

S.I. No. 145/1998:

EUROPEAN COMMUNITIES MERCHANT SHIPPING (PORT STATE CONTROL) REGULATIONS, 1998.

I, MICHAEL WOODS, Minister for the Marine and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive No. 95/21/EC¹ of 19 June 1995 and Commission Directive No. 96/40/EC² of 25 June 1996, hereby make the following regulations:

¹ O.J. No. L.157, 7.7.1995, p.1

² O.J. No. L.196, 7.6.1996, p.7

Citation.

1. (1) These Regulations may be cited as the European Communities Merchant Shipping (Port State Control) Regulations, 1998.

(2) These Regulations shall come into operation on the 15th day of May, 1998.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires—

"Competent Authority" means the Marine Survey Office of the Department of the Marine and Natural Resources;

"Conventions" has the same meaning as it has in Article 2 of the Directive;

"Directive" means Council Directive No. 95/21/EC of 19 June 1995;

"functions" includes powers and duties;

"inspector" means an officer of the Competent Authority appointed under Regulation 5(1) to be an inspector;

"Member State" means a Member State of the European Communities;

"Minister" means the Minister for the Marine and Natural Resources;

"MOU" means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, as provided for in Article 2 of the Directive;

"ship" means any seagoing vessel to which one or more of the Conventions applies, flying a flag of a state other than the State.

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.

(3) In these Regulations, unless the contrary intention appears—

(a) a reference to a Regulation is to a Regulation of these Regulations,

(b) a reference to a paragraph is to a paragraph of the Regulation in which the reference occurs, and

(c) a reference to an Annex by number is to an Annex to the Directive which is so numbered.

Application

3. (1) These Regulations shall apply to any ship and its crew to which the Directive applies.

(2) Nothing in these Regulations shall affect the rights of intervention available to the State under the relevant international Conventions.

(3) When inspecting a ship flying the flag of a state which is not a party to a Convention, the Competent Authority or an inspector shall not give to such ship or its crew more favourable treatment than that given or to be given to a ship flying the flag of a state which is a party to that Convention or to the crew of such a ship.

Inspection body.

4. (1) The Marine Survey Office of the Department of the Marine and Natural Resources shall be the Competent Authority for the inspection of ships for the purposes of the Directive and these Regulations.

(2) The function of the Competent Authority shall be to take whatever measures are necessary or appropriate in the performance of duties under the Directive and these Regulations and it has such powers as are necessary to enable it to perform that function.

Inspectors.

5. (1) Subject to paragraph (5), the Minister shall appoint such and so many officers who fulfil the qualification criteria specified in Annex VII as the Minister thinks necessary to be inspectors for the purposes of the Directive and these Regulations and may revoke any such appointment.

(2) The Minister shall issue to every inspector appointed under paragraph (1) a warrant of appointment and the Competent Authority shall issue to every such inspector a personal document in the form of an identity card in accordance with Article 12(4) of the Directive as amended by Commission Directive No. 96/40/EC of 25 June 1996 establishing a common model for an identity card for inspectors carrying out port State control and, when exercising a power or performing a function conferred or imposed on an inspector by or under the Directive or these Regulations, the inspector shall, on being so requested by a person affected, produce the identity card to that person.

(3) Subject to paragraph (5) and to any directions of the Competent Authority, an inspector has such powers and shall perform such functions as are conferred or imposed on him or her by, or as are necessary to enable him or her to perform his or her duties under, the Directive or these Regulations.

(4) If an inspector does not have the required professional expertise in a matter necessary for the performance of a particular function under the Directive or these Regulations, the inspector may be assisted by any person with the required expertise as directed by the Competent Authority.

(5) An inspector performing functions under the Directive or these Regulations, and any persons assisting him or her, shall have no commercial interest either in the port or in the ships in respect of which the functions are performed, nor shall the inspector be employed by or undertake work on behalf of non-governmental organisations which issue statutory and classification certificates in respect of ships or which carry out the surveys necessary for the issue of those certificates.

Inspection Commitments.

6. (1) The Competent Authority shall carry out an annual total number of inspections corresponding to at least 25 per cent of the number of individual ships which enter ports in the State during a representative calendar year.

(2) In selecting ships for inspection, the Competent Authority shall give priority to the categories of ships referred to in Annex I.

(3) Ships which have been inspected by the competent authority of any Member State within the previous six months shall not be inspected by the Competent Authority, provided that -

- (a) the ship is not in a category listed in Annex I,
- (b) no deficiencies have been reported following a previous inspection, and
- (c) no clear grounds exist for carrying out an inspection.

(4) Paragraph (3) shall not apply to any of the operational controls specifically provided for in the Conventions.

Inspection procedure.

