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## **The Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020**

**Notice to:- Notice to all owners, Ship Operators and Managers, Charterers, Master and Officers of Merchant Ships, Skippers of Fishing Vessels, Shipbuilders, Port Authorities, Operators of Fixed and Floating Platforms and Drilling Rigs and Classification Societies**

*This notice should be read in conjunction with the following:*

*Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) of the International Convention for the Prevention of Pollution from Ships 1973 (“MARPOL”) as modified by the 1978 and 1997 Protocols, including all amendments to that Annex to date.*

*The International Code for Ships Operating in Polar Waters (“the Polar Code”) (Part IIA, chapter V and IIB)*

*The Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020 (SI 2020/\*\*\*\*)*

*The Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 (SI 2003/1809) as amended*

*MGN 563 Guidance on the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 and amendments*

*MEPC.220(63) 2012 Guidelines for the Development of Garbage Management Plans*

*MEPC.295 (71) 2017 Guidelines for the Implementation of MARPOL Annex V*

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### Summary

The purpose of this MGN is to provide guidance and clarification with respect to certain aspects of MARPOL Annex V (referred to as “Annex V”), the Polar Code and the Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020 (SI 2020/\*\*\*\*) (referred to as “the UK Regulations”). Future amendments to the international requirements in Annex V and the Polar Code will be incorporated into UK law by way of ambulatory reference, where appropriate.

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## **Introduction**

- 1.1 The UK Regulations implement Annex V of MARPOL, including all the amendments to that Annex to date.
- 1.2 The purpose of the UK Regulations is to, by reference, incorporate the text of Annex V in its most up to date form into UK domestic law. The references to Annex V are ambulatory; this means that they will incorporate future technical amendments to Annex V (as agreed in the International Maritime Organization ('IMO')) into UK law at the point they come into force internationally, without the need for further UK legislation. Such amendments will be consulted upon with interested stakeholders at

the stage that they are being negotiated and prior to being agreed in the IMO. Under Article 16 of MARPOL, the UK has, and will continue to have, the facility to object to amendments<sup>1</sup> to MARPOL.

- 1.3 The above approach refers the reader of the UK Regulations directly to the international text, avoiding the need to transpose detailed technical obligations into the instrument. This MGN supplements that approach by amplifying any aspects of the international text which are thought to lack clarity or need additional detail. The amount of documentation to be read is therefore kept to a minimum.

## **Application**

- 2.1 The UK Regulations apply to United Kingdom ships wherever they may be (regulation 4). They also apply to non-UK ships, when they are in UK waters and controlled waters (i.e. the UK's Exclusive Economic Zone) (regulation 4).
- 2.2 The Regulations do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on Government, non-commercial service (regulation 4).
- 2.3 Shippers of solid bulk cargo on a ship to which the UK Regulations apply must make a declaration to the owner, master or forwarder as to whether the solid bulk cargo is harmful to the marine environment (regulation 9). Where such a declaration is made to a forwarder he must provide it to the owner or master (regulation 9).
- 2.4 All ships of 12 metres or more in overall length and fixed and floating platforms are required to display placards which notify the crew and any passengers of the requirements for the disposal of garbage (regulation 10).
- 2.5 The requirement for a ship to complete a Garbage Management Plan applies to all ships of 100 gross tonnage or above, every ship which carries 15 or more persons and fixed and floating platforms (regulation 11).
- 2.6 The requirement for a ship to carry and fill in a Garbage Record Book applies to all ships of 400 gross tonnage or above, every ship which carries 15 or more persons and is engaged on voyages to ports or offshore terminals under the jurisdiction of a Party to the Convention other than its flag State, and fixed and floating platforms (regulation 12).
- 2.7 Regulation 14 provides the Secretary of State with the power to grant an exemption from the requirements for a Garbage Record Book. The exemption can be granted to fixed and floating platforms and any ship engaged on voyages of one hour or less in duration which carry 15 or more persons.
- 2.8 Ships which are not required to have a Garbage Record Book must nonetheless record certain discharges or accidental losses of garbage in their log-books (regulation 15).

