
The Merchant Shipping (Port State Control) Regulations 2011

Notice to all Shipowners, Agents, Operators, Masters, Seafarers, Pilots and Port Authorities

This notice should be read in conjunction with the Merchant Shipping (Port State Control) Regulations 2011 and takes effect on the date that the Regulations come into force.

This notice replaces MSN 1775 (M)

PLEASE NOTE:-

Where this document provides guidance on the law it should not be regarded as definitive. The way the law applies to any particular case can vary according to circumstances - for example, from vessel to vessel and you should consider seeking independent legal advice if you are unsure of your own legal position.

Summary

This notice provides information on the Merchant Shipping (Port State Control) Regulations 2011 which implement Directive 2009/16/EC in UK law. The regulations provide for:

- inspection of foreign flag seagoing ships and their crews calling at UK ports or anchorages to engage in a ship/port interface
- expanded inspections of ships with a high risk profile after 6 months from the previous inspection in the Paris MoU region
- expanded inspections of oil, gas or chemical tankers, bulk carriers or passenger ships, over 12 year of age, at intervals according to their risk profile
- a requirement for owners and masters of ships eligible for expanded inspections to give 72 hour notice of arrival in port; to allow sufficient time in the operating schedule for an expanded inspection to be carried out; and for the ship to remain in the port until the inspection is completed
- ships of any type which are repeatedly detained will be refused access to ports and anchorages of member States. The period of the refusal of access increases on each occasion and may result in permanent exclusion on the third or fourth occasion

Continued

- a requirement for port authorities and pilots, including deep sea pilots, to report apparent anomalies which may pose a risk to safety or to the marine environment
- an obligation on port authorities to provide actual times of arrival and actual times of departure of ships calling at their ports and anchorages.

1. Introduction

- 1.1 A new inspection regime was introduced in the Paris Memorandum of Understanding on port State control (Paris MoU) region from 1 January 2011. For EU members the new inspection regime is set out in Directive 2009/16/EC on port State control (the Directive) which replaces Directive 1995/21/EC. The Directive also introduces stronger sanctions for non compliant ships and places new reporting obligations on port authorities and pilots.
- 1.2 Provisions of the Directive which apply to ship owners, operators, agents, masters, seafarers, pilots and port authorities are transposed in the Merchant Shipping (Port State Control) Regulations 2011 (the regulations) which replace SI 1995/3128.
- 1.3 Certain duties placed on the UK Government under the Directive do not need new law because powers to do what is required (to inspect ships) are available in the Merchant Shipping Act 1995 and regulations implementing the Conventions. These duties are set out in a non legislative procedure.
- 1.4 References in this notice to Annexes are to Annexes to Directive 2009/16/EC unless stated otherwise.
- 1.5 Reference to the Paris MoU means the administrative agreement for cooperation on port State control signed by:
- Belgium, Bulgaria, Canada, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovenia, Spain, Sweden and the United Kingdom.
- 1.6 The Paris MoU region is the geographical area in which Paris MoU members carry out port State control inspections.

2. Definitions

- 2.1 Definitions of terms used in the Regulations are given in regulation 2.

3. Application

- 3.1 Port State control inspections apply to foreign flag seagoing ships and their crews calling at UK ports, or anchorages within the jurisdiction of a port, to engage in a ship/port interface (regulation 3).

A ship/port interface means that the ship is directly affected by the movement of persons or goods or the provision of port services to or from the ship.

Within the jurisdiction of the port is interpreted as the area within port limits which is categorised waters as set out in MSN 1827, and does not include waters regarded as “sea”.

- 3.2 Port State inspections in UK ports or anchorages do not apply to –

British ships (ships registered in the UK or a British Territory)
fishing vessels
warships
naval auxiliaries
wooden ships of a primitive build
government ships used for non commercial purposes
pleasure yachts not engaged in trade.

3.3 However British ships are subject to provisions of the port State control Directive when calling at ports or anchorages of other EU coastal States which have implemented it.

4. Ship risk profile

4.1 All ships calling at a port or anchorage in the Paris MoU region are assigned a ship risk profile - high, standard or low - which is recalculated daily in the inspection database. The ship risk profile determines the priority for inspection, intervals between inspections and the type of inspection. The purpose is to ensure that the frequency and detail of inspections carried out reflects the risk posed by the ship, which includes reducing the burden of inspection on low risk ships.