7. (1) In carrying out an inspection under these Regulations an inspector shall, as a minimum -

(a) check the certificates and documents listed in Annex II, to the extent applicable, and

(b) satisfy himself or herself of the overall condition (including hygienic conditions) of the ship, including the engine room and accommodation.

(2) The inspector may examine all relevant certificates and documents, in addition to those listed in Annex II, which are required to be carried on board in accordance with the Conventions.

(3) Where, after the inspection referred to in paragraphs (1) and (2), an inspector believes on clear grounds that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention, he or she shall carry out-

(a) a more detailed inspection, including further checking of compliance with on-board operational requirements, and

(b) a re-inspection to determine whether work or action to rectify any deficiency has been carried out or taken.

(4) For the purposes of paragraph (3), "clear grounds" exist when the inspector finds evidence which, in his or her professional judgement, warrants a more detailed inspection of the ship, its equipment or its crew, and the matters set out in Annex III shall constitute such evidence.

(5) An inspector shall also observe the relevant procedures and guidelines for the control of ships specified in Annex IV.

Expanded inspection of certain ships.

8. (1) Where, as the result of an inspection referred to in Regulation 7, an inspector believes that the condition of a ship of a category listed in Annex V, or of its equipment or crew, does not substantially meet the relevant requirements of a Convention, then, subject to paragraph (3), the Competent Authority shall ensure that an expanded inspection of the ship is carried out by an inspector.

(2) Section B of Annex V contains non-mandatory guidelines for expanded inspections.

(3) Without prejudice to Regulation 7, an inspector shall not carry out an expanded inspection of a ship referred to in paragraph (1) where at any time

during the immediately preceding period of 12 months an expanded inspection of the ship has been carried out by an inspector or the Competent Authority, or by an inspector appointed by a competent authority of any other Member State.

(4) (a) In the case of a passenger ship operating on a regular schedule in or out of a port or ports in the State but not between a port or ports in the State and a port or ports in another Member State or other Member States, the expanded inspection shall be carried out by an inspector.

(b) In the case of a passenger ship operating such a schedule between a port or ports in the State and a port or ports in another Member State or other Member States, the expanded inspection may be carried out by an inspector.

Report of inspection to ship's master.

9. (1) On completion of an inspection, a more detailed inspection, or an expanded inspection of a ship, the inspector who carried out the inspection shall provide to the master of the ship a document, in the form specified in Annex 3 to the MOU, giving the results of the inspection and details of any decisions taken by the inspector and of corrective action to be taken by the master, owner or operator.

(2) In the case of deficiencies warranting the detention of a ship, the document shall include information about the future publication of the detention order in accordance with the Directive.

Rectification and detention.

10. (1) In the case of deficiencies which are clearly hazardous to safety, health or the environment, the Competent Authority -

(a) shall cause to be detained a ship in which such a deficiency is confirmed or revealed by an inspection referred to in Regulation 7 or 8, or

(b) shall cause to be stopped any operation the carrying out of which reveals a deficiency,

unless satisfied that the deficiency has been or will be rectified in accordance with the Conventions.

(2) The Competent Authority may cause a direction to be given to the owner or master of a ship for the purposes of paragraph (1) and the owner or master, as the case may be, shall comply with the direction.

(3) In the performance of his or her functions under this Regulation, an inspector shall apply the criteria set out in Annex VI.

(4) (a) If a ship is unduly detained or delayed by the exercise of port State control under the Directive or these Regulations, the owner or operator shall be entitled to compensation for any loss or damage suffered.

(b) The burden of proving that a ship is unduly detained or delayed shall lie with the owner or operator of the ship.

Right of appeal.

11. (1) The owner or operator of a ship, or his or her representative in the State, may appeal against a detention decision taken by the Competent Authority but the lodging of such an appeal shall not cause the detention to be suspended.

(2) An appeal under this Regulation shall lie to the judge of the Circuit Court in whose Circuit the port in which the ship is detained is located and shall be made within 7 days of the commencement of the detention.

(3) On hearing an appeal under paragraph (1), the Court may confirm or vary the detention or allow the appeal.

(4) A decision of the Circuit Court on an appeal under paragraph (1) shall be final, save that, by leave of the Court, an appeal from its decision shall lie to the High Court on a specified question of law.

Follow-up to inspections and detention.

12. (1) A ship found to be deficient under Article 9(2) of the Directive may proceed to the nearest appropriate repair yard available as chosen by the master and the authorities concerned, provided that any conditions determined by the competent authority of the state whose flag the ship is entitled to fly and agreed by the Competent Authority are complied with.

(2) The port authorities at any port shall, if so requested by the Competent Authority, refuse entry into their port to any ship referred to in paragraph (1) -

(a) which proceeds to sea without complying with the conditions determined by the competent authority of any Member State in the port of inspection, or

(b) which refuses to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard,

until the owner or operator has provided evidence to the satisfaction of the competent authority where the ship was found defective that the ship fully complies with all applicable requirements of the Convention and the Competent Authority has advised the port authorities accordingly.

