

2020 No. 000

MARINE POLLUTION

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

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

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The Secretary of State, in exercise of the powers conferred by articles 3 to 6 of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006^(a), articles 2(1), (2)(a) to (g), (3) and 3 of the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996^(b) and sections 128(5), 128(6), 302(1) and 306A of the Merchant Shipping Act 1995^(c), and with the consent of the Treasury^(d), makes the following Regulations:

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2020.

(2) These Regulations come into force on [DATE];

(3) The amendments listed in Part 1 of Schedule 1 (amendments) have effect.

(4) The instruments listed in the first column of the Table in Part 2 of Schedule 1 (revocations) are revoked to the extent specified in the third column of that Table.

Interpretation

2.—(1) In these Regulations—

“the 1995 Act” means the Merchant Shipping Act 1995;

“Annex IV” means Annex IV of the Convention^(e);

“the Appendix” means the Appendix to Annex IV;

“appropriate documentation” means the documentation referred to in regulation (3) (prohibition on non-United Kingdom ships proceeding to sea without a Sewage Certificate);

“Certifying Authority” has the meaning given in regulation 4 (Certifying Authorities);

“Contracting Government” means the Government of a State which has consented to be bound by the Convention, and for which Annex IV of the Convention is in force;

“Contracting Government ship” means a ship, other than a United Kingdom ship, which is registered in, or is not registered but is entitled to fly the flag of, a State whose Government is a Contracting Government;

“controlled waters” means the areas of sea specified by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2014^(f) as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of UNCLOS (Protection and Preservation of the Marine Environment);

“the Convention” means the International Convention for the Prevention of Pollution from Ships 1973, as amended by the Protocols of 1978 and 1997^(g);

(a) S.I. 2006/2950.

(b) S.I. 1996/282.

(c) 1995 c. 21; there are amendments to section 128 which are not relevant to these Regulations. Section 306A was inserted by the Deregulation Act 2015 (c. 20), section 106.

(d) The consent of the Treasury is required to make these Regulations under section 302(1) of the Merchant Shipping Act 1995 (c. 21).

(e) Regulations for the Prevention of Pollution by Sewage from Ships. See footnote (d) to “the Convention” for further information.

(f) S.I. 2014/3306.

(g) The Convention (“MARPOL”), was published in Cmnd. 5748, and amended by the Protocols of 1978 (Cmnd. 7347) and 1997 (Cm. 4427). Hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW. The Parliamentary Archives catalogue numbers are as follows: HL/PO/JO/10/11/1853/505 (Cmnd. 5748), HL/PO/JO/10/11/1959/2033 (Cmnd. 7347) and

“date of expiry”, in relation to a Sewage Certificate held in respect of a ship, means the last day of the period specified in that Sewage Certificate as the period for which that Certificate is valid;

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

“GT” means gross tonnage and the gross tonnage of a ship is to be determined, for the purposes of these Regulations, in accordance with Schedule 2 (gross tonnage).

“harbour master” includes a dock master, pier master and any person specifically appointed by a harbour authority (within the meaning of section 151(1) (interpretation) of the 1995 Act) for the purpose of enforcing the provisions of these Regulations;

“IMO” means the International Maritime Organization;

“international voyage” means a voyage between—

- (a) a port in the United Kingdom and a port outside the United Kingdom; or
- (b) a port in a Convention State other than the United Kingdom and a port in any other State or territory, whether a Convention State or not, which is outside the United Kingdom;

“nautical mile” means an international nautical mile of 1,852 metres;

“offshore terminal” means an installation situated away from the shore, where bulk, fluid or gas cargo, or more than one of these, is—

- (a) transferred between ships;
- (b) loaded onto a ship after having been transported from the shoreline; or
- (c) unloaded from a ship for transporting to the shoreline;

“relevant platform” means a fixed or floating platform which is used in connection with the exploration, exploitation or associated offshore processing of seabed mineral resources;

“sea” includes any estuary or arm of the sea;

“sewage” has the meaning given in regulation 1 of Annex IV (definitions);

“Sewage Certificate” has the meaning given in regulation 9 (requirement for a Sewage Certificate: initial survey);

“ship” means a vessel of any type whatsoever which is operating in the marine environment, including a hydrofoil boat, an air-cushion vehicle, a submersible, a floating craft and a fixed or floating platform;

“surveyor” means a surveyor of ships, or any other person appointed by a Certifying Authority other than the Secretary of State, to be a surveyor; and

“UNCLOS” means the United Nations Convention on the Law of the Sea(a).

(2) In these Regulations the following terms have the meaning given in regulation 17 of Annex IV (definitions)—

- (a) “Polar Code”(b); and
- (b) “polar waters”.

HL/PO/JO/10/11/3156/2285 (Cm. 4427). Annex IV of MARPOL has been amended by a number of IMO Resolutions, most recently by MEPC.284(70). The text of IMO Resolutions may be obtained in hard copy from the IMO Library at 4 Albert Embankment, London SE1 7SR. The amendments to MARPOL can be found on the Foreign and Commonwealth Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch/>).

- (a) This Convention (“UNCLOS”) was originally published in Cmnd. 8941, and subsequently in Cm. 4524. A hard copy of Cm. 4524 is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW (catalogue number: HL/PO/JO/10/11/3186/287). An electronic copy of Cm. 4524 can be found at <https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=69421>. A copy of UNCLOS may be obtained from the United Nations (email doalos@un.org), and at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
- (b) The International Code for Ships Operating in Polar Waters, known as “the Polar Code”, was adopted by IMO Resolution MEPC.264(68). IMO Resolution MEPC.265(68) amended MARPOL by incorporating into it the provisions of the Polar Code relating to the prevention of pollution. The amendment came into force on 1st January 2017. The Polar Code (ISBN 978-92-801-16281) is available from IMO Publishing, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications; email: sales@imo.org; telephone: 0207 735 7611. IMO Resolutions are available from the IMO Library, also of 4 Albert Embankment, London SE1 7SR.

(3) For the purposes of these Regulations—

- (a) subject to sub-paragraph (b), a “discharge” in relation to sewage, means any release howsoever caused from a ship, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying;
- (b) a “discharge” does not include—
 - (i) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, signed at London on 13th November 1972, as amended by the 1996 Protocol^(a); or
 - (ii) the release of sewage for the purposes of legitimate scientific research into pollution abatement or control; and
- (c) a “United Kingdom ship” means a ship which—
 - (i) is registered in the United Kingdom; or
 - (ii) is not registered under the law of any country but is wholly owned by persons each of whom is—
 - (aa) a British citizen, a British overseas territories citizen or a British overseas citizen; or
 - (bb) a body corporate which is established under the law of any part of the United Kingdom and has its principal place of business in the United Kingdom.

(4) Any reference in these Regulations to the date that a ship was constructed is a reference to the date on which the keel of the ship was laid or on which the ship was at a stage of construction at which—

- (a) construction identifiable with a specific ship began; and
- (b) assembly of that ship incorporated at least 50 tonnes of structural material or one percent of the estimated mass of all structural material, whichever is less,

and “constructed” is to be construed accordingly.