4.2 Elements of the ship risk profile and their weighting are explained in Annex I Part I and Annex II to the Directive and include -

ship type, age (keel laying date), flag of registry, the performance of recognised organisations and company performance; and

the number of deficiencies and detentions recorded within the previous 36 months.

Calculators for deriving ship risk profiles and company performance based on information entered by the user are provided on the Paris MoU website at <http://www.parismou.org>.

4.3 Tables of flag and recognised organisation performance are published in Paris MoU Annual Reports at <http://www.parismou.org> and take effect from 1 July each year.

4.4 Reference in the ship risk profile to 'IMO Audit' is to the Voluntary IMO Member State Audit Scheme in IMO Assembly Resolution A.974 (24). Flags which meet the flag criteria for determining a low risk profile ship (the flag is on the Paris MoU white list and has completed an IMO audit) are identified on <http://www.parismou.org>.

5. Frequency of inspections

5.1 Ships with a high, standard or low risk profile will be inspected after 6, 12 or 36 months, respectively, from the previous inspection in the Paris MoU region. Ships with 'overriding factors' described in Annex I Part II 2A of the Directive will be inspected regardless of the period since the last inspection.

5.2 Inspections at the discretion of inspectors may take place before they are due – from 5, 10 or 24 months after the previous inspection in the Paris MoU region for a ship with a high, standard or low risk profile, respectively. A ship with 'unexpected factors' described in Annex I Part II 2B may be inspected according to the professional judgement of the inspector.

5.3 The interval to the next inspection restarts after each inspection. Ships other than those described above will not, generally, be selected for inspection.

6. Scope of inspections

- 6.1 An inspection may be an initial, more detailed or expanded inspection (regulation 4).
- 6.2 All inspections begin with an initial inspection (regulation 5). The inspector will, as a minimum, check relevant certificates and documents listed in Annex IV, confirm that deficiencies outstanding from the previous inspection in the Paris MoU region have been rectified, and look at the overall condition of the ship, including the engine room, accommodation and conditions of hygiene on board ship.
- 6.3 Where there is evidence for believing, after an initial inspection, that the condition of the ship or its equipment or crew does not substantially meet the relevant standards of a Convention, which in the professional judgement of the inspector warrants further inspection, then a more detailed inspection of the ship, its equipment or crew, including compliance with on board operational requirements will be carried out. Examples of clear grounds for a more detailed inspection are given in Annex V.
- 6.4 The following ships are subject to expanded inspections:
- ships with a high risk profile,
 - gas, oil or chemical tankers, bulk carriers or passenger ships, over 12 years of age,
 - the above ships with overriding or unexpected factors,
 - any ship inspected for the purpose of lifting a refusal of access notice.

An expanded inspection will cover the areas listed in Annex VII of the Directive and specific items in those areas, subject to their practical feasibility or constraints of safety.

7. 72 hour notice of ship arrival for expanded inspections

- 7.1 Owners or masters of the following ships intending to call at a port or anchorage in the UK must provide the information listed in Annex III of the Directive at least 72 hours before the expected time of arrival or before leaving the previous port or anchorage if the voyage is expected to take less than 72 hours (regulation 6). The ships identified in Annex I Part II 3A and 3B are:
- a high risk profile ship not inspected in the Paris MoU region in the previous 5 months
 - an oil, gas or chemical tanker, bulk carrier or passenger ship, over 12 years of age, with a standard risk profile not inspected in the Paris MoU region in the previous 10 months
 - an oil, gas or chemical tanker, bulk carrier or passenger ship, over 12 years of age, with a low risk profile not inspected in the Paris MoU region in the previous 24 months
 - a high risk profile ship, or oil, gas or chemical tanker, bulk carrier or passenger ship, over 12 years of age, to which overriding or unexpected factors apply.

Surveys carried out on passenger ferries under Directive 1999/35/EC count as expanded inspections for port State control. Since the surveys are generally due at more frequent intervals it is unlikely that there will be a need to report for an expanded inspection, unless the ship is a high risk profile ship.

