

2010 No. 895

MARINE POLLUTION

**The Merchant Shipping (Prevention of Air Pollution from Ships)
(Amendment) Regulations 2010**

<i>Made</i> - - - -	<i>21st March 2010</i>
<i>Laid before Parliament</i>	<i>24th March 2010</i>
<i>Coming into force</i> - -	<i>20th April 2010</i>

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the environment (b) and maritime transport (c).

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act, articles 2 and 3 of the Merchant Shipping (Prevention of Air Pollution from Ships) Order 2006(d), article 2 of the Merchant Shipping (Prevention of Pollution)(Law of the Sea Convention) Order 1996(e) and section 128(5) and (6) of the Merchant Shipping Act 1995(f).

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2010 and come into force on 20th April 2010.

Amendment to the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

2.—(1) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008(g) are amended as follows.

(2) For regulation 22 substitute “**22.** Schedule 2A has effect.”.

(3) After Schedule 2 insert Schedule 2A as set out in Schedule 1 to these Regulations.

(4) Schedule 2 to these Regulations, which makes minor amendments primarily consequential upon the amendments made by paragraphs (2) and (3), has effect.

(a) 1972 c.68, was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of the European Union (Amendment) Act 2008 (c.7).

(b) S.I. 2008/301.

(c) S.I. 1994/757.

(d) S.I. 2006/1248.

(e) S.I. 1996/282.

(f) 1995 c.21; section 128 was amended by section 2 of the Merchant Shipping (Pollution) Act 2006 (c.8) and there are other amendments to section 128 which are not relevant to these Regulations. In relation to section 128(6), these Regulations are “Regulations made by virtue of paragraph (f) of subsection (4)” of section 128, since they are made under S.I. 2006/1248, which pursuant to section 128(4)(f) authorises the making of regulations.

(g) S.I. 2008/2924.

Signed by authority of the secretary of State for Transport

21st March 2010

Paul Clark
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE 1

Regulation 2(3)

New Schedule to be inserted in the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

“SCHEDULE 2A

Regulation 22

Sulphur oxides

Interpretation

1. In this Schedule—

“the 1999 Directive” means Council Directive 1999/32/EEC(a) of 26th April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, as amended by Directive 2005/33/EC(b) of the European Parliament and of the Council of 6th July 2005;

“approved exhaust gas cleaning system” means an exhaust gas cleaning system approved in accordance with Merchant Shipping Notice 1734 (M+F) or Merchant Shipping Notice 1735 (M+F) as appropriate;

“emission abatement technology” means an exhaust gas cleaning system, or any other technological method that is verifiable and enforceable;

“marine diesel oil” means any marine fuel which has a viscosity or density falling within the ranges of viscosity or density defined for DMB or DMC grades in Table I of ISO 8217 (2005)(c);

“marine gas oil” means any marine fuel which has a viscosity or density falling within the ranges of viscosity or density defined for DMX or DMA grades in Table I of ISO 8217 (2005);

“marine fuel” means any petroleum based liquid fuel intended for use or in use on board a vessel including those fuels defined in ISO 8217 (2005);

“placing on the market” means supplying or making available to third persons, against payment or free of charge, anywhere within the United Kingdom marine fuels for on-board combustion, but excludes supplying or making available marine fuels for export in ships’ cargo tanks.

(a) O.J. No. L121, 11.5.1999, p.13.

(b) O.J. No. L191, 22.7. 2005, p.59.

(c) ISO Standard – Petroleum Products – Fuels (class F) – Specification of Marine Fuels: ISBN 0 580 475 468.

Control of sulphur oxide emissions: general provisions

2.—(1) This paragraph applies to any ship unless paragraph 3(3), 4(3), 6 or 7 applies to it.