## **Definitions**

- 3.1 Regulation 1 and regulation 13 of Annex V provide clear definitions of terms used in the Annex. Section 5.1 of chapter 5 of part II-A of the Polar Code provides further definitions relevant to the

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<sup>1</sup> In this unlikely event, further UK domestic legislation will be prepared to prevent the ambulatory reference from incorporating such amendments into domestic law.

discharge of garbage in polar waters. Regulation 2 of the UK Regulations adopts the definitions in Annex V and the Polar Code.

- 3.2 To ensure that there is no ambiguity as to what is controlled, Annex V defines both ‘garbage’ and each individual garbage type. For the former, Annex V provides that:

“ **Garbage** means all kinds of food wastes, domestic wastes and operational wastes, all plastics, cargo residues, incinerator ashes, cooking oil, fishing gear, and animal carcasses generated during the normal operation of the ship and liable to be disposed of continuously or periodically except those substances which are defined or listed in other Annexes to the present Convention. Garbage does not include fresh fish and parts thereof generated as a result of fishing activities undertaken during the voyage, or as a result of aquaculture activities which involve the transport of fish including shellfish for placement in the aquaculture facility and the transport of harvested fish including shellfish from such facilities to shore for processing.”

### General Prohibition

- 4.1 A significant change to the approach taken by the Annex since the last UK Regulations in 2008<sup>2</sup> is the reversal of the historical presumption that garbage may be discharged into the sea based on the nature of the garbage, defined distances from shore and treatment. Instead, regulation 3.1 of Annex V now prohibits the discharge of all garbage into the sea, with limited exceptions. This requirement is implemented in the UK Regulations in regulation 5.

### Plastics and Cooking oil

- 5.1 Plastic has been prohibited from discharge into the sea since Annex V entered into force 30 years ago. To ensure there is no confusion on discharge requirements for plastic or cooking oil, regulations 3.2 and 3.3 were added to Annex V. The intention of these regulations is to clearly show that discharge of plastic or cooking oil is only permitted in the circumstances set out in regulation 7 in Annex V (Exceptions). However, this does not mean that other garbage types that have not been specifically identified in regulation 3.1 can be discharged; this is not the case. Please refer to regulations 4, 5, 6 and 7 of Annex V, as well as chapter 5 of part II-A of the Polar Code to see the limited categories of garbage which can legally be discharged, and the conditions with which these discharges must comply. Further information about these is set out below.

### Limited Discharges

- 6.1 Annex V does permit limited discharges<sup>3</sup> of garbage into the sea subject to the conditions set out in regulations 4 (Discharge of garbage outside special areas), 5 (Special requirements for discharge of garbage from fixed or floating platforms), 6 (Discharge of garbage within special areas) and 7 (Exceptions) of Annex V. There are additional conditions for the discharge of garbage in polar waters pursuant to chapter 5 of part II-A of the Polar Code. The IMO have developed comprehensive Guidelines to assist in the implementation of, and compliance with, Annex V; the “2017 Guidelines on

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<sup>2</sup> The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, S.I. 2008/3257.

<sup>3</sup><http://www.imo.org/en/Documents/Simplified%20overview%20of%20the%20discharge%20provisions%20of%20the%20revised%20MARPOL%20Annex%20V.pdf>

the Implementation of MARPOL Annex V” (“the 2017 Guidelines”) is a published document and can be purchased (ISBN 9789280115642).<sup>4</sup>

- 6.2 Ordinarily there are only four garbage categories that are permitted to be discharged into the sea, and only then in certain circumstances. These are food waste, solid bulk cargo residues which are not harmful to the marine environment (HME), animal carcasses and cleaning agents or additives which are not harmful to the marine environment (HME).