7.2 The information specified in Annex III should be sent direct to the MCA Marine Office covering the port of destination, contact details at <http://www.dft.gov.uk/mca>, or emailed to PSC_Headquarters@mcga.gov.uk.

7.3 On receiving 72 hour notice of arrival for expanded inspection the MCA will inform the ship if *no* expanded inspection will be carried out; bearing in mind that the owner or master of the ship may be required to allow sufficient time in the operating schedule for an expanded inspection to be completed at a following port of call in the Paris MoU region.

8. Ship to remain in port until an expanded inspection is completed

8.1 The owner or master of a ship subject to an expanded inspection must ensure that sufficient time is available in the operating schedule to allow an expanded inspection to be carried out (regulation 6).

8.2 Regulation 6 also requires the ship to remain in the port or anchorage until an expanded inspection is completed.

9. Detention

9.1 Where an inspection reveals deficiencies which in the professional judgment of the inspector are clearly hazardous to safety, health or the environment, the ship will be detained or the operation revealing such deficiencies will be stopped. The detention notice or stoppage of an operation will not be lifted until the hazard is removed or the MCA has established that the ship can, subject to any necessary conditions, proceed to sea safely and without risk to the safety and health of passengers or crew, to other ships, or without an unreasonable threat of harm to the marine environment (regulation 9). In deciding whether or not to detain a ship, inspectors will be guided by the criteria set out in Annex X.

9.2 A ship will be detained if it is not equipped with a functioning voyage data recorder when its use is required by Directive 2002/59/EC (Vessel Traffic Monitoring and Information System)

9.3 In the case of accidental damage sustained on the ship's voyage to a port, the ship will not be detained provided that action set out in Annex X has been taken.

9.4 A detention notice may include a direction that the ship will remain in a particular place, or move to a particular anchorage or berth. It may also specify circumstances in which the master may move the ship from a specified place for reasons of safety or prevention of pollution.

9.5 A fee in accordance with the Merchant Shipping (Fees) Regulations will be charged for an inspection which results in detention, any revisit to check that deficiencies have been rectified, and for an expanded inspection requested by the owner in order to lift a refusal of access (regulation 22).

10. Refusal of access to ports and anchorages

10.1 Ships of any type may be refused access to ports and anchorages in the UK and other member States following repeated detentions. The period of refusal of access increases on each occasion and may result in permanent refusal of access on the third or fourth occasion (regulations 10 to 12). A change of flag or owner after the issue of a refusal of access notice does not affect the terms of the notice.

10.2 A first or second refusal of access applies to:

- ships registered with a flag on the Paris MoU black list detained or issued with a prevention of operation notice under Directive 1999/35/EC (mandatory surveys for the safe operation of regular ro ro ferry and high speed craft passenger services) for a third time in a port or anchorage in the Paris MoU region within the last 36 months; or
- ships registered with a flag on the Paris MoU grey list detained or issued with a prevention of operation notice under Directive 1999/35/EC for a third time in a port or anchorage in the Paris MoU region within the last 24 months.

The ship must be detained for a third or subsequent time for a refusal of access notice to be issued. Detentions from 17 June 2009 (the date on which the Directive entered into force) count towards calculating the number of detentions. The flag is the flag of registry at the time of the third, or subsequent, detention.

10.3 A refusal of access takes effect as soon as the ship leaves the port where it has been detained and a refusal of access notice has been issued (regulation 12).

10.4 A refusal of access is lifted only when conditions in Annex VIII paragraphs 3 to 9 are met, and in the case of a first refusal of access after a period of 3 months from issue of the notice, or in the case of a second refusal of access after a period of 12 months from issue of the refusal of access notice.

10.5 A detention following a second refusal of access will result in a third refusal of access regardless of the flag at the time of detention or the time that has passed since the second refusal of access. A third refusal of access may be lifted after 24 months if:

- the ship is registered with a flag that is not on the Paris MoU black or grey list,
- statutory and classification certificates are issued by organisations recognised under Regulation (EC) No 391/2009 (standards for ship inspection and survey organisations)
- the company has a high performance based on its ships' deficiency and detention rates in the Paris MoU region, as described in Annex I Part I 1 (for a company performance calculator see <http://parismou.org>), and
- the conditions in Annex VIII paragraphs 3 to 9 are met.

