
STATUTORY INSTRUMENTS

2017 No.

MERCHANT SHIPPING

ENVIRONMENTAL PROTECTION

HEALTH AND SAFETY

**The Ship Recycling (Requirements in relation to Hazardous
Materials on Ships) Regulations 2017**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) (“the 1972 Act”) and section 56(1) of Finance Act 1973(b), as read with paragraph 1A of Schedule 2 to the 1972 Act(c).

The Treasury has consented to the making of these Regulations as required by section 56 of the Finance Act 1973.

The Secretary of State is designated for the purposes of section 2(2) of the 1972 Act in relation to—

- (a) measures relating to the safety of ships and the health and safety of persons on them(d);
- (b) measures relating to employers’ obligations in respect of the health and safety of workers(e);
- (c) the environment(f).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for the references to Annex I and II of Regulation (EU) No 1257/2013 of the European Parliament and of the Council on ship

(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).
(b) 1973 c.51. Section 56(1) was amended by article 6(1)(e) of the Treaty of Lisbon (Changes of Terminology) Order 2011 (S.I. 2011/1043).
(c) Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.
(d) S.I. 1993/595 to which there are amendments not relevant to these Regulations.
(e) S.I. 1999/2027.
(f) S.I. 2008/301.

recycling(a) to be construed as references to those Annexes as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Ship Recycling (Requirements in relation to Hazardous Materials on Ships) Regulations 2017 and come into force on xx.

Interpretation

2.—(1) In these Regulations—

“the 1995 Act” means the Merchant Shipping Act 1995(b);

“Annex I hazardous material” means material of a type mentioned in the first column of the table in Annex I to the EU Ship Recycling Regulation and defined in the second column;

“Annex I control measures” means the measures set out in column 3 of the table in Annex I to the Ship Recycling Regulation;

“an Article 8 survey” means a survey of a type referred to in Article 8(3);

“authorised recognised organisation” means a recognised organisation that the Secretary of State has authorised to carry out Article 8 surveys;

“Crown employment” has the meaning given by section 191(3) of the Employment Rights Act 1996(c);

“the EU Ship Recycling Regulation” means Regulation (EU) No 1257/2013 of the European Parliament and of the Council on ship recycling;

“UK Government officer” means a person in Crown employment authorised by the Secretary of State to carry out an Article 8 survey, as described in regulation 3(2);

“United Kingdom ship” means a ship registered in the United Kingdom under Part 2 of the 1995 Act;

“United Kingdom waters” means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom;

“valid inventory of hazardous materials”, in relation to a ship, means an inventory that the ship is required to have on board under Article 5(1), (2) or 12(1) which—

- (a) identifies Annex I hazardous material as required by the EU Ship Recycling Regulation;
- (b) where required by the Regulation, also identifies the other hazardous materials listed in Annex II to that Regulation;
- (c) is properly maintained and updated; and
- (d) complies with the other requirements of the Regulation for such an inventory.

(2) Terms which are used in these Regulations that are used in the EU Ship Recycling Regulation, and are not otherwise defined in these Regulations, have the meaning they bear in that EU Regulation.

(3) A reference in these Regulations to Annex I or II of the EU Ship Recycling Regulation is to that Annex as amended from time to time.

(4) A reference in these Regulations to an Article is to an Article of the EU Ship Recycling Regulation.

(a) OJ No L 330, 10.12.2013, p 1.

(b) 1995 c. 21.

(c) 1996 c.18.

Article 3: designation of the administration and officers of the administration

3.—(1) The Secretary of State is designated as the administration in respect of the United Kingdom for the purposes of the EU Ship Recycling Regulation.

(2) The reference in Article 8(1) to officers of the administration is to persons in Crown employment who are authorised by the Secretary of State to carry out Article 8 surveys.

Article 6(1)(b): timeframe for notifying an intention to recycle

4. A ship owner notifying the Secretary of State under Article 6(1)(b) must do so before the date on which the ship is sent for recycling.

Article 8: powers of surveyors carrying out an Article 8 survey

5.—(1) This regulation applies to—

- (a) a UK Government officer; and
- (b) an officer of an authorised recognised organisation suitably qualified and experienced to carry out an Article 8 survey.

(2) When carrying out an Article 8 survey, the officer has the powers conferred under section 258(1) to (3) of the 1995 Act^(a) as if—

- (a) that officer were a surveyor of ships appointed under section 256(2) of that Act; and
- (b) the EU Ship Recycling Regulation were a provision of that Act.

