Prevention(f);”;

(f) after the definition of the “IMO guidelines” insert—

“the IMSBC Code” means the International Maritime Solid Bulk Cargoes (IMSBC) Code, 2009 edition & supplement (formerly the Code of Safe Practice for Solid Bulk Cargoes (BC Code))(g);

(g) at the end of the definition of the MARPOL Convention add—

“and the amendments in force on the date on which the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements)(Amendment) Regulations 2011 come into force;”;

(h) after the definition of “port authority” insert—

““relevant requirements” means the requirements of paragraph 2.4.5 of regulation 19 in Chapter V of the Annex to the SOLAS Convention;

(a) S.I. 1997/2637, amended by S.I. 2004/2110.

(b) O.J. No. L.131, 28.5.2009, p.101.

(c) O. J. No.L.49, 24.2.2011, p.33.

(d) ISBN: 9789280142266.

(e) ISBN: 9789280115130.

(f) ISBN: 9789280151510.

(g) ISBN: 9789280142396.

“scheduled service” means a series of ship crossings operated so as to serve traffic between the same two or more ports, either according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series and it is intended that the service will be operated for a minimum of one month,”;

- (i) in the definition of “the SOLAS Convention” for “these Regulations” substitute “the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) (Amendment) Regulations 2011”.

3. In regulation 2 (interpretation) in sub-paragraph (3)(d) for “BC Code” substitute “IMSBC Code”.

4. In regulation 2 (interpretation) in paragraph (8)—

- (a) delete sub-paragraph (a);
- (b) after sub-paragraph (c) insert—
“(ca) the IMSBC Code;”.

5. In regulation 4 (application)—

- (a) in paragraph (2) at the end of sub-paragraph (c) add “unless otherwise stated”;
- (b) in paragraph (3) for sub-paragraphs (a) and (b) substitute—
“(a) bunkers on ships of less than 1000 gross tonnage;
(b) ships’ stores and equipment for use on board any ship.”

6. After regulation 4 insert—

“Exemptions from the requirements of regulations 5 or 10

4A.—(1) The Secretary of State may exempt the owner, agent and master of a specified ship on a scheduled service from the requirements of regulation 5(2) or 10(2) in relation to a voyage that is scheduled to last up to 12 hours and is part of a scheduled service between ports within the United Kingdom.

(2) Any such exemption has effect only if granted in writing and the person who operates the schedule service—

- (a) maintains, and keeps up to date, a list of the ships engaged on that scheduled service;
- (b) has sent that list, and details of all updates, to the MCA;
- (c) ensures that, in respect of each voyage made by a ship whilst engaged on the scheduled service, the information specified in—
 - (i) regulation 5(3), or
 - (ii) Annex B to MSN 1831 (M+F),

as the case may be, is kept so that it can be provided at any time by electronic means to the MCA immediately on request.

(3) Where an exemption has been granted under paragraph (1) the master of a specified ship shall notify the port authority of destination of any deviation of 3 hours or more from the estimated time of arrival at that port, or the pilot station for that port.

(4) Regulations 5(2) and 10(2) do not apply to the owner, agent or master of a ship engaged on an international scheduled service in respect of which there is in force an exemption granted pursuant to Article 15.2(a) of the Directive.”.

(a) Article 15.2 was substituted by Directive 2009/17/EC.

7. In regulation 8 (installation of automatic identification systems) delete paragraph (5)(c) (and the word “and” which follows paragraph (5)(b)).

8. After regulation 8 insert—

“Installation of automatic identification systems on fishing vessels

8A.—(1) This regulation applies to a fishing vessel having an overall length of more than 15 metres which—

- (a) is operating in United Kingdom waters;
- (b) is landing its catch at a port situated in the United Kingdom; or
- (c) is registered in the United Kingdom.

(2) A fishing vessel referred to in paragraph (1) shall be fitted with an automatic identification system which complies with the relevant requirements in accordance with the timetable contained in Part I of Annex II to the Directive.”.

9. For regulation 9 (operation of automatic identification systems) substitute—

“9.—(1) Where a ship is fitted with an automatic identification system pursuant to regulation 8 or 8A, the master shall comply with—

- (a) in the case of a fishing vessel, paragraph (2),
- (b) otherwise, paragraph (3).