(5) For the purpose of the interpretation of Annex IV, as referred to in these Regulations—

- (a) regulation 1 of Annex IV (definitions); and
- (b) regulation 17 of Annex IV (definitions),
have effect.

(6) For the purpose of the interpretation of the Polar Code, as referred to in these Regulations—

- (a) paragraph 2 (definitions) of the introduction to the Polar Code; and
- (b) section 4.1 (definitions) of chapter 4 of part II-A of the Polar Code (prevention of pollution by sewage from ships),
have effect.

Ambulatory reference

3.—(1) Any reference in these Regulations to the Convention, an Annex to the Convention or to the Polar Code is to be construed—

- (a) as a reference to the Convention, an Annex to the Convention or the Polar Code as modified from time to time; and

(a) This Convention (“the London Convention”) was originally published in Cmnd. 5169 and subsequently in Cmnd. 6486. An electronic copy of Cmnd. 6486 can be found at <http://foto.archivalware.co.uk/data/Library2/pdf/1976-TS0043.pdf>. It was amended by the Protocol of 1996 (Cmnd. 4078 and Cm. 9234). An electronic copy of Cm. 9234 can be found at <http://foto.archivalware.co.uk/data/Library2/pdf/2016-TS0021.pdf>. Hard copies of the London Convention and Cmnd. 4078 are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW. The Parliamentary Archives catalogue numbers are as follows: HL/PO/JO/10/11/1891/1448 (the London Convention) and HL/PO/JO/10/11/3094BT/3684 (Cmnd. 4078).

- (b) if the Convention, an Annex to the Convention or the Polar Code are replaced, as a reference to that replacement.

(2) For the purposes of paragraph (1), the Convention, an Annex to the Convention or the Polar Code are modified or replaced if a modification or replacement takes effect in accordance with Article 16 of the Convention.

Certifying Authorities

4.—(1) In these Regulations, “Certifying Authority” means the Secretary of State, or any person authorised by the Secretary of State.

(2) Authorisation under paragraph (1) may be given conditionally or unconditionally and is subject to paragraph (4).

(3) Without prejudice to the generality of paragraph (2), conditions may impose limitations on any person’s authorisation relating to—

- (a) an individual ship;
- (b) classes of ship; and
- (c) the extent of any survey to be carried out by that person.

(4) The Secretary of State may specify in relation to an individual case or to a class of case, that for the purpose of these Regulations a survey, or part of survey, may only be carried out by the Secretary of State and not by another Certifying Authority.

(5) A Certifying Authority, other than the Secretary of State, is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown and its property is not to be regarded as property of, or held on behalf of, the Crown.

Application

5.—(1) Subject to paragraphs (2) and (3), these Regulations apply to—

- (a) United Kingdom ships (wherever they may be) engaged on international voyages;
- (b) United Kingdom ships operating in polar waters; and
- (c) other ships while they are within United Kingdom waters or controlled waters and engaged on international voyages.

(2) These Regulations do not apply to—

- (a) any warship;
- (b) any naval auxiliary ship;
- (c) any other ship owned or operated by a State and used, for the time being, only on government non-commercial service; or
- (d) any ship of less than 400 GT unless that ship carries more than 15 persons.

(3) Regulation 18 (procedure to be adopted when a ship is deficient) applies to—

- (a) United Kingdom ships (wherever they may be) engaged on international voyages; and
- (b) any other ship which is—
 - (i) in a port in the United Kingdom;
 - (ii) at an offshore terminal in United Kingdom waters or controlled waters; or
 - (iii) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.

PART 2

Discharge of Sewage

Prohibition on the discharge of sewage

6.—(1) Subject to paragraph (2), the discharge of sewage from a ship into the sea is prohibited, except—

- (a) in the case of a ship on a voyage outside a special area, when the sewage is discharged in accordance with part A of regulation 11 of Annex IV (discharge of sewage from ships other than passenger ships in all areas and discharge of sewage from passenger ships outside special areas);
- (b) in the case of a passenger ship operating in a special area from the relevant date onwards, when the sewage is discharged in accordance with part B of regulation 11 of Annex IV (discharge of sewage from passenger ships within a special area); and
- (c) in the case of a United Kingdom ship operating in polar waters, when the sewage is discharged in accordance with chapter 4 of part II-A of the Polar Code (prevention of pollution by sewage from ships).

(2) Paragraph (1) does not apply in the case of a discharge of sewage—

- (a) which is necessary for the purpose of—
 - (i) securing the safety of a ship and those on board the ship; or
 - (ii) saving life at sea;
- (b) which—
 - (i) results from damage to a ship or its equipment; and
 - (ii) where all reasonable precautions have been taken before and after the occurrence of the damage to prevent or minimise the discharge; or
- (c) which took place in waters under the jurisdiction of a State other than the United Kingdom and was in accordance with such less stringent requirements as were imposed by that State.

(3) Subject to paragraph (2), where sewage is mixed with waste or waste water covered by an Annex to the Convention other than Annex IV, paragraph (1) applies in addition to any statutory prohibition or requirement which relates to that waste or waste water and which implements that other Annex.

(4) In this regulation—

- (a) the following terms have the meaning given in regulation 1 of Annex IV (definitions)—
 - (i) “passenger ship”; and
 - (ii) “special area”; and
- (b) “the relevant date” means the relevant date determined by the IMO for the special area in question pursuant to regulation 13.2 of Annex IV (reception facilities for passenger ships in special areas).

PART 3

Equipment

Sewage systems

7.—(1) A ship must be equipped in accordance with regulation 9 of Annex IV (sewage systems).

(2) A ship constructed before 2nd October 1983 must be equipped, so far as is practicable, to discharge sewage in accordance with regulation 6 (prohibition on the discharge of sewage).

(3) For the purposes of regulation 9 of Annex IV (sewage systems)—

- (a) in the case of a United Kingdom ship, a sewage treatment plant must be of a type approved under the Merchant Shipping (Marine Equipment) Regulations 2016(a); and
- (b) in the case of a ship which is not a United Kingdom ship;
 - (i) a sewage treatment plant;
 - (ii) a sewage comminuting and disinfecting system and its facilities; or
 - (iii) a holding tank,

will comply if the Secretary of State is satisfied that it complies with the requirements of Annex IV.

Discharge connections

8. The sewage discharge pipeline of a ship must be fitted with a standard discharge connection in accordance with regulation 10 of Annex IV (standard discharge connections).

PART 4

Survey and Certification of Ships

Requirement for Sewage Certificate: initial survey

9.—(1) A United Kingdom ship to which this regulation applies must not—

- (a) proceed to sea, or
- (b) if it is already at sea, remain at sea,

unless the requirements set out in paragraph (2) are met.

(2) The requirements are that—

- (a) a survey has been carried out in respect of the ship;
- (b) at the date of the survey, the surveyor is satisfied that the structure, equipment, systems, fittings, arrangements and materials of the ship fully comply with the requirements of Part 3 (Equipment); and
- (c) a Sewage Certificate has been issued in respect of that ship and is still valid.

(3) In these Regulations “Sewage Certificate” means an International Sewage Pollution Prevention Certificate in the form shown in the Appendix.