### **Food waste**

- 7.1 Food waste is the more widely acceptable garbage category that can be discharged into the sea. Its discharge is governed by:
- Outside special areas (excluding polar waters): regulations 4.1.1 and 4.1.2 of Annex V;
  - From fixed and floating platforms: regulation 5.2 of Annex V;
  - Inside special areas (excluding polar waters): regulation 6.1.1 of Annex V;
  - In polar waters: regulation 4.1.1 and 4.1.2 or 6.1.1 of Annex V and chapter 5 of part II-A of the Polar Code.
- 7.2 Regulation 6.1.1 of Annex V provides that within in the Antarctic area the discharge of avian products is further restricted. The term ‘avian products’ includes all bird related products such as poultry and poultry parts. Food waste comprising of avian products needs to be sterilized to destroy microorganisms in or on the product. This can be done by cooking the product at a high temperature e.g. microwaving, boiling etc.

### **Residues of Solid Bulk Cargoes**

- 8.1 The conditions for when cargo residues can be discharged are governed by:
- Outside special areas (excluding polar waters): regulation 4.1.3 of Annex V;
  - Inside special areas (excluding polar waters): regulation 6.1.2 of Annex V;
  - In polar waters: regulation 4.1.3 or 6.1.2 of Annex V and chapter 5 of part II-A of the Polar Code.
- 8.2 One of these conditions is that only those cargo residues which cannot be recovered using ‘commonly available methods for unloading’ can be discharged. Variable methods are used to load, and unload ships which carry solid bulk cargoes, depending on the design of the ship, size, cargo and logistics of the port infrastructure. Commonly available methods of unloading a cargo from a ship may be a broom, brush, grabbers, conveyor belts etc. Only where these commonly available methods cannot recover cargo residues can the remaining cargo residue be discharged into the sea.
- 8.3 Solid bulk cargoes require classification to determine whether they are HME; the criterion for classification are set out in Appendix I to Annex V. The shipper will need to undertake such classification and provide the shipowner/master with a declaration as to whether they are harmful to

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<sup>4</sup> The Guidelines were published in IMO Resolution MEPC.297(71).

the marine environment. All shippers of solid bulk cargoes will be required to provide a declaration in the form required in section 4.2.3 of the IMSBC Code (regulation 9 of the UK Regulations).

- 8.4 Further information can be found in the 2017 Guidelines which provides a dedicated section on solid bulk cargoes.

### **Animal carcasses**

- 9.1 Animal carcasses may only be discharged outside of special areas, but not in Arctic waters (see regulation 4.1.4 of Annex V and paragraph 5.2.1.4 of chapter 5 of part II-A of the Polar Code and UK regulation 5(1)). Annex V applies to mortalities which may gradually accrue over the voyage of the ship due to illness, refusal to feed, exhaustion etc.; as such it covers mortalities which are generated during the normal operation of the ship. Animals which die or are euthanized onboard during the voyage due to these factors are considered to be garbage and will need to be recorded in the Garbage Record Book when they are discharged or incinerated. Carcasses of animals resulting from mortalities in excess of those generated during the normal operation of the ship will need to be treated as spoilt cargo<sup>5</sup>. The 2017 Guidelines provides a dedicated section on animal carcasses.

### **Cleaning agents or additives**

- 10.1 The conditions for when cleaning agents or additives can be discharged into the sea, if they are not HME, are governed by:
- Outside special areas (excluding polar waters): regulation 4.2 of Annex V;
  - Inside special areas (excluding polar waters): regulation 6.2;
  - In polar waters: regulation 4.2 or 6.2 of Annex V and chapter 5 of part II-A of the Polar Code.
- 10.2 The HME criteria for cleaning agents or additives are different to that of solid bulk cargoes, as the criteria does not extend to:
- .6 Specific Target Organ Toxicity Repeated Exposure Category 1 combined with not being rapidly degradable and having high bioaccumulation; and/or
  - .7 Solid Bulk Cargoes containing or consisting of synthetic polymers, rubber, plastics, or plastic feedstock pellets (this includes materials that are shredded, milled, chopped or macerated or in similar materials). of the solid bulk cargoes criteria.
- 10.3 Regulation 5(2) of the UK Regulations sets out when a cleaning agent or additive will be considered to be HME.
- 10.4 The 2017 Guidelines provides details of the criteria and the evidence required to show that the products used are complying.