(3) For the purposes of paragraph (2), the power to inspect any document conferred by section 258(1) is a power to inspect any document carried in the ship in pursuance of the EU Ship Recycling Regulation.

(4) If any person obstructs an officer in the exercise of his or her powers under paragraph (2), that person is liable, on summary conviction—

- (a) in England and Wales, to a fine;
- (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.

Articles 8 and 9: Fees for surveys and certificates in respect of work done by UK Government officers

6.—(1) This regulation applies where a UK Government officer—

- (a) carries out an Article 8 survey; or
- (b) issues, endorses or extends the validity of a certificate under Article 9.

(2) The Secretary of State may charge a fee in respect of the work mentioned in paragraph (1)(a) or (b).

(3) The Merchant Shipping (Fees) Regulations 2017^(b) apply in relation to a fee under paragraph (2) as if—

- (a) the work mentioned in paragraph (1)(a) or (b) above were described in paragraph 2 of Part 1 of Schedule 1 to those Regulations as a service or function to which that Part of that Schedule applies;
- (b) references in regulation 3 of those Regulations to the issue of a certificate include references to the extension of the validity of a certificate;
- (c) the reference in paragraph 4(1) of Part 1 of Schedule 1 to those Regulations to a service mentioned in paragraph 2(1)(a) or (c) includes a reference to an Article 8 survey;

(a) Section 258 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28) (“the 1997 Act”), Schedule 1, paragraph 4. For the definition of “qualifying foreign ship” in section 258, see section 313A of the 1995 Act (inserted by the 1997 Act, Schedule 6, paragraph 20).

(b) S.I. 2017/xx.

- (d) references in Part 14 of that Schedule to an inspection include references to an Article 8 survey; and
- (e) references in the Regulations to the Agency were references to the Secretary of State.

Articles 11 and 12: application of Port State Control provisions

7.—(1) The Merchant Shipping (Port State Control) Regulations 2011(a) are amended as follows.

(2) In regulation 2 (interpretation of Part 1)—

- (a) in the definition of “the Directive”, after “control”, insert “as in force on the date the Ship Recycling (Requirements in relation to Hazardous Materials on Ships) Regulations 2017(b) are made”;
- (b) after the definition of “the Directive” insert—

“the EU Ship Recycling Regulation” means Regulation (EU) No 1257/2013 of the European Parliament and of the Council on ship recycling(c);”;
- (c) in the definition of “initial inspection”, after “Conventions”, insert “and the EU Ship Recycling Regulation”.
- (d) for the definition of “initial inspection” substitute—

“initial inspection” means a visit on board a ship by an inspector in order to check compliance with—

 - (a) the relevant Conventions, including at least the checks set out in Article 13.1 of the Directive; and
 - (b) a requirement under the EU Ship Recycling Regulation to have on board an inventory certificate or ready for recycling certificate or a statement of compliance (in each case within the meaning given by that Regulation).”.

(3) In regulation 5 (initial inspections and more detailed inspections), after paragraph (4) insert—

“(5) The power in Article 11(2) of the EU Ship Recycling Regulation to carry out a detailed inspection in the circumstances mentioned in that provision—

- (a) is exercisable by an inspector by means of carrying out a more detailed inspection under these Regulations; and
- (b) is to be treated as applying to ships to which Article 12 of that Regulation applies (as well as to ships to which Article 11 applies).

(6) In its application to ships to which Article 12 applies, the reference in Article 11(2) of that Regulation to a valid certificate is to be treated as a reference to the ship’s statement of compliance (within the meaning of that Regulation).”.

(4) In regulation 6(3), at the end insert “or in the circumstances mentioned in Article 11(2) of the EU Ship Recycling Regulation (including as that provision is applied by regulation 5(5))”.

(5) In regulation 9—

- (a) in paragraph (1), after “Conventions” insert “or the EU Ship Recycling Regulation”;
- (b) in paragraph (2), after “Where such deficiencies” insert “fall to be rectified in accordance with the Conventions and”;
- (c) after paragraph (2) insert—

(a) S.I. 2011/2601.

(b) S.I. 2017/xx.

(c) OJ No L 330, 10.12.2013, p 1.

“(2A) Paragraph (2B) applies where deficiencies mentioned in paragraph (1) fall to be rectified in accordance with the EU Ship Recycling Regulation and the inspector is of the opinion that the ship may be detained under Article 11(3) or 12(5) of that Regulation.

(2B) If the inspector decides to detain the ship, the inspector must do so by serving a notice (“a detention notice”) on the master of the ship.