Renewal of Sewage Certificate: renewal survey

10.—(1) A United Kingdom ship to which this regulation applies must not—

- (a) proceed to sea, or
- (b) if it is already at sea, remain at sea,

after the date of expiry of a Sewage Certificate issued in respect of that ship unless the requirements set out in paragraph (2) are met.

(2) The requirements are that—

- (a) a survey has been carried out in respect of the ship;

(a) S.I. 2016/1025. From exit day onwards, amended by S.I. 2019/470.

- (b) at the date of the survey, the surveyor is satisfied that the structure, equipment, systems, fittings, arrangements and materials of the ship fully comply with the requirements of Part 3 (Equipment); and
- (c) a Sewage Certificate has been issued in respect of that ship and is still valid.

(3) A survey carried out under paragraph (2) is referred to in these Regulations as a “renewal survey”.

Responsibilities of the owner and master of a United Kingdom ship

11.—(1) The owner and the master of a United Kingdom ship must ensure that the condition of the ship and its equipment are maintained to conform with the provisions of Part 3 (Equipment), so as to ensure that the ship in all respects remains fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) The owner and the master of a United Kingdom ship must ensure that after any survey of the ship required by this Part has been completed, no change, except by way of direct replacement, is made to the structure, equipment, systems, fittings, arrangements or material of that ship without the approval of—

- (a) the Certifying Authority who appointed the surveyor to carry out the survey; or
- (b) the Secretary of State, where the Sewage Certificate was issued by a Contracting Government other than the United Kingdom following a request made pursuant to regulation 14 (issue of a Sewage Certificate by another Government in respect of United Kingdom ships),

as the case may be.

(3) Whenever—

- (a) an accident occurs to a United Kingdom ship, or
- (b) a defect is discovered in a United Kingdom ship,

which substantially affects the integrity of the ship or the efficiency or completeness of the equipment of the ship required under Part 3 (Equipment), the owner and the master of the ship must ensure that the requirements of paragraph (4) are complied with.

(4) The requirements are that—

- (a) the accident or defect, as the case may be, is reported at the earliest opportunity to the Certifying Authority who issued the Sewage Certificate in respect of the ship; and
- (b) in the case of a ship in a port outside of the United Kingdom, the accident or the defect, as the case may be, is also immediately reported to the appropriate maritime authorities in the State in which the port is situated.

(5) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph 4(a), the Certifying Authority—

- (a) must cause an investigation to be initiated to determine whether or not an additional survey is necessary; and
- (b) if it considers that an additional survey is necessary, must cause that survey to be carried out.

(6) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a) and the ship in question is in a port outside the United Kingdom, the Certifying Authority must ascertain that the requirement in paragraph (4)(b) has been complied with.

Additional surveys

12.—(1) This regulation applies to a United Kingdom ship where—

- (a) a repair resulting from an investigation referred to in regulation 11(5) (responsibilities of the owner and master of a United Kingdom ship) has been made to the ship; or
- (b) an important repair or renewal has been made to the ship.

- (2) A ship to which this regulation applies must not—
- (a) proceed to sea, or
 - (b) if it is already at sea, remain at sea,
- unless the requirements set out in paragraph (3) are met.
- (3) The requirements are that—
- (a) a survey has been carried out in respect of that ship;
 - (b) at the date of the survey the surveyor is satisfied that—
 - (i) the repair or renewal has been made effectively;
 - (ii) the materials used in, and the workmanship of, the repair or renewal are satisfactory in all respects; and
 - (iii) the ship complies in all respects with the requirements of Part 3 (Equipment); and
 - (c) the surveyor has issued a survey report expressing the satisfaction required by subparagraph (b).
- (4) A survey carried out under paragraph (3) is referred to in these Regulations as an “additional survey”.
- (5) For the purposes of paragraph (1)(b) an important repair or renewal is a repair or renewal which is required to be effected in order to—
- (a) address a defect which substantially affects the integrity of the ship or the efficiency or completeness of the equipment of the ship; or
 - (b) ensure compliance with the requirements of Annex IV.
- (6) In the case of a dispute as to whether a repair or renewal effected or intended to be effected in respect of a ship is an important repair or renewal for the purposes of this regulation, the owner or master of a ship may serve a written request upon the Secretary of State seeking advice^(a).
- (7) A repair or renewal is to be regarded as not being an important repair or renewal for the purposes of this regulation unless the Secretary of State advises to the contrary within 21 days of receipt of a request under paragraph (6).

Issue of Sewage Certificates by a Certifying Authority in respect of United Kingdom ships

13.—(1) Subject to the payment of any fee due under the Merchant Shipping (Fees) Regulations 2018^(b), on being notified by a surveyor that the surveyor—

- (a) has carried out a survey in respect of a United Kingdom ship; and
- (b) is satisfied at the date of the survey that the structure, equipment, systems, fittings, arrangements and materials of the ship fully comply with the requirements of Part 3 (Equipment),

a Certifying Authority must issue a Sewage Certificate in respect of that ship.

(2) Where a ship becomes a United Kingdom ship on transfer from the flag of a Contracting Government other than the United Kingdom, a Certifying Authority must issue a Sewage Certificate in respect of that ship where—

- (a) a Sewage Certificate has been issued in respect of the ship and was still valid immediately before the date of the transfer;
- (b) the Certifying Authority has caused a survey to be carried out in respect of the ship; and
- (c) the Certifying Authority is satisfied that—

(a) The process for requesting this advice from the Secretary of State can be found in Marine Guidance Note No. [XXXXX]. Copies of MGN [XXXXX] may be obtained free of charge at <https://www.gov.uk> or in hard copy from the Maritime and Coastguard Agency (“MCA”) of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

(b) S.I. 2018/1104, to which there are amendments not relevant to these Regulations.

- (i) the condition of the ship and its equipment is maintained to conform with the provisions of Annex IV, so as to ensure that the ship is fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment; and
- (ii) no change, other than a change referred to in paragraph (3) has been made to the structure, equipment, systems, fittings, arrangements or materials of the ship covered by the last survey carried out under regulation 4.1 of Annex IV (surveys) without the approval of the Contracting Government in question.

(3) The changes referred to in paragraph (2)(c)(ii) are the direct replacement of equipment and fittings.

(4) A Sewage Certificate issued under this regulation must be in English.

Issue of Sewage Certificates by another Government in respect of United Kingdom ships

14.—(1) The Secretary of State may request a Contracting Government to survey a United Kingdom ship and to—

- (a) Issue, or authorise the issue of, a Sewage Certificate in respect of that ship; or
- (b) endorse or authorise the endorsement of an existing Sewage Certificate in respect of that ship.

(2) Where a Sewage Certificate is issued pursuant to paragraph (1)(a)—

- (a) the Secretary of State is to be treated as the Certifying Authority in relation to it; and
- (b) any reference in these Regulations to the Certifying Authority who issued the Certificate is to be treated as a reference to the Secretary of State.

Issue of Sewage Certificates in respect of ships which are not United Kingdom ships

15.—(1) The Secretary of State, when requested to do so by a Contracting Government, may cause a survey to be carried out in respect of a Contracting Government ship.