(2) The master shall ensure that the system is maintained in operation at all times except where the master considers it necessary in the interest of the safety or security of his vessel.

(3) The master shall ensure that the system is maintained in operation at all times except where international agreements, rules or standards provide for the protection of navigational information.”.

10. In regulation 10 (notification by ships carrying dangerous or polluting goods)—

(a) for references to—

- (i) “the Annex to Merchant Shipping Notice 1784 (M)” substitute “Annex B of Merchant Shipping Notice 1831 (M+F)”; and
- (ii) regulation “11(1)” and “11(5)” substitute “4A”;

(b) in paragraph (7) for “Merchant Shipping Notice 1784 (M)” substitute “Merchant Shipping Notice 1831 (M+F)”.

11. Delete regulation 11 (exemptions from the requirements of regulation 10).

12. In regulation 12 (reporting of incidents and accidents at sea)—

- (a) in paragraphs (1) and (5) after “controlled waters” insert “or United Kingdom waters”;
- (b) in paragraphs (2)(c) and (10)(d) delete “adopted by the Assembly of the IMO on 27th November 1997”.

13. After regulation 13 (measures to be taken in the event of exceptionally bad weather or sea conditions) insert—

“Measures to be taken in the event of risks posed by the presence of ice

13A.—(1) This regulation applies whenever the MCA are of the opinion, based on information provided to them by the Meteorological Office, that the presence of ice poses a serious threat to the—

- (a) safety of human life at sea; or
- (b) protection of United Kingdom waters or the territorial sea of any other EEA State.

(2) The MCA shall supply to the master of every ship in United Kingdom waters or which intends to enter or leave a port in the United Kingdom appropriate information on the—

- (a) ice conditions;
- (b) recommended routes; and
- (c) ice breaking services,

within United Kingdom waters.”.

14. Delete regulation 14 (measures to be taken in the event of incidents or accidents at sea).

15. In regulation 15 (obligations of shipowners in relation to accidents and incidents) in paragraph (1)—

- (a) after “sea” delete “either”;
- (b) after “Code” delete “or in accordance with regulation 14”.

16. In regulation 16 (confidentiality of information)—

(a) for paragraph (1) substitute—

“(1) Subject to paragraph (4), no authority or member of staff of an authority shall—

- (a) disclose any confidential information which has been obtained by, or furnished to, that authority or member of staff, as the case may be, under or for the purposes of the Directive and these Regulations; or
- (b) use any such information,

unless the disclosure or use is made with lawful justification.”;

(b) in paragraph (2), (2)(a), (b), (c) and (d) after “disclosure” insert “or use”.

17. In regulation 17 (offences)—

- (a) in paragraph (3) for “, 13(9) or 14(2)” substitute “or 13(9)”;
- (b) in paragraph (4) for “or 8(4)” substitute “, 8(4) or 8A”.

18. After regulation 22 insert—

“Review

23.—(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 this regulation comes into force.

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

SCHEDULE 2

Regulation 3

Amendments to the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997

1. The Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997 are amended as follows.

2. In regulation 2 (interpretation), in paragraph (1)—

(a) delete the definition of “Bulk Cargoes Code”;

(b) in the definition of “IBC Code” for “1998” substitute “2007”(a);

(c) in the definition of “IMDG Code” for “2002” substitute “2010/11”(b);

(d) after the definition of “IMO Recommendations” insert—

“the IMSBC Code means the International Maritime Solid Bulk Cargoes (IMSBC) Code, 2009 edition & supplement (formerly the Code of Safe Practice for Solid Bulk Cargoes (BC Code))(c);”

(e) at the end of “the MARPOL Convention” add—

“and the amendments in force on the date on which the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements)(Amendment) Regulations 2011 come into force.”; and

(f) for the definition of “SOLAS” substitute—

“SOLAS means the International Convention for the Safety of Life at Sea, 1974 as amended in accordance with its Protocol of 1988 and the amendments in force on the date on which the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) (Amendment) Regulations 2011 come into force.”;

3. In regulation 2 (interpretation), in paragraph (2)—

(a) delete “the Bulk Cargoes Code”; and

(b) for “or IMO Recommendations” substitute “IMO Recommendations or IMSBC Code”.