(2C) A detention notice issued under paragraph (2B) must—

- (a) set out the grounds of detention; and
 - (b) the steps that must be taken in order for the ship to be released.”;
- (d) in paragraph (3), after “(2)”, insert “or under paragraph (2B)”;
- (e) in paragraph (5), after “detained” insert “in accordance with paragraph (2),”;
- (f) in paragraph (8), after “Conventions” insert “or the EU Ship Recycling Regulation”;
- (g) in paragraph (12), after “control” insert “or the provisions of Article 11(3) or 12(5) of the EU Ship Recycling Regulation”.
- (6) In regulation 14(1)—
- (a) after “access in” insert “—
 - (a)”; and
 - (b) after “1995” insert “; or
 - (b) Article 11(3) or 12(5) of the EU Ship Recycling Regulation”.
- (7) In regulation 15—
- (a) at the beginning of paragraph (10), insert “Subject to paragraph (10A),”; and
 - (b) after paragraph (10) insert—
- “(10A) In connection with functions under this regulation in respect of a detention under—
- (a) Article 11(3) or 12(5) of the EU Ship Recycling Regulation; or
 - (b) regulation 8 of the Ship Recycling (Requirements in relation to Hazardous Materials on Ships) Regulations 2017^(a) (“the 2017 Regulations”) (to which this regulation applies by virtue of regulation 24(1)(d)),
- the arbitrator has the powers conferred on an inspector by regulation 12 of the 2017 Regulations.”.
- (8) In regulation 17(1), after “Conventions”, insert “and the EU Ship Recycling Regulation”.
- (9) In regulation 22(2)—
- (a) after “enactment,”, insert “or the EU Ship Recycling Regulation”;
 - (b) after the second and third use of “Convention”, insert “or that Regulation”.
- (10) In regulation 22(3)—
- (a) for “or a Convention enactment” substitute “, a Convention enactment or the EU Ship Recycling Regulation”;
 - (b) omit the words from “any fees payable” to “from it” and insert “any appropriate fee payable”.
- (11) At the end of regulation 22 insert—
- “(4) In paragraph (3), “appropriate fee” means—
- (a) in the case of a detention made pursuant to this Part or a Convention enactment, a fee payable under the Merchant Shipping (Fees) Regulations 2017^(b) in respect of an inspection leading to, or arising from, the detention;

(a) S.I. 2017/xx.

(b) S.I. 2017/xx.

- (b) in the case of a detention made pursuant to the EU Ship Recycling Regulation, a fee payable in connection with the carrying out of an Article 8 survey leading to, or arising from, the detention.

(5) In paragraph (4), “Article 8 survey” has the same meaning as in regulation 2(1) of the Ship Recycling (Requirements in relation to Hazardous Materials on Ships) Regulations 2017.”

(12) In regulation 23, after paragraph (6), insert—

“(6A) A person commits an offence if that person fails to comply with a requirement of a detention notice issued under regulation 9(2B).

(6B) A person who is guilty of an offence under paragraph (6A) is liable —

- (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland and Northern Ireland, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”

(13) In regulation 24(1)—

- (a) omit the “or” which follows sub-paragraph (b); and
- (b) after sub-paragraph (c) insert—
 - “or;
 - (d) regulation 8 of the Ship Recycling (Requirements in relation to Hazardous Materials on Ships) Regulations 2017(a)”.

Detention of ships to which Part 1 of the Merchant Shipping (Port State Control) Regulations 2011 does not apply

8.—(1) This regulation applies to a ship to which the EU Ship Recycling Regulation applies but Part 1 of the Merchant Shipping (Port State Control) Regulations 2011 does not apply.

(2) If a person carrying out an Article 8 survey or an inspector appointed under regulation 12 is of the opinion that at least one of the matters referred to in paragraph (3) is subsisting in contravention of the EU Ship Recycling Regulation, he or she may detain the ship by serving a notice (“a detention notice”) on the master.

(3) The matters referred to in paragraph (2) are—

- (a) the ship does not have on board a valid inventory of hazardous materials;
- (b) Annex I hazardous material is installed or used on the ship in a manner contrary to the Annex I control measures.

(4) The detention notice must—

- (a) set out the grounds of detention; and
- (b) the steps that must be taken in order for the ship to be released.

(5) A detention notice may—

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

(6) A person commits an offence if that person fails to comply with a requirement of a detention notice.

(a) S.I. 2017/xx.

(7) It is a defence for a person (P) charged under paragraph (6) to prove that P took all reasonable steps to avoid committing the offence.

