

2020 No.

MARINE POLLUTION

**The Merchant Shipping (Prevention of Pollution by Garbage
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 4, 5 and 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) and 306A of the Merchant Shipping Act 1995(c) 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 Garbage from Ships) Regulations 2020.

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

Interpretation

2.—(1) In these Regulations—

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

(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.

“Annex V” means Annex V to the Convention(a);

“controlled waters” means the areas of sea specified by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2014(b) 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(c);

“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 the Schedule (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;

“the IMSBC Code” means the International Maritime Solid Bulk Cargoes (IMSBC) Code(d);

“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;

“Polar Code” has the meaning given to it in regulation 13 of Annex V (definitions)(e);

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

“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;

“SOLAS” means the International Convention for the Safety of Life at Sea 1974(f); and

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- (a) Regulations for the Prevention of Pollution by Garbage from Ships. See footnote (c) to “the Convention” for further information.
 - (b) S.I. 2014/3306.
 - (c) 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 HL/PO/JO/10/11/3156/2285 (Cm. 4427). Annex V to MARPOL has been amended by a number of IMO Resolutions, most recently by MEPC.277(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/>).
 - (d) The IMSBC Code was adopted by IMO Resolution MSC.268(85) and entered into force on 1st January 2011. The provisions of the Code were made mandatory under the SOLAS Convention by virtue of IMO Resolution MSC.269(85). The IMSBC Code has been amended by a number of IMO Resolutions, most recently by MSC.426(98). The IMSBC Code (ISBN 978-92-801-1659-5) is available from IMO Publishing at 4 Albert Embankment, London SE1 7SR (email: sales@imo.org, tel: +44 (0)20 7735 7611) and IMO Resolutions are available from the IMO Library, also at 4 Albert Embankment, London SE1 7SR.
 - (e) 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.
 - (f) This Convention (“SOLAS”) was amended by two Protocols; one in 1978 and one in 1988. A consolidated edition of SOLAS and its Protocols (ISBN: 978-92-801-15949) can be obtained from IMO Publishing, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications; email: sales@imo.org; telephone: 0207 735 7611. The amendments to SOLAS can be found on the Foreign and Commonwealth Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch/>).

“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 1 of Annex V (definitions)—

- (a) “Antarctic area”;
- (b) “fixed or floating platform”; and
- (c) “garbage”.

(3) For the purposes of these Regulations—

- (a) subject to sub-paragraph (b), a “discharge” in relation to garbage, 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^(b); or
 - (ii) the release of garbage 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) For the purpose of the interpretation of Annex V (as referred to in these Regulations)—

- (a) regulation 1 of Annex V (definitions); and
- (b) regulation 13 of Annex V (definitions),

have effect.

(5) 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 5.1 (definitions) of chapter 5 of part II-A of the Polar Code (prevention of pollution by garbage from ships),

have effect.

Ambulatory reference

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

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- (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) 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).

- (a) as a reference to the Convention, an Annex to the Convention, the Polar Code or the IMSBC Code as modified from time to time; and
 - (b) if the Convention, an Annex to the Convention, the Polar Code or the IMSBC Code is replaced, as a reference to that replacement.
- (2) For the purposes of paragraph (1)—
- (a) the Convention, an Annex to the Convention or the Polar Code is modified or replaced if a modification or replacement takes effect in accordance with Article 16 of the Convention; and
 - (b) the IMSBC Code is modified or replaced if a modification or replacement takes effect in accordance with Article VIII of SOLAS.

Application

- 4.—(1) Subject to paragraph (2), these Regulations apply to—
- (a) United Kingdom ships (wherever they may be); and
 - (b) other ships while they are within United Kingdom waters or controlled waters.
- (2) These Regulations do not apply to any—
- (a) warship;
 - (b) naval auxiliary ship; or
 - (c) other ship owned or operated by a State and used, for the time being, only on government, non-commercial service.