Ship owners wishing to have a third refusal of access lifted should consider initiating the process at least 3 months before the 24 month period closes, in order to ensure that it is completed within this period. If the criteria are not met after a period of 24 months from issue of the notice, the ship is permanently refused access to ports and anchorages in EU member States.

10.6 A detention subsequent to a third refusal of access will result in permanent exclusion from ports and anchorages of member States regardless of the flag of registry or the time that has passed since the third refusal of access.

10.7 Access to a specific port or anchorage may be permitted in the event of force majeure or overriding safety considerations, or to reduce the risk of pollution or to have deficiencies rectified, provided that adequate measures to the satisfaction of the Secretary of State have been implemented by the owner or master to ensure safe entry (regulation 13).

11. Rights of appeal

- 11.1 The ship owner or master has rights of appeal and compensation against decisions on detention and decisions on refusal of access (regulations 14 to 16). In accordance with the Directive these place the onus of proof in any claim for loss or damage suffered on the owner. The master of a ship issued with a detention or refusal of access notice will be informed of the appeal procedure, the time limits for appeal and the practical arrangements for doing so.

12. Follow up to inspections and detentions

- 12.1 On completion of an inspection, the inspector will provide the master with a copy of the inspection report as specified in Annex IX (regulation 7), which should be retained on board ship for two years.
- 12.2 When a ship is detained the MCA will immediately inform the flag administration in writing, including a report of inspection, of the circumstances of detention. Recognised organisations responsible for the issue of classification or statutory certificates will be notified where relevant.
- 12.3 Where detainable deficiencies described in 9.1 cannot be rectified in the port of inspection the MCA may allow the ship to proceed to the nearest appropriate repair yard where follow up action can be taken, subject to conditions which ensure that the ship can proceed safely and without unreasonable risk to the marine environment (regulation 18). In the case of structural deficiencies, thickness measurements may be required before the ship is allowed to sail.
- 12.4 If a ship is detained because it is not fitted with a functioning voyage data recorder and the defect cannot readily be rectified in the port of detention, the ship may be allowed to proceed to the nearest appropriate port where it can be readily rectified, or be required to rectify it within 30 days (regulation 9).

13. Ships detained or released to a repair yard

- 13.1 Where a ship with deficiencies described in 9.1 fails to comply with the conditions imposed or, if it is allowed to sail to a repair yard, fails to call at the specified repair yard or to effect the required repairs, the ship is not permitted to enter any port or anchorage of a member State until the owner has provided evidence to satisfy the detaining authority that the ship fully complies with the applicable requirements of the Conventions (regulation 17). Access may be provided in circumstances of force majeure (regulation 13).

14. Complaints

- 14.1 The MCA will assess all complaints from persons or organisations with a legitimate interest in the safety of the ship and its crew to determine whether the complaint is justified (regulation 21).
- 14.2 Where the complaint is considered justified, the MCA will ensure that anyone concerned by the complaint can make their views known. The confidentiality of crew members during interviews will be ensured, and the identity of the complainant will not be revealed to the ship master or owner. An inspection may be carried out according to the professional judgement of the inspector. The complainant will be notified of follow up action taken, or where the complaint is judged to be manifestly unfounded, the reasons for reaching this conclusion. The flag State, and the International Labour Organization if appropriate, will be informed of complaints not manifestly unfounded and of follow up action taken.

15. Reports from pilots on apparent anomalies

15.1 UK pilots engaged in berthing or unberthing a ship, or engaged on a ship bound for a port in the UK or in transit within UK waters must immediately inform the port authority authorising them, or the MCA, or the authority of another coastal member State, as appropriate, whenever they learn in the course of their normal duties that there are apparent anomalies which may prejudice the safe navigation of the ship or which may pose a threat of harm to the marine environment. For these purposes a UK pilot means a pilot authorised under the Pilotage Act 1987 or a pilot boarding a ship in UK waters (regulation 19).

15.2 The information should be transferred electronically whenever possible and include:

- ship name, IMO number, call sign and flag
- last port of call and port of destination
- a description of the apparent anomalies found on board ship.