(8) A person who is guilty of an offence under paragraph (6) is liable —

- (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland and Northern Ireland, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

Offences for contravention of EU Ship Recycling Regulation in respect of Member State ships

9.—(1) This regulation applies to the ship owner of a ship—

- (a) to which the EU Ship Recycling Regulation applies; and
- (b) which is either—
 - (i) a United Kingdom ship; or
 - (ii) a ship flying the flag of a member State other than the United Kingdom.

(2) In respect of a United Kingdom ship, this regulation applies wherever the ship may be.

(3) In respect of a ship which is not a United Kingdom ship, this regulation applies when the ship is in port or anchorage in the United Kingdom or in United Kingdom waters.

(4) The ship owner is guilty of an offence if, in contravention of the EU Ship Recycling Regulation, any of the following apply—

- (a) Annex I hazardous material is installed or used on the ship in a manner contrary to the Annex I control measures;
- (b) the ship does not have on board a valid inventory of hazardous materials;
- (c) the ship owner does not comply with any requirement of Article 6(1) to (4);
- (d) the ship is not submitted for an initial, renewal or final survey when one is required under Article 8.

(5) [For the purposes of this regulation, an EEA state which is not a member State is to be treated as a member State.]

Offences for contravention of EU Ship Recycling Regulation in respect of third country ships

10.—(1) This regulation applies to the ship owner and the master of a ship—

- (a) to which the EU Ship Recycling Regulation applies;
- (b) to which regulation 9 does not apply; and
- (c) which is in port or anchorage in the United Kingdom or in United Kingdom waters.

(2) The ship owner and the master are each guilty of an offence if, in contravention of the EU Ship Recycling Regulation, any of the following apply—

- (a) Annex I hazardous material is installed or used on the ship in a manner contrary to the Annex I control measures;
- (b) the ship does not have on board a valid inventory of hazardous materials;
- (c) a statement of compliance that satisfies the requirements of Article 12(6) and (7) of the Regulation has not been issued in relation to the ship.

Offences under regulations 9 and 10: supplementary

11.—(1) In proceedings for an offence under regulation 9 or 10, it is a defence for the ship owner or master to prove that the ship owner or master took all reasonable steps to avoid committing the offence.

- (2) A ship owner or master who is guilty of an offence under regulation 9 or 10 is liable—
- (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

Inspectors: detention of certain ships and offences

12.—(1) The Secretary of State may appoint any person as an inspector—

- (a) for the purposes of regulation 8; or
- (b) to investigate whether an offence under regulation 9 or 10 has been committed.

(2) An inspector appointed under paragraph (1) has the powers available to an inspector under section 259(2) of the 1995 Act, and subsections (7), and (9) to (12), of section 259 apply to the exercise of those powers.

(3) For the purposes of paragraph (2), section 259(2)(h)(iii) (articles or substances detained as evidence) applies as if these Regulations were an instrument made under the 1995 Act.

(4) A person (P) commits an offence if P—

- (a) intentionally obstructs an inspector in the exercise of any power available to the inspector by virtue of paragraph (2);
- (b) without reasonable excuse, does not comply with a requirement imposed in pursuance of section 259(2) as applied by paragraph (2) or prevents another person from complying with such a requirement; or
- (c) without prejudice to the generality of sub-paragraph (b), makes a statement or signs a declaration which P knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement imposed in pursuance of section 259(2)(i) of the 1995 Act, as applied by paragraph (2).

(5) A person who commits an offence under paragraph (4) is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine or both.

(6) Nothing in section 259(2) as applied by paragraph (2) is to be taken to compel the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, as the case may be, on an order for the production of documents in an action in the Court of Session.

(7) Any Regulations made under section 259(8) or 260(3) of the 1995 Act apply for the purposes of the provisions of section 259 as applied by paragraph (2) as they apply for the purposes of the 1995 Act.

Review

13.—(1) Before the end of each review period, the Secretary of State must—

- (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 have regard to how the provisions of the EU Ship Recycling Regulation implemented by these Regulations are implemented in other member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved 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 in another way which involves less onerous regulatory provision.

(4) The first review period is the period of five years beginning with the date on which these Regulations come into force.

(5) Each subsequent review period is a period of five years beginning with the date on which the preceding review was published.

(6) “Regulatory provision” has the meaning given in section 32(4) of the Small Business, Enterprise and Employment Act 2015(a).

Signed by authority of the Secretary of State

Date

[Name]
[Parliamentary Under Secretary of State]
Department for Transport

Date

[Name]
[Name]
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

(a) 2015 c. 26.