PART 2

Discharge of Garbage

Prohibition on the discharge of garbage

- 5.—(1) The discharge of garbage from a ship into the sea is prohibited except as provided in—
- (a) regulation 4 of Annex V (discharge of garbage outside special areas);
 - (b) regulation 5 of Annex V (special requirements for discharge of garbage from fixed or floating platforms);
 - (c) regulation 6 of Annex V (discharge of garbage within special areas);
 - (d) section 5.2 (operational requirements) of chapter 5 of part II-A of the Polar Code (prevention of pollution by garbage from ships); and
 - (e) regulation 8 (exceptions).
- (2) For the purposes of regulation 4.2 of Annex V and regulation 6.2 of Annex V (discharge of cleaning agents or additives) a substance will be “harmful to the marine environment” where it—
- (a) falls within the definition of a “harmful substance” in regulation 1 of Annex III of the Convention^(a); and
 - (b) contains any components which are known to be carcinogenic, mutagenic or reprotoxic.

(a) Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form. Annex III to the MARPOL Convention was revised and replaced by IMO Resolution MEPC.193(61) and further amended by MEPC.246(66) and MEPC.257(67). 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 HL/PO/JO/10/11/3156/2285 (Cm. 4427). The MEPC Resolutions may be obtained from the IMO Library.

Mixed garbage

6.—(1) In these Regulations where garbage is mixed with—

- (a) substances regulated by an Annex to the Convention other than Annex V; or
- (b) other types of garbage,

the more stringent discharge requirements apply to the mixture.

(2) In paragraph (2) “mixed” includes contaminated.

Restriction on United Kingdom ships entering the Antarctic area

7. A United Kingdom ship must not enter the Antarctic area unless—

- (a) it has sufficient capacity for the retention on board of all garbage while operating in that area; and
- (b) it has concluded arrangements for the discharge of that retained garbage at a reception facility outside of the Antarctic area.

Exceptions

8.—(1) Regulations 5(1) (prohibition on the discharge of garbage) and 6 (mixed garbage) do not apply to—

- (a) the discharge of garbage 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) the accidental loss of garbage—
 - (i) which is a result of 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 accidental loss;
- (c) the accidental loss of fishing gear, provided that all reasonable precautions have been taken to prevent the accidental loss; or
- (d) the discharge of fishing gear for—
 - (i) the protection of the marine environment; or
 - (ii) for the safety of a ship or its crew.

(2) The requirement in—

- (a) regulation 4 of Annex V (discharge of garbage outside special areas);
- (b) regulation 6 of Annex V (discharge of garbage within special areas); and
- (c) section 5.2 (operational requirements) of chapter 5 of part II-A of the Polar Code (prevention of pollution by garbage from ships),

that the discharge of garbage is only permitted while a ship is en route, does not apply to a discharge of food wastes where the retention on board a ship of the food wastes presents an imminent health risk to the persons on board.

(3) Where fishing gear accidentally lost or discharged pursuant to paragraph (1)(c) or (d) poses a significant threat to—

- (a) the marine environment; or
- (b) navigation,

the accidental loss or discharge must be reported in accordance with paragraph (4).

(4) A report under paragraph (3) must be to—

- (a) the ship’s flag State; and

- (b) any coastal State which has jurisdiction over the waters where the accidental loss or discharge occurred.

(5) In this regulation the following terms have the meaning given in regulation 1 of Annex V (definitions)—

- (a) “en route”;
- (b) “fishing gear”; and
- (c) “food waste”.

PART 3

Solid Bulk Cargoes

Declaration regarding solid bulk cargoes

9.—(1) A shipper of solid bulk cargo on a ship to which these Regulations apply must make a declaration to the owner or master in the form specified in section 4.2.3 of the IMSBC Code as to whether the solid bulk cargo is harmful to the marine environment in accordance with paragraph (2).

(2) The shipper must declare solid bulk cargo to be harmful to the marine environment if it falls within one or more of the parameters listed in Appendix I of Annex V (criteria for the classification of solid bulk cargoes).

(3) Where the shipper does not deliver the cargo to the ship or its agent—

- (a) the shipper must provide the forwarder with the declaration; and
- (b) the forwarder must provide the owner or master with the declaration.

(4) In this regulation—

- (a) “forwarder” means a person who receives a declaration under this regulation in preparation for eventual delivery of the cargo to the ship or its agent, and may include a cargo packer or consolidator;
- (b) “shipper” means any person who, whether as principal or agent for another, consigns solid bulk cargoes for carriage by sea; and
- (c) “solid bulk cargoes”—
 - (i) has the meaning given in paragraph 2 of regulation 1-1 of Chapter VI of SOLAS; and
 - (ii) does not include grain.