An EU wide standard report format may be made available. However, prompt notification of the relevant information is more important than format.

15.3 MCA Marine Office telephone and fax numbers are found at <http://www.dft.gov.uk/mca>. Alternatively pilots may email PSC_Headquarters@mcga.gov.uk, or outside working hours contact the 24 hour Infoline by phone on 0870 600 6505 or email to infoline@mcga.gov.uk.

15.4 The MCA will maintain the confidentiality of the source of reports received from pilots in so far as the law allows.

16. Reports from port authorities on ships with apparent anomalies

16.1 Port authorities which in the course of their normal duties learn that a ship within their port has apparent anomalies which may prejudice the safety of the ship or which poses an unreasonable threat of harm to the marine environment must immediately inform the MCA (regulation 19). Reports received from pilots referred to in 15.1 above should also be forwarded to the MCA.

16.2 The information should be transferred electronically whenever possible and include:

- ship name, IMO number, call sign and flag
- the last port of call and port of destination
- a description of apparent anomalies found on board ship.

An EU wide standard report format may be made available. However, prompt notification of the relevant information is more important than format.

16.3 The port authority may inform an MCA surveyor through locally agreed channels or MCA Marine Office, telephone and fax numbers are found on <http://www.dft.gov.uk/mca>. Or reports may be sent to PSC_Headquarters@mcga.gov.uk, or outside working hours to the 24 hour Infoline by phone on 0870 600 6505 or email to infoline@mcga.gov.uk.

17. Reports from port authorities on actual times of ship arrival and departure

17.1 Port authorities are required to provide details of actual times of arrival and actual times of departure of foreign flag ships calling at UK ports and anchorages, within a reasonable time (regulation 20). The MCA interprets a 'reasonable time' for reporting as within 72 hours of the event.

17.2 For ships calling at an anchorage within the jurisdiction of the port to engage in a ship/port interface, without calling at a berth, the port authority should provide the times of arrival at and departure from the anchorage; for ships calling at a berth, via an anchorage or not, the times of arrival and departure from the berth.

17.3 Information on actual times of port calls should be entered in the MCA data exchange system CERS (Consolidated European Reporting System) by one or more of the means currently used to transfer 24 hour notice of expected ship arrival and departure under Directive 2002/59/EC -

system to system transfer (the port authority system downloads information directly into CERS)

online input via a web interface (port authority personnel input data into a CERS web portal using a secure user name and password)

a service provider (input is delegated to a third party using either of the above means).

17.4 The CERS system is expected to be able to receive information on actual times of port calls from April 2012, and port authorities and service providers will be notified when the data can be entered. In the interim, regulation 23 provides for a defence in relation to enforcement action for contravention.

17.5 Information on actual times of ship calls entered in CERS will be transferred via the EU data exchange system SafeSeaNet to the EU port State control inspection database, where it is used by the European Commission to set and monitor port State inspection commitments.

18. Ships which fail to comply with EU requirements

18.1 Regulation 20 requires port authorities to provide the MCA with information which they may hold regarding:

- ships which have failed to notify information required by:
 - o Directive 2000/59/EC on port reception facilities
 - o Directive 2002/59/EC on a vessel traffic monitoring and information system
 - o Regulation (EC) No 725/2004 on enhancing ship and port facility security,
- ships which have sailed without complying with the requirements of Directive 2000/59/EC for delivery of ship generated waste or cargo residues,
- ships which have been denied entry or expelled from the port on security grounds.

18.2 On receipt of the information (an unexpected factor, Annex I Part I 2B), the inspector will decide whether to carry out an inspection as described in 5.2 above.

18.3 The report should identify the ship name, IMO number and the reason for reporting. Information may be passed to the MCA as in 16.3 above.

More Information

Inspection Operations Branch
Maritime and Coastguard Agency
Bay 2/20
Spring Place
105 Commercial Road
Southampton
SO15 1EG

Tel : +44 (0) 23 8032 9343
Fax : +44 (0) 23 8032 9104
e-mail: pat.dolby@mcga.gov.uk

General Inquiries: infoline@mcga.gov.uk

MCA Website Address: www.dft.gov.uk/mca

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