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<sup>5</sup> <http://www.imo.org/en/OurWork/Environment/LCLP/Documents/58.pdf>

Ic-lp.1/circ.58 3 July 2013 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and its 1996 Protocol Revised Guidance on the Management of Spoilt Cargoes.

- 10.5 Cleaning agents and additives used under Annex V do not require to be assessed through the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) advisory body.

### **Mixed or contaminated Garbage**

- 11.1 Regulations 4.4 and 6.4 of Annex V cover the eventuality that garbage that can be discharged might be mixed with or contaminated by a prohibited garbage category (e.g. plastic) or a substance covered by another Annex of MARPOL. Where this happens the most stringent discharge requirements apply to the mixture. For example:
- if plastic is mixed with food waste then the mixture must be treated as if it were all plastic;
  - if cooking oil is mixed with oil and stored in oil sludge tank then the mixture must be treated as if it were all cooking oil.
- 11.2 This principle applies to substances from across the MARPOL Annexes. The same requirements for mixed or contaminated garbage apply to discharges outside and within special areas and from fixed and floating platforms. This requirement is given effect in the UK Regulations in regulation 6.

### **Exceptions**

- 12.1 Regulation 7 of Annex V (UK regulation 8) provides exceptions to the prohibition on the discharge of garbage in emergency situations. Under these provisions all garbage categories as defined under the garbage definition can be discharged for the purposes of securing the safety of the ship and those onboard or saving life at sea. This regulation also provides an exception for the accidental loss of garbage as a result of damage to a ship or its equipment, or the accidental loss of fishing gear (see paragraph's 15.1- 15.4 on reporting) provided that all reasonable precautions have been taken before and after the loss to prevent or minimize the loss. It also provides an exception for the discharge of fishing gear for the protection of the marine environment. The provisions on mixed or contaminated garbage do not apply to garbage discharged or lost under an exception.

### **Garbage Management Plans**

- 13.1 Regulation 10.2 of Annex V (UK regulation 11) requires every ship of 100 gross tonnage and over, every ship carrying 15 or more persons and fixed and floating platforms to carry a Garbage Management Plan.
- 13.2 This document must set out procedures for minimizing, collecting, storing, processing and disposing of garbage, including the use of any garbage-related equipment on board. It must also designate the person or persons in charge of carrying out the Plan. The Garbage Management Plan must be set out in accordance with the IMO's 2012 Guidelines for the Development of Garbage Management Plans.<sup>6</sup> The crew should be trained in garbage management and be aware of the contents of the Plan, and the Master of the ship is responsible for ensuring that this Plan is followed and implemented. The 2017 Guidelines provide further comprehensive guidance to assist crews minimize waste and on how to handle waste. The 2017 Guidelines cover collection, processing, storage and discharge and also provide details on shipboard equipment such as compaction, grinding and incineration equipment.

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<sup>6</sup> The Guidelines were published in IMO Resolution MEPC.220(63).

## **Garbage Record Books/Electronic Record Book**

- 14.1 Regulation 10.3 of Annex V (UK regulation 12) requires every ship of 400 gross tonnage and over, every ship carrying 15 or more persons engaged in voyages to ports or offshore terminals under the jurisdiction of another Party to the Convention, and fixed and floating platforms to maintain a Garbage Record Book whether as a part of the ship's official log-book, a separate document or an electronic record book.
- 14.2 The Garbage Record Book must be in the form specified in Appendix II to Annex V. The electronic record book must be approved in line with the Guidelines for the Use of Electronic Record Books Under MARPOL.<sup>7</sup> Companies wishing to use an electronic record book will be able to obtain approval of their electronic system against the Guidelines from one of the UK's delegated Recognised Organisations.