PART 4

Placards, Garbage Management and Garbage Record-Keeping

Placards

10.—(1) A ship which—

- (a) has a length overall of 12 metres or more; or
- (b) is a fixed or floating platform,

must display placards which notify the crew and any passengers of the requirements for the discharge of garbage contained in regulations 3 to 6 of Annex V (provisions relating to discharge requirements) and section 5.2 (operational requirements) of chapter 5 of part II-A of the Polar Code (prevention of pollution by garbage from ships).

(2) Placards must be written in accordance with regulation 10.1.2 of Annex V (placards).

(3) In paragraph (1) “length overall” means the extreme length of the hull of the ship measured between the foremost part of the bow and the aftmost part of the stern.

Garbage management plan

11.—(1) A ship which—

- (a) is of 100 GT or above;
- (b) carries 15 or more persons; or
- (c) is a fixed or floating platform,

must carry a garbage management plan which complies with the requirements of regulation 10.2 of Annex V (garbage management plans).

(2) The master of a ship and the manager of a fixed or floating platform must ensure that its crew follow the ship’s garbage management plan.

Garbage record keeping

12.—(1) This regulation and regulation 13 (entries in garbage record books) apply to a ship which—

- (a) is of 400 GT or above;
- (b) carries 15 or more persons and is engaged in voyages to ports or offshore terminals under the jurisdiction of a party to the Convention other than the ship’s flag State; or
- (c) is a fixed or floating platform.

(2) A ship to which this regulation applies must be provided with a garbage record book in—

- (a) the format specified in regulation 10.3 of Annex V (garbage record books); and
- (b) the form specified in Appendix II to Annex V (form of garbage record book).

(3) The garbage record book and receipts obtained from reception facilities must be—

- (a) kept on board the ship to which they relate and in such a place as to be readily available for inspection at all reasonable times; and
- (b) preserved for a period of at least two years after the last entry has been made.

Entries in garbage record books

13.—(1) On a ship to which this regulation applies each—

- (a) discharge;
- (b) accidental loss; or
- (c) completed incineration,

of garbage must be recorded promptly in the garbage record book and the entry signed for by the officer in charge of the discharge, accidental loss or incineration.

(2) An entry under paragraph (1)(a) must include the information specified in regulation 10.3.2, 10.3.3, 10.3.4 or 10.3.6 of Annex V (garbage record books) appropriate to the operation being recorded.

(3) In the case of a United Kingdom ship, the garbage record book must be written in English and, in the case of any other ship, it must be written in or translated into English, French or Spanish.

(4) Where an entry has been written in the national language of the ship’s flag State as well as in English, French or Spanish, in the case of any dispute or discrepancy the entry made in that national language prevails.

(5) Each completed page of the garbage record book must be signed by the master of the ship or the manager of the fixed or floating platform.

Exemptions from regulations 12 and 13

14.—(1) The Secretary of State may grant an exemption in writing from one or more of the requirements of regulations 12 (garbage record keeping) and 13 (entries in garbage record books) in respect of a ship specified in regulation 10.4 of Annex V (exemptions from garbage record keeping).

(2) An exemption given by the Secretary of State pursuant to paragraph (1) is only valid if given in writing and may be—

- (a) given subject to such conditions and limitations as the Secretary of State may specify; and
- (b) altered or cancelled by a notice given in writing by the Secretary of State.

(3) In this regulation “in writing” includes the provision of such communication by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication.

Log-books

15.—(1) This regulation applies to a ship which is not required to be provided with a garbage record book.

(2) In the event of a discharge or accidental loss of garbage pursuant to regulation 8 (exceptions), a ship to which this regulation applies must record in its log-book the information specified in regulation 10.3.6 of Annex V (exceptions and garbage record books).

PART 5

Enforcement

Inspection of ships

16.—(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 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) 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 garbage;
- (b) verifying whether garbage has been discharged from the ship in violation of these Regulations;
- (c) inspecting the garbage management plan;
- (d) inspecting the garbage record book; or
- (e) inspecting the log-book.

(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.

(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.

(4) Where the ship is inspected for the purposes of paragraph (2)(b) 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.