4. In regulation 10 (declaration) in paragraphs (1) and (3) after “taken on board any ship unless” insert “before the goods are taken on board”.

5. In regulation 10 after paragraph (3)(i) insert—

“(j) the emergency numbers of the person in possession of information on the physico-chemical characteristics of the products and on the action to be taken in an emergency, and

(k) the other data contained in the data safety sheet as specified in Annex B of Merchant Shipping Notice 1831 (M+F)”.

6. In regulation 20(2)(a) (carriage of dangerous goods or marine pollutants in bulk) for the words “Appendix B of the Solid Bulk Cargoes Code” substitute “Appendix 1 of the IMSBC Code”.

7. In regulation 21 (documentation), in paragraphs (1), (3)(a) and (4) for “Appendix B of the Bulk Cargoes Code” substitute “Appendix 1 of the IMSBC Code”.

8. In regulation 24 (penalties), in paragraph (2)(e) for “Bulk Cargoes Code” substitute “the IMSBC Code”.

9. After regulation 25 insert—

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(b) ISBN: 9789280115130.

(c) ISBN: 9789280142396.

“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 EU obligations implemented by these Regulations have been 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 have been 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 this regulation comes into force.

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2009/17/EC (O.J. No. L 131, 28.5.2009, p.101) and Directive 2011/15/EU (O.J. No. L 49, 24.2.2011, p.33). Those Directives amend Directive 2002/59/EC (O.J. No. L 208, 5.8.2002, p.10) establishing a Community vessel traffic monitoring and information system. These Regulations amend the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (S.I. 2004/2110: “the 2004 Regulations”) which implemented most of Directive 2002/59/EC and the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997 (S.I. 1997/236: “the 1997 Regulations”) which implemented, in part, Directive 2002/59/EC.

Regulation 2 and Schedule 1 amend the 2004 Regulations. *Paragraphs 2, 3 and 4* set out further definitions for terms used in the Regulations and identify the up to date editions of the relevant Conventions and Codes. *Paragraph 5* amends the application of the Regulations. *Paragraph 6* provides for an exemption from the requirements in regulations 5 (notification prior to entry into port) and 10 (notification of ships carrying dangerous or polluting goods). *Paragraphs 7 and 8* provide for fishing vessels of 15 metres or more to be fitted with an automatic identification system and *paragraph 9* requires that it is maintained in operation at all times except when the master considers it unnecessary in the interest of the safety or security of his vessel. *Paragraphs 10 and 11* update references to the Merchant Shipping Notice and make consequential amendments. *Paragraph 12* amends regulation 12 (reporting of incidents and accidents at sea) to extend the reporting obligation to ships in United Kingdom waters. *Paragraph 13* provides for measures to be taken in the event of risks posed by the presence of ice. *Paragraphs 14 and 15* remove provisions regarding incidents and accidents at sea. *Paragraph 16* amends the provision on the duty of confidentiality and *paragraph 17* concerns penalties.

Regulation 3 and Schedule 2 amend the 1997 Regulations, updating references to the relevant Codes and Conventions and prescribe the additional information to be provided in the declaration required by regulation 10 (declaration) of those Regulations and provides that the declaration is to be provided before the goods are taken on board.

Both the 1997 and 2004 Regulations are amended to require the Secretary of State to review the operation and effect of those Regulations and publish a report within five years after the requirement comes into force and every five years thereafter. Following a review it will fall to the Secretary of State to consider whether the 1997 and the 2004 Regulations should remain as they are or be revoked or amended. For both the 1997 and the 2004 Regulations a further instrument will be required to revoke those Regulations or to amend them. (*Paragraph 18, Schedule 1 and paragraph 4, Schedule 2.*)

A full impact assessment of the effect these Regulations will have on the costs of business and the voluntary sector is available from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone number 02380 329100). A copy has also been placed in the library of each House of Parliament. The impact assessment and transposition note are also annexed to the Explanatory Memorandum which is available alongside these Regulations at www.legislation.gov.uk. A copy has been placed in the library of both Houses.

Merchant Shipping Notices and Marine Guidance Notes 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; e-mail orders mnotices@ecgroup.co.uk). They may also be accessed on the MCA's website www.mcga.gov.uk, which also has details of any amendments or replacements.

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