(2) While a ship to which this paragraph applies is within a sulphur oxide emission control area it must comply with at least one of the following conditions—

- (a) the sulphur content of any fuel oil used on board the ship must not exceed 1.50 per cent by mass,
- (b) an approved exhaust gas cleaning system must be applied to reduce the total emission of sulphur oxide from the ship, including both auxiliary and main propulsion engines, to 6.0g/kW h or less calculated as the total weight of sulphur dioxide emission, and
- (c) any other technological method to limit sulphur oxide emissions must be used that has been—
 - (i) approved for the purposes of these Regulations by the Secretary of State in accordance with the provisions of a Merchant Shipping Notice, or
 - (ii) authorised for the purposes of Annex VI by a Contracting Government other than the United Kingdom.

(3) While a ship to which this paragraph applies is not within a sulphur oxide emission control area it must not use fuel oil which has a sulphur content exceeding 4.50 per cent by mass.

(4) The master of any ship using separate fuel oils to comply with sub-paragraph (2)(a) must—

- (a) allow sufficient time for the fuel oil service system to be fully flushed of all fuels containing sulphur exceeding 1.50 per cent by mass prior to entry into a sulphur oxide emission control area, and
- (b) record in accordance with paragraph 5 the details of any fuel changeover operation.

(5) The master must ensure that waste streams from the use of an approved exhaust gas cleaning system pursuant to sub-paragraph (2)(b) are not discharged into a port, harbour or estuary unless it is thoroughly documented that those waste streams will have no adverse impact on the ecosystems of the port, harbour or estuary.

Maximum sulphur content of marine fuel used by passenger ships

3.—(1) This paragraph applies to—

- (a) a United Kingdom passenger ship, and
- (b) any other passenger ship which calls at a port in the United Kingdom.

(2) This paragraph does not apply to a passenger ship—

- (a) while paragraph 4(3) applies to it,
- (b) using an approved exhaust gas cleaning system,
- (c) using an exhaust gas cleaning system authorised for the purposes of Annex VI by a Contracting Government other than the United Kingdom, or
- (d) using emission abatement technologies that have been—
 - (i) permitted in accordance with paragraph 6 or 7, or
 - (ii) authorised for the purposes of Article 4c of the 1999 Directive by an EEA State other than the United Kingdom.

(3) A ship to which this paragraph applies must not, in the sea areas described in sub-paragraph (4), use marine fuel which has a sulphur content exceeding 1.50 per cent by mass.

(4) The sea areas referred to in sub-paragraph (3) are—

- (a) United Kingdom waters, and
- (b) controlled waters.

(5) The master of a ship to which this paragraph applies must record in accordance with paragraph 5 the details of any fuel changeover operation.

(6) In this paragraph—

“passenger ship” means a ship that carries more than 12 passengers and is operating on a regular service, where a passenger is every person other than—

- (a) the master and members of the crew or other person employed or engaged in any capacity on board a ship on the business of that ship, and
- (b) a child under one year of age; and

“regular service” means a series of crossings operated so as to serve traffic between the same two or more ports within the European Union, or a series of voyages from and to the same port within the European Union without intermediate calls, either—

- (a) according to a published timetable, or
- (b) with crossings so regular that they constitute a recognisable schedule.

Maximum content of marine fuel used by ships at berth and inland waterway vessels

4.—(1) This paragraph applies to—

- (a) an inland waterway vessel, and
- (b) a ship at berth.

(2) This paragraph does not apply to—

- (a) a ship at berth for that period of time which is sufficient to allow the crew to complete any necessary fuel changeover operations—
 - (i) as soon as possible after arrival at berth, and
 - (ii) as late as possible before departure,
- (b) a ship which, according to published timetables, is due to be at berth for less than two hours,
- (c) a ship which switches off all engines and uses shore-side electricity while at berth,
- (d) an inland waterway vessel, while it is at sea, that carries a certificate proving conformity with the International Convention for the Safety of Life at Sea, 1974(a) as amended, or
- (e) a ship using emission abatement technologies that have been—
 - (i) permitted in accordance with paragraph 6 or 7, or
 - (ii) authorised for the purposes of Article 4c of the 1999 Directive by an EEA State other than the United Kingdom.

(3) A ship or an inland waterway vessel to which this paragraph applies must not use marine fuel which has a sulphur content exceeding 0.10 per cent by mass.