(5) Where the garbage record book is inspected under paragraph (2)(d) or the log-book is inspected under paragraph (2)(e) the person exercising the power of inspection may—

- (a) make a copy of an entry in that book; and
- (b) require the master of the ship to certify that the copy is a true copy of the original.

(6) Any copy certified in accordance with paragraph (5) is to be admissible in any judicial proceedings as evidence of the facts stated in it.

General provisions on detention

17.—(1) Where a surveyor of ships has clear grounds for believing that—

- (a) the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by garbage; or
- (b) an offence under regulation 21(1) (offences) is being committed in respect of a ship,

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

(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 of ships has clear grounds for believing that an offence under regulation 21(1)(a) or (c) (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;
- (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.

(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).

(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 21(1)(a) or (c) (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 21(1)(a) or (c) (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 21(1)(a) or (c) (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 21(1)(a) or (c) (offences) are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (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 21(1)(a) or (c) (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 21(1)(a) or (c) (offences).

Power for harbour master to detain a ship

18.—(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 21(1)(a) or (c) (offences) by the discharge from a ship of garbage into the waters of the harbour, the harbour master may detain the ship.

(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.

(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 21(1)(a) or (c) (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 21(1)(a) or (c) (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 21(1)(a) or (c) (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) 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 21(1)(a) or (c) (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 21(1)(a) or (c) (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 21(1)(a) or (c) (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 21(1)(a) or (c) (offences).

Duty of harbour master to report deficient ships

19. 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

20.—(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) 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”,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

21.—(1) Any contravention of—

- (a) regulation 5(1) (prohibition on the discharge of garbage), in the case of a fixed or floating platform, is an offence by the owner and manager of the platform;
- (b) regulation 7 (restriction on United Kingdom ships entering the Antarctic area), 8(3) (reporting of the loss or discharge of fishing gear), 10 (placards), 11(1) (garbage management plan), 12(2) (garbage record book), 12(3)(a) (availability of inspection of garbage record book), 13(1), 13(2), 13(3) (entries in garbage record books) or 15(2) (exceptions and entries in log-books), in the case of a fixed or floating platform, is an offence by the owner and manager of the platform;
- (c) regulation 5(1) (prohibition on the discharge of garbage), in the case of a ship other than a fixed or floating platform, is an offence by the owner, manager, demise charterer and master of the ship;
- (d) regulation 7 (restriction on United Kingdom ships entering the Antarctic area), 8(3) (reporting of the loss or discharge of fishing gear), 10 (placards), 11(1) (garbage management plan), 12(2) (garbage record book), 12(3)(a) (availability of inspection of garbage record book), 13(1), 13(2), 13(3) (entries in garbage record books), or 15(2) (exceptions and entries in log-books), in the case of a ship other than a fixed or floating platform, is an offence by the owner, manager, demise charterer and master of the ship;
- (e) regulation 9(1) or (3)(a) (declaration regarding solid bulk cargoes) is an offence by the shipper;

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

- (f) regulation 9(3)(b) (declaration regarding solid bulk cargoes) is an offence by the forwarder;
 - (g) regulation 11(2) (garbage management plan), in the case of a fixed or floating platform, is an offence by the manager of the platform;
 - (h) regulation 11(2) (garbage management plan), in the case of a ship other than a fixed or floating platform, is an offence by the master of the ship;
 - (i) regulation 12(3)(b) (receipts from reception facilities), in the case of a fixed or floating platform, is an offence by the owner of the platform;
 - (j) regulation 12(3)(b) (receipt from reception facilities), in the case of a ship other than a fixed or floating platform, is an offence by the owner of the ship;
 - (k) regulation 13(1) or 13(2) (entries in garbage record books), is an offence by the officer in charge of the discharge, accidental loss or incineration;
 - (l) regulation 13(5) (entries in garbage record books), in the case of a fixed or floating platform, is an offence by the manager of the platform; and
 - (m) regulation 13(5) (entries in garbage record books), in the case of a ship other than a fixed or floating platform, is an offence by the master of the ship.
- (2) Subject to paragraphs (3) and (4) 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 of regulation 10 (placards) is punishable on summary conviction—
- (a) in England and Wales by a fine; or
 - (b) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum.
- (4) A contravention referred to in paragraph (1)(a) or (c) is specified for the purpose of article 6 of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006^(a) (which applies section 131(3) of the 1995 Act (penalties for certain pollution offences) subject to a modification).
- (5) Where an offence under this regulation is—
- (a) committed; or
 - (b) would be committed save for the operation of regulation 22(1) (defences),

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

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

Defences

22.—(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 21(1)(a) or (c) (offences) it is a defence for the person charged to prove that—

- (a) the ship was not a United Kingdom ship;

(a) S.I. 2006/2950.