## **Reporting of accidental loss or discharge of fishing gear**

- 15.1 The amount of marine debris resulting from the fishing industry is significant, hence specific regulations have been introduced into Annex V to control this category of garbage. Regulation 10.3.6 of Annex V (UK regulations 13(2) and 15) requires fishing vessels to record the discharge or loss of fishing gear in the Garbage Record Book or ship's logbook.
- 15.2 Regulation 10.6 of Annex V (UK regulation 8(3)) requires fishing vessels to report the accidental loss or discharge of fishing gear which poses a significant threat to the marine environment or navigation. The 2017 Guidelines have a dedicated section on fishing gear, which provides examples of lost or abandoned fishing gear which could be considered to pose a significant threat to the marine environment or navigation.
- 15.3 Reports of fishing gear which poses a significant threat to the marine environment or navigation need to be made to the flag State, and where appropriate to the coastal State in whose jurisdiction the loss of the fishing gear occurred. For the purposes of the UK, details of such losses or discharges need to be sent the following e-mail address: [environment@mcga.gov.uk](mailto:environment@mcga.gov.uk)
- 15.4 The details required to be submitted will be the same as required in the Garbage Record Book, i.e. the ships' name, distinctive number or letters, IMO No. etc. The details should include the amount and nature of the gear lost or discharged, the position of the ship (longitude/latitude) and the conditions of the marine environment where it was lost or discharged.

## **Garbage Record Books: Exemption/ Equivalence**

- 16.1 Regulation 10.4 of Annex V (UK regulation 14) allows the Administration (in the UK the MCA, acting on behalf of the Secretary of State) to waive the requirements for Garbage Record Books. The following may be exempted:
  - a) Ships engaged on a voyage of one hour or less – Exemptions may be issued for a ship certified to carry 15 or more persons if engaged on a voyage of one hour or less. It should be noted that the MCA policy is that a Garbage Record Book will still need to be held on board the ship, but those in charge of the ship can apply for an exemption from making entries in the Book. Applications for the

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<sup>7</sup> The Guidelines were published in IMO Resolution MEPC. 312(74).

exemption should be made to the MCA. The applicant will need to declare that over the period of the time the exemption is being applied for, the ship will only undertake voyages of one hour or less in duration. If an exemption is granted, it will need to be attached to the Garbage Record Book and will not have effect at any time when the ship engages in a voyage of over one hour in duration. There will be a fee at the standard MCA hourly rate for the issue of an exemption.

b) Fixed or Floating platforms – Fixed or floating offshore installations engaged in exploration and exploitation of the seabed must have a Garbage Record Book or equivalent. The equivalent accepted by the MCA are the waste manifest records, special waste pre-notification consignment notes (for special wastes) and duty of care transfer notes (for non-special wastes) which are already maintained and held by fixed or floating platforms. This also applies to unmanned installations. Where unmanned installations do not have a premise to maintain records then the required records must be held at the operator's premises onshore.

### **The International Code for Ships Operating in Polar Waters (Polar Code)**

- 17.1 Annex V applies to ships in Antarctic and Arctic waters (polar waters). However, the Polar Code sets additional requirements in relation to discharges into the sea in polar waters. Antarctic and Arctic waters are defined in Annex V in regulation 1.14.7 and regulation 13.2 respectively.
- 17.2 The UK Regulations only govern discharges into polar waters from United Kingdom ships (regulation 4). The effect of regulation 5(1)(d) is that the discharge of garbage from a United Kingdom ship into the sea in polar waters is prohibited except as provided in section 5.2 of Chapter 5 of part II-A of the Polar Code. Section 5.2 only allows the discharge of garbage where the discharge meets the requirements of regulation 4 of Annex V (in the case of Arctic waters) or regulation 6 of Annex V (in the case of Antarctic waters). It then sets out additional requirements which must also be met.
- 17.3 As the Antarctic is a special area under Annex V regulation 6.1, the amendments for the Antarctic in the Polar Code set out appropriate geographical changes such as stipulating the distances that discharges must be from ice- shelves, fast ice and ice concentration exceeding 1/10.
- 17.4 As Arctic waters fall outside special area waters under Annex V, the Polar Code sets out more stringent provisions in addition to those in regulation 4 of Annex V. This brings Arctic waters more in line with the Antarctic standard, as well as setting out appropriate geographical changes to the discharge requirements.