(2) The Secretary of State must issue a Sewage Certificate for a ship for which a survey described in paragraph (1) has been carried out, if—

- (a) the Secretary of State is satisfied that the requirements of Annex IV are complied with; and
- (b) any fee due under the Merchant Shipping (Fees) Regulations 2018 has been paid.

(3) The Secretary of State must send as soon as possible to the Contracting Government who made the request referred to in paragraph (1) a copy of—

- (a) the Sewage Certificate issued pursuant to that paragraph; and
- (b) the survey report.

Duration and validity of Sewage Certificates

16.—(1) Subject to paragraphs (2) to (8) of this regulation and to regulation 18(3) (procedure to be adopted when a ship is deficient), a Sewage Certificate which is issued in respect of a United Kingdom ship is valid for such period as is specified in the certificate, not exceeding five years, beginning with the date of completion of the relevant survey.

(2) Subject to paragraphs (3) and (4) and regulation 17(10) (extension of periods of validity of sewage certificates), where a renewal survey is completed—

- (a) within three months before the expiry of the Sewage Certificate; or
- (b) after the date of expiry of the latest Sewage Certificate,

the new Sewage Certificate is valid for such period as is specified in the Certificate, beginning with the date of the completion of the renewal survey and ending with a date not exceeding five years from the date of expiry of the latest Sewage Certificate.

(3) A Sewage Certificate issued in respect of a United Kingdom ship ceases to be valid—

- (a) upon the ship being transferred to the flag of another State;
- (b) upon the ship proceeding to sea where—
 - (i) a repair or renewal referred to in regulation 12(1) (additional surveys) has been made; and
 - (ii) the requirements set out in regulation 12(3) (additional surveys) have not been complied with;
- (c) if a survey under regulation 9 or 10 is not completed in accordance with the requirements of these Regulations;
- (d) upon a new Sewage Certificate being issued in respect of the ship; or
- (e) upon the date of expiry of the Sewage Certificate.

(4) The Secretary of State may cancel a Sewage Certificate issued in respect of a United Kingdom ship, where the Secretary of State has reason to believe that—

- (a) the Sewage Certificate was issued on false or erroneous information; or
- (b) since the completion of any survey required by these Regulations, the structure, equipment or machinery of the ship has sustained damage or is otherwise deficient.

(5) The Secretary of State may require that a Sewage Certificate is surrendered provided that—

- (a) the Sewage Certificate was issued in respect of a United Kingdom ship; and
- (b) it has—
 - (i) expired;
 - (ii) been suspended; or
 - (iii) been cancelled.

(6) A direction given by the Secretary of State under paragraph (5) may specify that a Sewage Certificate must be surrendered within such time and in such manner as the Secretary of State may direct.

(7) In relation to a ship, no person may—

- (a) intentionally alter a Sewage Certificate;
- (b) intentionally make a false Sewage Certificate;
- (c) knowingly or recklessly provide false information in connection with a survey required under these Regulations;
- (d) with intent to deceive, use or lend a Sewage Certificate or permit a Sewage Certificate to be used by another person;
- (e) fail to surrender a Sewage Certificate when required to do so pursuant to paragraph (5); or
- (f) in Scotland, forge a Sewage Certificate.

(8) The owner and master of a ship, in respect of which a Sewage Certificate has been issued, must ensure that the Sewage Certificate is readily available on board the ship for examination at all times.

Extension of periods of validity of Sewage Certificates

17.—(1) Where the remaining period of the validity of a Sewage Certificate in respect of a United Kingdom ship is less than five years, the Certifying Authority who issued the Sewage Certificate may extend its period of validity to a maximum period of five years.

(2) Where—

- (a) a renewal survey has been completed by a surveyor, but
- (b) the new Sewage Certificate cannot be issued or placed on board the ship before the date of expiry of the latest Sewage Certificate,

the surveyor may endorse the latest Sewage Certificate.

(3) An endorsement issued pursuant to paragraph (2) must be in the relevant form set out in the Appendix.

(4) Where a Sewage Certificate has been endorsed under paragraph (2), that Certificate is valid for such further period as is specified in the Certificate, not exceeding five months beginning with the original date of expiry of the Certificate.

(5) Where—

(a) a renewal survey has not been completed before the date of expiry of the latest Sewage Certificate in question, and

(b) at that date of expiry the ship is not in the port in which the survey is to be carried out,

the Certifying Authority who issued the latest Sewage Certificate may extend the period of validity of that Sewage Certificate for a period not exceeding three months, if it appears to the Certifying Authority that it is proper and reasonable to do so solely for the purpose of allowing the ship to complete its voyage to its port of survey.

(6) Where the period of validity of a Sewage Certificate has been extended pursuant to paragraph (5), the ship in question must not leave its port of survey until a new Sewage Certificate has been issued in respect of that ship.

(7) Subject to paragraph (8), the Certifying Authority who issued the latest Sewage Certificate in respect of a ship engaged solely on short voyages may extend the period of validity of that Sewage Certificate for a period not exceeding one month.

(8) A Certifying Authority must not extend the period of validity of a Sewage Certificate under paragraph (7) if the period of validity of that Sewage Certificate has already been extended under paragraph (1), (4) or (5).

(9) Subject to paragraph (10) and to regulations 16(4) (duration and validity of a Sewage Certificate) and 18(3) (procedure to be adopted when a ship is deficient), where a survey has been completed and a new Sewage Certificate has been issued in respect of a ship referred to in paragraph (6) or (7), that new Certificate is valid for such period as is specified in the Certificate, not exceeding five years beginning with the original date of expiry of the previous Sewage Certificate.

(10) In special circumstances, as determined by the Secretary of State^(a), the period of validity of a new Sewage Certificate which is—

(a) issued in respect of a ship referred to in paragraph (6) or (7); or

(b) referred to in regulation 16(2) (duration and validity of Sewage Certificates) and issued where the survey is completed after the date of expiry of the latest Sewage Certificate,

is such period as is specified in the new Certificate, not exceeding five years beginning with the date of the completion of the survey in question.

(11) Where the period of validity of a Sewage Certificate is extended under paragraph (1), (5) or (7), the Certifying Authority in question must endorse the Sewage Certificate in accordance with the relevant form set out in the Appendix.

(12) In this regulation—

(a) “the original date of expiry” means the date on which a Sewage Certificate would have expired but for any extension of its period of validity.

(b) “short voyage” means a voyage which—

(i) does not exceed 1,000 nautical miles between the last port of call in the State in which the voyage begins and the last port of call in the voyage before beginning any return voyage; and

(a) Guidance regarding what are considered to be “special circumstances” can be found in Marine Guidance Note No. [XXXX]. Copies of MGN [XXXX] may be obtained free of charge at <https://www.gov.uk> or in hard copy from the Maritime and Coastguard Agency (“MCA”) of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

- (ii) on any return voyage does not exceed 1,000 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the State in which the voyage began,

and for the purposes of this definition no account is to be taken of any deviation by a ship from its intended voyage due solely to stress of weather, or any other circumstances that neither the master, nor the owner, nor the charterer (if any) of the ship could have prevented or forestalled(a).