- (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

23.—(1) Where there has been an offence under regulation 21(1)(a) or (c) (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 proceedings be taken; or
- (b) the offence has caused or is likely to cause pollution in United Kingdom waters or controlled waters.

(2) Where 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;
- (b) “foreign State” means a State other than the United Kingdom; and
- (c) “nautical mile” means an international nautical mile of 1,852 metres.

Suspension of proceedings at flag State request

24.—(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 garbage), 3 (solid bulk cargoes) or 4 (placards, garbage management and garbage record-keeping) committed outside United Kingdom waters by a ship which 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

25. 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

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

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;
- (b) in the case of an offence in respect of a ship other than a fixed or floating platform, the reference to the owner were to the owner, manager or demise charterer; and
- (c) in the case of an offence in respect of a fixed or floating 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

26. Section 146 of the 1995 Act (enforcement and application of fines) applies to any fine for an offence under regulation 21(1) (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 or incineration for an offence under regulation 21(1) (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 21(1)(a) or (c) (offences).

PART 6

Review

Review of the Regulations

27.—(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 V 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).

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

Signed by the authority of the Secretary of State for Transport

Date

Name
Parliamentary Under Secretary of State
Department for Transport

DRAFT

SCHEDULE

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.

(a) S.I. 1997/1510, amended by S.I. 1998/1916 and 1999/3206. There are other amendments but none is relevant.

(b) This Convention (“the Tonnage Convention”) was 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.

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 as the largest of them).

DRAFT

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the most up to date version of Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (“the Convention”). Annex V contains regulations for the Prevention of Pollution by Garbage from Ships. The current version of Annex V came into force internationally on 31st December 1988 and amendments have been made to it since that time. These Regulations implement all amendments to Annex V 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).

The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 (S.I. 2008/3257) which implemented a previous version of Annex V are revoked by virtue of the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2020 [REF] (“the Sewage Regulations”). The Sewage Regulations, which come into force simultaneously with these Regulations, also update other instruments which refer to these Regulations.

Parts 2 and 3 of the Regulations apply to United Kingdom ships wherever they may be and to all other ships in United Kingdom waters or controlled waters (regulation 4). Part 2 imposes a prohibition on the discharge of garbage into the sea (regulation 5) subject to a number of exceptions outside special areas (regulation 5(1)(a)), for fixed or floating platforms (regulation 5(1)(b)) and within special areas (regulation 5(1)(c)). There is also an exemption for discharges of garbage within polar waters which comply with the requirements of Chapter 5 of part II-A of the Polar Code (regulation 5(1)(d)). United Kingdom ships are prohibited from entering the Antarctic area unless they have sufficient capacity for the retention of garbage on board (regulation 7). Regulation 8 (exceptions) provides exceptions to the prohibition in regulation 5 covering safety, accidental loss and the protection of the marine environment. Part 3 of the Regulations requires a shipper of solid bulk cargo to make a declaration as to whether that cargo is harmful to the marine environment (regulation 9).

Part 4 applies to United Kingdom ships wherever they may be and to all other ships in controlled waters which meet certain size and weight criteria. It imposes a requirement for the carrying on ships of placards notifying passengers and crew about the disposal of garbage (regulation 10). Ships are required to have a garbage management plan (regulation 11) and garbage record books to record the discharge or incineration of garbage (regulations 12 and 13). Ships without garbage record books are required to record certain discharges of garbage in their log-books (regulation 15). The Secretary of State may grant exemptions from one or more of the garbage record book requirements in regulations 12 and 13 (regulation 14).

Part 5 of the Regulations makes provision in relation to 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 30). 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.

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 Maritime and Coastguard Agency (“MCA”) of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

The Convention (including its Protocols, Annexes and amendments), SOLAS, the Polar Code, the London Convention and the Tonnage Convention can be obtained from the International Maritime Organization (“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 applies (regulation 3) 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 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.