(3) Notwithstanding paragraph (2), the port authorities may permit access to the port -

(a) in the event of force majeure or overriding safety considerations,

(b) to reduce or minimise the risk of pollution, or

(c) to have deficiencies rectified,

provided adequate measures, to the satisfaction of the Competent Authority, have been implemented by the owner, the operator or the master of the ship to ensure safe entry and the Competent Authority has advised the port authorities accordingly.

Reports from pilots and port authorities.

13. (1) If a pilot engaged in berthing or unberthing a ship in the State, or engaged on a ship bound for a port within a Member State, learns in the course of the pilot's normal duties that there are deficiencies which may prejudice the safe navigation of the ship, or which may pose an unreasonable threat of harm to the marine environment, the pilot shall immediately inform the Competent Authority or the competent authority of another Member State, as appropriate.

(2) If a port authority in the State, when exercising its normal duties, learns that a ship within its port has deficiencies which may prejudice the safety of the ship or pose an unreasonable threat of harm to the marine environment, it shall immediately inform the Competent Authority.

Reimbursement of costs.

14. (1) If the inspections referred to in Regulations 7 and 8 confirm or reveal deficiencies in relation to the requirements of a Convention warranting the detention of a ship, all costs relating to the inspections in any normal accounting period (including any statutory fees for its detention and reinspection) shall be paid by the owner or the operator of the ship or his or her representative in the State.

(2) All costs relating to inspections carried out consequent to Regulation 12(2) by the Competent Authority shall be charged to the owner or operator of the ship.

(3) The detention of the ship shall not be lifted until full payment has been made or a sufficient security which is satisfactory to the Competent Authority has been given for the reimbursement of the costs.

Co-operation.

15. For the purposes of Article 14 of the Directive, where the Minister is not satisfied that adequate arrangements are in place to ensure that the Competent Authority can obtain all relevant information on ships calling at ports in the State, he or she may direct the port authorities, and other relevant authorities or commercial organisations to put in place such arrangements as he or she considers to be necessary and those to whom a direction is given shall comply with the direction.

Publication of detentions.

16. (1) The Competent Authority shall, as a minimum, publish information quarterly concerning ships detained during the previous three month period and which have been detained more than once during the past 24 months.

include - (2) The information published under paragraph (1) shall

(a) the name of the ship,

(b) the name of the shipowner or the operator of the ship,

(c) the IMO number,

(d) the flag State,

(e) the name of the classification society, where relevant, and, if applicable, any other party which has issued certificates to such ship in accordance with the Conventions on behalf of the flag state,

(f) the reason for detention, and

(g) the name of the port and date of detention.

Offences.

17. (1) Where there is a contravention of a direction given under Regulation 10(2), in respect of a ship, the owner and master of the ship shall each be guilty of an offence and shall each be liable on summary conviction to a fine not exceeding £1,500.

(2) Where a ship -

12(1), or (a) fails to proceed to the yard specified under Regulation

(b) enters a port in contravention of Regulation 12(2),

the owner and master of the ship shall each be guilty of an offence, and shall each be liable on summary conviction to a fine not exceeding £1,500.

(3) A person who fails to comply with a direction of the Minister under Regulation 15 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

(4) Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent, connivance or approval of or to be attributable to any neglect on the part of, a person being a director, manager, secretary, or other similar officer of the body corporate, or any other person who was acting or purporting to act in any such capacity, that person as well as the

body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(5) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Minister.

GIVEN under my Official Seal, this 8th day of May,
1998.

MICHAEL WOODS

Minister for the Marine and Natural Resources.

EXPLANATORY NOTE

These Regulations give effect to Council Directive 95/21/EC of 19 June, 1995 and Commission Directive No. 96/40/EC of 25 June, 1996 on the harmonization of the laws, regulations and administrative provisions of the Member States relating to standards for ship safety, pollution prevention and shipboard living and working conditions (port State control).

The Directive stems from the European Commission's Communication "A Common Policy on Safe Seas" and provides a legal framework in the community to make mandatory the current practice of member states acting under their voluntary commitment to the Paris Memorandum of Understanding on Port State Control (Paris MOU).

These Regulations:—

- come into operation on 15 May, 1998.
- apply to any ship and its crew calling at an Irish port or at an off-shore installation, or anchored off such a port or such an installation, on or over the Irish Continental Shelf.
- provide for the appropriate Irish maritime administration to carry out the Inspection procedures referred to in the Directive.
- empower the Minister to order the detention of ships found to have deficiencies which are clearly hazardous to safety and health of persons or the environment.