Procedure to be adopted when a ship is deficient

18.—(1) This regulation applies where a surveyor determines that—

- (a) the condition of a ship or its equipment does not correspond substantially with the particulars of the Sewage Certificate, if any, issued in respect of the ship; or
- (b) a ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) In the circumstances described in paragraph (1) the surveyor must—

- (a) immediately advise the owner or master of the corrective action which, in the opinion of the surveyor, is required; and
- (b) where the ship has a valid Sewage Certificate, notify the Certifying Authority who issued the Certificate—
 - (i) that the surveyor has so advised the owner or master as the case may be; and
 - (ii) if that corrective action is not taken.

(3) Where a Sewage Certificate has been issued in respect of a United Kingdom ship and is still valid, the Certifying Authority may suspend the validity of that Certificate until the corrective action has been taken.

(4) Where the Certifying Authority suspends the validity of a Sewage Certificate issued in respect of a United Kingdom ship, it must immediately give notice in writing of such suspension—

- (a) to the owner of the ship; and
- (b) where the ship is in a port outside the United Kingdom, to the appropriate maritime authorities of the State in which the port is situated.

(5) Where the owner of a United Kingdom ship is given notice of suspension, that owner must notify the master of the ship in question of the suspension.

(6) In the application of paragraphs (1) and (2) to a ship which is not a United Kingdom ship—

- (a) “the Certifying Authority” means the Government of the State where the ship is registered (or if the ship is not registered, the Government of the flag State); and
- (b) “surveyor” includes a person authorised by that Government to survey the ship.

Prohibition on non-United Kingdom ships proceeding to sea without a Sewage Certificate

19.—(1) A Contracting Government ship must not proceed to sea from a port in the United Kingdom unless—

- (a) a Sewage Certificate has been issued pursuant to Annex IV in respect of that ship and is still valid;
- (b) a surveyor is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment; or

(a) The definition of “short voyage” derives from IMO Resolution A.1104(29). Resolutions of the IMO can be obtained from the IMO Library at 4 Albert Embankment, London SE1 7SR and from www.imo.org/en/MediaCentre/Pages/Default.aspx; email: media@imo.org; telephone: 020 7587 3134. They will also be made available via the Foreign and Commonwealth Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch/#home>).

- (c) a person having powers to detain the ship has permitted the ship to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.
- (2) A ship which is not a United Kingdom ship or a Contracting Government ship must not proceed to sea from a port in the United Kingdom unless—
 - (a) a surveyor is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment; or
 - (b) a person having powers to detain the ship has permitted the ship to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.
- (3) A ship to which subparagraph (1)(b) or (c) or paragraph (2) of this regulation applies must not proceed to sea unless documentation has been issued in respect of that ship which is still valid and shows that—
 - (a) a survey has been carried out in respect of the ship as if regulation 9 (requirement for a Sewage Certificate: initial survey) applied to the ship; and
 - (b) either—
 - (i) a surveyor is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment; or
 - (ii) a person having powers to detain the ship has permitted the ship to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard.

Arbitration

20.—(1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out in respect of a United Kingdom ship, the applicant may serve a written notice on the responsible person within 21 days of receiving notification of that outcome—

- (a) stating that there is a dispute between them; and
- (b) requesting that the dispute be referred to a single arbitrator.

(2) Subject to paragraph (3), an arbitrator referred to in paragraph (1) must be appointed by agreement between the applicant and the responsible person.

(3) In default of agreement between the applicant and the responsible person, the arbitrator is such person as may be appointed by the President or Vice President of the Chartered Institute of Arbitrators following a request made by—

- (a) one party, after giving written notice to the other party, or
- (b) the parties jointly,

but this paragraph does not apply in relation to Scotland.

(4) No person is to be an arbitrator under this regulation unless that person is—

- (a) a person who holds a certificate to act as—
 - (i) a master or chief mate on a seagoing ship of 3,000 GT or more, in accordance with Regulation II/2 of Chapter 2 of the Annex to STCW;
 - (ii) a chief engineer officer or second engineer officer on a seagoing ship powered by main propulsion machinery of 3,000 kW propulsion power or more, in accordance with Regulation III/2 of Chapter 3 of the Annex to STCW;
- (b) a person who holds a certificate of competency equivalent to a certificate referred to in sub-paragraph (a);
- (c) a naval architect;
- (d) a qualified person;
- (e) a person with special experience of shipping matters, or the fishing industry, or of activities carried on in ports; or
- (f) a member of the Chartered Institute of Arbitrators.

(5) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 259 of the 1995 Act.

(6) In the application of this regulation to Scotland—

- (a) any reference to an arbitrator is to be construed as a reference to an arbiter; and
- (b) the reference in paragraph (2) to a single arbitrator appointed by agreement between the applicant and the responsible person is to be construed as a reference to a single arbiter so appointed, or in default of agreement, appointed by a sheriff.

(7) The rules for arbitration set out in Merchant Shipping Notice No M.1613(a) apply unless alternative procedures are agreed between the applicant and the responsible person before the commencement of arbitration proceedings.

(8) In this regulation—

- (a) “applicant” means a person who makes an application for a survey required by these Regulations;
- (b) “Merchant Shipping Notice” means a notice described as such and issued by the Secretary of State, and any reference to a particular Merchant Shipping Notice includes a reference to a Merchant Shipping Notice amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time;
- (c) “qualified person” means—
 - (i) a person who satisfies the judicial appointment eligibility condition on a seven year basis;
 - (ii) a person who is an advocate or solicitor in Scotland of at least seven years’ standing; or
 - (iii) a person who is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland of at least seven years’ standing;
- (d) “responsible person” means—
 - (i) the Certifying Authority responsible under regulation 13 (issue of a Sewage Certificate by a Certifying Authority in respect of United Kingdom ships) or 14 (issue of a Sewage Certificate by another Government in respect of United Kingdom ships) for the issue of the Sewage Certificate in connection with which a survey required by these Regulations is carried out; or
 - (ii) in the case of a dispute relating to an additional survey, the Certifying Authority which issued the Sewage Certificate in respect of the ship; and
- (e) “STCW” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978(b), as amended in 1995 by resolution 1 of the STCW Conference convened at the IMO’s headquarters from 26th June to 7th July 1995.

PART 5

Enforcement

Inspection of ships

21.—(1) Insofar as sections 258(a) (power to inspect ships and their equipment etc.) and 259 (powers of inspectors in relation to premises and ships) of the 1995 Act apply in relation to a ship

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- (a) Merchant Shipping Notices are published by the Maritime and Coastguard Agency. Copies of MSN No. M.1613 may be obtained free of charge at <https://www.gov.uk> or in hard copy from the Maritime and Coastguard Agency (“MCA”) of Spring Place, 105 Commercial Road, Southampton SO15 1EG.
 - (b) This Convention (“STCW”) was originally published in Cmnd. 7543 and subsequently in Cmnd 9266. An electronic copy of Cmnd. 9266 can be found at <https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=68238>. A hard copy of Cmnd. 9266 is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London, SW1A 0PW (catalogue number: HL/PO/JO/10/11/2230/2631).

to which these Regulations apply, for the purpose of checking compliance with these Regulations those sections have effect subject to the following modifications.

(2) The power to inspect a ship and its equipment, any part of the ship, any articles on board and any document carried in the ship, is limited to—

- (a) verifying whether sewage has been discharged from the ship in violation of these Regulations;
- (b) investigating any operation regulated by these Regulations, if there are clear grounds for believing that the master or the crew are not familiar with essential shipboard procedures for preventing pollution by sewage;
- (c) verifying whether a Sewage Certificate has been issued in respect of the ship and is still valid; or
- (d) verifying whether appropriate documentation has been issued in respect of the ship and is still valid;

except where there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the Sewage Certificate or other appropriate documentation referred to in sub-paragraph (c) or (d).

(3) The power in those sections to go on board a ship may only be exercised if the ship is—

- (a) in a port in the United Kingdom;
- (b) at an offshore terminal in United Kingdom waters or controlled waters;
- (c) a fixed platform in United Kingdom waters or controlled waters; or
- (d) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.

(4) Where the ship is inspected for the purposes of paragraph (2)(a) and is not a United Kingdom ship, the person exercising the powers of inspection must ensure that the report of the inspection is sent to—

- (a) a diplomatic representative of the ship's flag State or the appropriate maritime authorities of that State; and
- (b) any other party to the Convention who requested the inspection.

General provisions on detention

22.—(1) Where—

- (a) a determination is made of the kind mentioned in regulation 18(1) (procedure to be adopted when a ship is deficient) in relation to a ship; or
- (b) a surveyor has clear grounds for believing that—
 - (i) a Sewage Certificate is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
 - (ii) appropriate documentation is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
 - (iii) the condition of a ship or its equipment does not correspond substantially with the particulars of that Certificate or other appropriate documentation;
 - (iv) the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage; or
 - (v) an offence under regulation 26(1) (offences) is being committed in respect of a ship,

the ship is liable to be detained until a surveyor is satisfied that it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(a) Section 258 is amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1, paragraph 4, and Schedule 7, Part 1, and the Protection of Freedoms Act 2012 (c. 9), Schedule 2, Part 1 paragraph 2 and Schedule 10, Part 2.

(2) Notwithstanding paragraph (1), a person having powers to detain a ship may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) Where a surveyor has clear grounds for believing that an offence under regulation 26(1)(d) or (e) (offences) has been committed in respect of a ship, the ship is liable to be detained.

(4) The power under this regulation to detain a ship may only be exercised if the ship is—

- (a) in a port in the United Kingdom;
- (b) at an offshore terminal in United Kingdom waters or controlled waters;
- (c) a fixed platform in United Kingdom waters or controlled waters; or
- (d) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.

(5) Section 284 of the 1995 Act^(a) (enforcing detention of a ship) applies where a ship is liable to be detained under the preceding provisions of this regulation as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under the preceding provisions of this regulation; and
- (b) subsection (7) were omitted.

(6) Where a ship is liable to be detained under the preceding provisions of this regulation, the person detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the 1995 Act.

(7) Where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately inform a diplomatic representative of the ship's flag State or the appropriate maritime authorities of that State.

(8) Where a ship is detained under paragraph (3), a person having power to detain the ship must, at the request of the owner, manager, demise charterer or master, immediately release the ship—

- (a) if no proceedings for an offence under regulation 26(1)(d) or (e) (offences) are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under regulation 26(1)(d) or (e) (offences), having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
- (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security; or
 - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State, by or on behalf of the owner, manager, demise charterer or master;
- (d) where the owner, manager, demise charterer or master is convicted of an offence under regulation 26(1)(d) or (e) (offences), if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) the release is ordered by a court or tribunal referred to in Article 292 of UNCLOS, and any bond or other financial security ordered by such court or tribunal is posted.

(9) The Secretary of State must repay any sum paid in pursuance of paragraph (8)(c) or release any security so given—

- (a) if no proceedings for an offence under regulation 26(1)(d) or (e) (offences) are instituted within the period of seven days beginning with the day on which the sum is paid; or

^(a) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1, paragraph 5, and S.I. 2015/664, Schedule 4, Part 1, paragraph 27(1) and (15).

- (b) if proceedings for that offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.

(10) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph 8(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 26(1)(d) or (e) (offences), the sum so paid or the amount made available under the security must be applied as follows—

- (a) first in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and

- (b) next in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(11) Section 145 of the 1995 Act^(a) (interpretation of section 144) applies for the purposes of paragraphs (8) to (10), as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and

- (b) references to an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were references to an offence under regulation 26(1)(d) or (e) (offences).

Power for harbour master to detain a ship

23.—(1) Where the harbour master of a harbour in the United Kingdom has clear grounds for believing that an offence has been committed under regulation 26(1)(d) or (e) (offences) by the discharge from a ship of sewage into the waters of the harbour, the harbour master may detain the ship.

(2) Section 144(2) and (3) of the 1995 Act (harbour master's power of detention of ships for certain offences) apply to a detention under paragraph (1) as they apply to a detention under section 144(1) of the 1995 Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by the harbour authority.

(4) Where a ship is detained under this regulation, the harbour master must immediately release the ship—

- (a) if no proceedings for an offence under regulation 26(1)(d) or (e) (offences) are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under regulation 26(1)(d) or (e) (offences), having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
- (c) if either—
 - (i) the sum of £30,000 is paid to the harbour authority by way of security; or
 - (ii) security which, in the opinion of the harbour master, is satisfactory and is for an amount not less than £30,000 is given to the harbour authority;
- (d) where the owner, manager, demise charterer or master is convicted of an offence under regulation 26(1)(d) or (e) (offences), if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or

(a) Section 145 was amended by the Criminal Justice Act 2003 (c. 44), Schedule 36, Part 2, paragraph 13, and by the Criminal Justice and Courts Act 2015 (c. 2), Schedule 11, paragraph 16.

- (e) if the release is ordered by a court or tribunal referred to in Article 292 of UNCLOS and any bond or other financial security ordered by such court or tribunal is posted.

(5) The harbour authority must repay any sum paid in pursuance of paragraph 4(c) or release any security so given—

- (a) if no proceedings for an offence under regulation 26(1)(d) or (e) (offences) are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for an offence under regulation 26(1)(d) or (e) (offences), having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.

(6) Where a sum has been paid or security has been given by any person in pursuance of paragraph (4)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 26(1)(d) or (e) (offences), the sum so paid for the amount made available under the security must be applied as follows—

- (a) first in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
- (b) next in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(7) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
- (b) references to an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were references to an offence under regulation 26(1)(d) or (e) (offences).

Duty of harbour master to report deficient ships

24. The harbour master of a harbour in the United Kingdom must immediately notify the Secretary of State if the harbour master has reason to believe that a ship is about to—

- (a) enter the harbour; or
- (b) leave the harbour,

and does not comply with the requirements of these Regulations.

Right of appeal and compensation

25.—(1) Regulations 15 (arbitration) and 16 (compensation) of the Merchant Shipping (Port State Control) Regulations 2011^(a) apply in relation to the exercise of the power of detention under these Regulations as they apply in relation to the exercise of those powers under Part 1 (implementation of Directive 2009/16/EC^(b)) of those Regulations, subject to the modifications referred to in paragraph (2).

(2) The modifications are—

- (a) references to “inspector” are to be taken as references to the authority detaining the ship, or the harbour master, as the case may be;
- (b) references to—
 - (i) “refusal of access notice”;
 - (ii) “service of a refusal of access notice”; and
 - (iii) “refusal of access”,

(a) S.I. 2011/2601, to which there are amendments not relevant to the Regulations.

(b) OJ No. L 131, 28.05.2009, p. 57.

are omitted; and

- (c) in regulation 16(2) after “State” there is added “, except where the ship is detained by a harbour master, in which case any compensation awarded under this section must be paid by the harbour authority.”.

Offences

26.—(1) Any contravention of—

- (a) regulation 9(1) (requirement for a Sewage Certificate: initial survey), 10(1) (renewal of Sewage Certificate: renewal survey), 11(1), (2) or (3) (responsibilities of the owner and master of a United Kingdom ship), 12(2) (additional surveys), 16(8) (duration and validity of Sewage Certificates), 17(6) (extensions of periods of validity of Sewage Certificates) or 19(1), (2) or (3) (prohibition on non-United Kingdom ships proceeding to sea without a Sewage Certificate) is an offence by the owner and master of the ship;
- (b) regulation 7(1) or (2) (sewage systems), 8 (discharge connections) or 18(5) (procedure to be adopted when a ship is deficient) is an offence by the owner of the ship;
- (c) regulation 16(7) (duration and validity of Sewage Certificates) is an offence by the person in question;
- (d) regulation 6(1) (prohibition on the discharge of sewage) in the case of a relevant platform, is an offence by the owner and manager of the platform; or
- (e) regulation 6(1) (prohibition on the discharge of sewage) in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship.

(2) Subject to paragraph (3), an offence under paragraph (1) is punishable—

- (a) on summary conviction—
- (i) in England and Wales by a fine; or
- (ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment by a fine.

(3) A contravention referred to in paragraph (1)(d) or (e) is specified for the purpose of article 6 of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006 (which applies section 131(3) of the 1995 Act (penalties for certain pollution offences) subject to a modification).

(4) Where an offence under this regulation is—

- (a) committed, or
- (b) would be committed save for the operation of regulation 27(1) (defences),

by a person due to the act or default of some other person, that other person is also guilty of the offence.

(5) A person may be charged with and convicted of an offence by virtue of paragraph (4) whether or not proceedings are taken against the person whose act or default caused the offence to be committed.

Defences

27.—(1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that they took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings for an offence under regulation 26(1)(d) or (e) (offences) it is a defence for the person charged to prove that—

- (a) the ship was not a United Kingdom ship;
- (b) the discharge took place in waters that were not United Kingdom waters or controlled waters; and

- (c) the ship was in a port in the United Kingdom at the time of the institution of the proceedings by reason only of stress of weather or any other reason beyond the control of the owner, manager, charterer or master of the ship.

Restriction on jurisdiction over offences outside United Kingdom limits

28.—(1) Where there has been an offence under regulation 26(1)(d) or (e) (offences) in respect of a ship which is not a United Kingdom ship in the internal waters, territorial sea or exclusive economic zone of a foreign State, proceedings in respect of that offence must not be instituted in the United Kingdom unless—

- (a) that foreign State, the flag State of the ship or a foreign State polluted or threatened with pollution as a result of the offence requests that such proceedings be taken; or
- (b) the offence has caused or is likely to cause pollution in United Kingdom waters or controlled waters.

(2) Where such proceedings have been instituted but not concluded, they must be suspended upon the request of the foreign State in question and the Secretary of State must send all the evidence, court records and documents relating to the case, together with any sum paid or security given, to the foreign State.

(3) In this regulation—

- (a) “exclusive economic zone”, in relation to a foreign State, means the area beyond and adjacent to the territorial sea of that State, but not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured; and
- (b) “foreign State” means a State other than the United Kingdom.

Suspension of proceedings at flag State request

29.—(1) This regulation applies to proceedings instituted but not concluded in the United Kingdom in respect of a contravention of a provision in Part 2 (discharge of sewage) committed outside United Kingdom waters by a ship that is not a United Kingdom ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the court is satisfied that the ship’s flag State has instituted proceedings corresponding to the proceedings in paragraph (1) within six months of the institution of the proceedings in the United Kingdom.

(3) Paragraph (2) does not apply—

- (a) where the contravention of these Regulations resulted in serious pollution of the United Kingdom; or
- (b) if the Secretary of State certifies that the ship’s flag State has repeatedly disregarded its obligations to enforce effectively the requirements of the Convention in respect of its ships.

(4) Where proceedings instituted by the ship’s flag State have been brought to a conclusion, the suspended proceedings must be terminated.

Service of documents on foreign companies

30. Section 143(6) of the 1995 Act(a) (service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 131 of the 1995 Act) applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) of the 1995 Act, as if—

- (a) the reference to section 131 were to these Regulations;

(a) Section 143(6) is amended by S.I. 2009/1941, Schedule 1, paragraph 152(1) and (2).

- (b) in the case of an offence in respect of a ship other than a relevant platform, the reference to the owner were to the owner, manager or demise charterer; and
- (c) in the case of any offence in respect of a relevant platform, the reference to—
 - (i) the owner of the ship were to the owner of the platform; and
 - (ii) the master of the ship were to the manager of the platform.

Enforcement and application of fines

31. Section 146 of the 1995 Act (enforcement and application of fines) applies to any fine for an offence under regulation 26(1)(d) or (e) (offences) as if—

- (a) in subsection (1) of that section the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 were a reference to proceedings against the owner, manager, demise charterer, master or officer in charge of the discharge operation for an offence under regulation 26(1)(d) or (e) (offences); and
- (b) in subsection (2) of that section, the reference to an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were a reference to an offence under regulation 26(1)(d) or (e) (offences).

PART 6

Review

Review of the Regulations

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

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before [DATE – 5 YEARS AFTER CIF].

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(a) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under Annex IV are implemented in other countries which are subject to the obligations.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph 1(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Signed by the authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State

(a) 2015 c. 26. Section 30(3) was amended by the Enterprise Act 2016 (c. 12), section 19.

Date

Department for Transport

We consent

Name

Name

Two of the Lords Commissioners of Her Majesty's Treasury

Date

SCHEDULES

SCHEDULE 1

Regulation 1(2) and (4)

Amendments and Revocations

PART 1

Amendments

[Placeholder for consequential amendments – see paragraph X of the Consultation Document]

PART 2

Revocations

Table

<i>Regulations revoked</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008	S.I. 2008/3257	The whole instrument
The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) (Amendment) Regulations 2010	S.I. 2010/897	The whole instrument

SCHEDULE 2

Regulation 2(1)

Gross Tonnage

1. The “gross tonnage” of a United Kingdom ship is to be determined in accordance with paragraphs 3 to 7, and the “gross tonnage” of a ship other than a United Kingdom ship is to be determined in accordance with paragraphs 8 to 10.

2. In this Schedule—

“the 1997 Regulations” means the Merchant Shipping (Tonnage) Regulations 1997(a);
“length overall” and “length” (except in the expression “length overall”) have the same meaning as in the 1997 Regulations; and
“the Tonnage Convention” means the International Convention on Tonnage Measurement of Ships, 1969(b).

United Kingdom Ships

3. In the case of a ship of 24 metres in length or over for which the Secretary of State permits the continuing use of a gross tonnage pursuant to regulation 12(1) (use of gross tonnage ascertained under previous Regulations) of the 1997 Regulations, the “gross tonnage” is the smaller of—

- (a) the largest gross tonnage permitted for that ship pursuant to regulation 12(1) of the 1997 Regulations; and
- (b) the gross tonnage of the ship determined in accordance with regulation 6 (gross tonnage) of the 1997 Regulations.

4. In the case of any other ship of 24 metres in length or over, the “gross tonnage” is the gross tonnage of the ship determined in accordance with regulation 6 (gross tonnage) of the 1997 Regulations.

5. In the case of a fishing vessel of 15 metres or more in length overall but less than 24 metres in length, the “gross tonnage” is the tonnage of the vessel determined in accordance with regulations 6 (gross tonnage) and 12C(c) (measurement of smaller fishing vessels) of the 1997 Regulations.

6. In the case of a fishing vessel of less than 15 metres in length overall and less than 24 metres in length, the “gross tonnage” is the Registered Tonnage of the vessel determined in accordance with regulation 7 of the Merchant Shipping (Fishing Vessels – Tonnage) Regulations 1988(d).

7. In the case of any other ship of less than 24 metres in length, the “gross tonnage” is the gross tonnage of the ship determined in accordance with regulation 14(2) (measurement and certification) of the 1997 Regulations.

Ships other than United Kingdom ships

8. Subject to paragraph 9, in the case of a ship which has a gross tonnage determined in accordance with the Tonnage Convention, the “gross tonnage” is that gross tonnage.

9. Where a ship has a gross tonnage determined in accordance with the Tonnage Convention but the ship’s flag State permits the use of some other gross tonnage, the “gross tonnage” of the ship is the smaller of—

- (a) the largest gross tonnage permitted by the flag State to be used for that ship; and
- (b) the gross tonnage determined in accordance with the Tonnage Convention.

10. In the case of a ship which does not have a gross tonnage determined in accordance with the Tonnage Convention, the “gross tonnage” is the gross tonnage or equivalent measure determined in accordance with the law of the ship’s flag State (and where the ship has more than one such gross tonnage or equivalent measure, the “gross tonnage” is to be taken to be the largest of them).

(a) S.I. 1997/1510, amended by S.I.1998/1916 and 1999/3206. There are other amendments but none is relevant.
(b) The Tonnage Convention is published in Cmnd. 4332 and subsequently in Cmnd. 8716. An electronic copy of the Tonnage Convention is available via the Foreign and Commonwealth Office treaties database (<https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=68110>). A hard copy of Cmnd. 8716 is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW (catalogue number: HL/PO/JO/10/11/2156/147).
(c) Regulation 12C was inserted by regulation 2(2) of S.I. 1998/1916.
(d) S.I. 1988/1909, amended by S.I. 1998/1916 and 1999/3206.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the most up to date version of Annex IV of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (“the Convention”). Annex IV contains regulations for the Prevention of Pollution by Sewage from Ships. The current version of Annex IV came into force internationally on 27th September 2003 and amendments have been made to it since that time. These Regulations implement all amendments to Annex IV as at the date of this statutory instrument. Future amendments to the Convention and other instruments referred to in these Regulations will be automatically incorporated into the Regulations by way of ambulatory reference (regulation 3).

As a consequence of these Regulations, the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 (S.I. 2008/3257) and amending instruments and provisions are revoked and other instruments are updated to refer to these Regulations (Schedule 1). The provisions in relation to the prevention of pollution by garbage from ships are now to be found in the Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020 [REF] which come into force simultaneously with these Regulations.

The Regulations apply to United Kingdom ships engaged on international voyages (wherever they may be), United Kingdom ships operating in polar waters and to other ships while they are within United Kingdom waters and engaged on international voyages (regulation 5). There are some exceptions and these can also be found in regulation 5.

Part 2 of the Regulations imposes a prohibition on the discharge of sewage into the sea (regulation 6) which applies unless particular requirements are met. There are different requirements for passenger ships operating in a special area from the relevant date determined by the IMO onwards and for United Kingdom ships operating in polar waters.

Part 3 of the Regulations imposes requirements in relation to the equipment which must be utilised by ships and it covers sewage systems (regulation 7) and discharge connections (regulation 8).

Part 4 of the Regulations provides that a ship must not proceed to sea or (if it is already at sea) remain at sea unless a survey has been carried out and a Sewage Certificate has been issued (regulations 9 and 10). It also provides that an additional survey will be required following an important repair or renewal (regulation 12) and that the ship must be maintained to conform with the provisions of Part 3 (regulation 11).

Part 5 of the Regulations makes provision in relation to the powers of inspection and detention of ships, and in relation to offences and penalties.

The Secretary of State must 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 thereafter (regulation 32). Following such a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke the Regulations or to amend them.

Merchant Shipping Notices are published by the Maritime and Coastguard Agency (“MCA”) and a copy of MSN No. M 1613 may be obtained free of charge at <https://www.gov.uk> or in hard copy from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

Guidance supporting these Regulations has been published in a Marine Guidance Note (MGN [XXXX]). Copies of MGN [XXXX] may be obtained free of charge at <https://www.gov.uk> or in hard copy from the MCA at the address given above.

The Convention (including its Protocols, Annexes and amendments), the Polar Code, the London Convention, STCW and the Tonnage Convention can be obtained from the International Maritime Organization (“the IMO”) at IMO Publishing, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications; email: sales@imo.org; telephone: 0207 735 7611. The text of IMO Resolutions may be obtained in hard copy from the IMO Library at the same address as IMO Publishing. The amendments to the Convention can be found on the Foreign and Commonwealth

Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>). Except where otherwise stated, copies of the Command Papers referred to in this instrument are not available electronically but are available for inspection free of charge but by appointment at the Parliamentary Archives Houses of Parliament, London, SW1A 0PW; email: archives@parliament.uk; telephone: 0207 219 3074.

A hard copy of UNCLOS is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW (catalogue number: HL/PO/JO/10/11/3186/287). An electronic copy of Cm. 4524 can be found at <https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=69421>.

Future amendments to the Convention and other documents to which the ambulatory reference provision (regulation 3) applies may be obtained from the IMO and, after coming into force in the United Kingdom, found on <https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>. Until such publication is made, an amendment will be available from the MCA and on <https://www.gov.uk>. An amendment will be published in advance of its in force date by means of a Parliamentary Statement to both Houses of Parliament and by way of a Marine Guidance Note, which will be available in hard copy from the MCA and on <https://www.gov.uk>.

A full Impact Assessment has not been produced for this instrument as it is not expected to have significant impact on the public or voluntary sectors and only minimal impact on the private sector is foreseen. A Regulatory Triage Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside these Regulations at www.legislation.gov.uk.