(4) The master of a ship or inland waterway vessel to which this paragraph applies must record in accordance with paragraph 5 the details of any fuel changeover operation.

(5) In this paragraph—

“inland waterway vessel” means a vessel particularly intended for use on an inland waterway as defined in Council Directive 82/714/EEC of 4th October 1982(b) laying down technical requirements for inland waterway vessels including all vessels which carry—

(a) Cmnd 7874.

(b) O.J. No.L301, 28.10.1982, p.1; this Directive is no longer in force but the provision of the 1999 Directive which paragraph 4 of this Schedule implements still uses this definition of inland waterway vessel.

- (a) a Community inland navigation certificate as defined in Directive 82/714/EEC, or
- (b) a certificate issued pursuant to Article 22 of the Revised Convention for the Navigation of the Rhine^(a); and

“ship at berth” means a ship which is securely moored or anchored in a United Kingdom port while it is loading, unloading or hotelling, including the time spent when not engaged in cargo operations.

Records in ship’s logbook

5.—(1) A record made pursuant to paragraph 2(4)(b) or 3(5) of a fuel changeover operation consisting of a change from fuel oil having a sulphur content exceeding 1.50 per cent by mass to fuel oil having a sulphur content not exceeding 1.50 per cent by mass, must state—

- (a) the time, date and position of the ship when the operation is completed, and
- (b) the volume, in each tank at that time, of fuel oil having a sulphur content not exceeding 1.50 per cent by mass.

(2) A record made pursuant to paragraph 2(4)(b) or 3(5) of a fuel changeover operation consisting of a change from fuel oil having a sulphur content not exceeding 1.50 per cent by mass to fuel oil having a sulphur content exceeding 1.50 per cent by mass, must state—

- (a) the time, date and position of the ship when the operation commenced, and
- (b) the volume, in each tank at that time, of fuel oil having a sulphur content not exceeding 1.50 per cent by mass.

(3) A record made pursuant to paragraph 4(4) of a fuel changeover operation consisting of a change from fuel oil having a sulphur content exceeding 0.10 per cent by mass to a fuel oil having a sulphur content not exceeding 0.10 per cent by mass, must state—

- (a) the time and date when the operation commenced and is completed, and
- (b) the volume in each tank at that time, of fuel oil having a sulphur content not exceeding 0.10 per cent by mass.

(4) A record made pursuant to paragraph 4(4) of a fuel changeover operation consisting of a change from fuel oil having a sulphur content not exceeding 0.10 per cent by mass to fuel oil having a sulphur content exceeding 0.10 per cent by mass, must state—

- (a) the time and date when the operation commenced and is completed, and
- (b) the volume, in each tank at that time, of fuel oil having a sulphur content not exceeding 0.10 per cent by mass.

(5) The master of a ship making a record referred to in sub-paragraph (1), (2), (3) or (4) must make it—

- (a) in the case of a United Kingdom ship, in a log book in the format prescribed in Appendix 6 to Merchant Shipping Notice 1819 (M+F),
- (b) in the case of any other ship, in a ship’s log book.

(6) A ship is prohibited from entering a port in the United Kingdom if the requirements of this paragraph have not been met.

Trials of emission abatement technologies

6.—(1) The Secretary of State may on application in writing by the owner of a ship grant permission for the ship to use emission abatement technologies for trial purposes—

- (a) if the ship is a United Kingdom ship, or
- (b) while the ship is operating within—

(a) Revised Convention for Rhine Navigation of 17th October 1898 as set out in the text of 20th November 1963.

- (i) United Kingdom waters, or
 - (ii) controlled waters.
- (2) A permission under sub-paragraph (1) is valid only if it—
- (a) is in writing, and
 - (b) contains a limit on the period of the trial, such period not to exceed 18 months.
- (3) Subject to sub-paragraph (6), a permission under sub-paragraph (1) may—
- (a) include such conditions as the Secretary of State believes appropriate to the trial in question, and
 - (b) be varied or revoked at any time by the Secretary of State giving written notice to the owner.
- (4) The Secretary of State must—
- (a) at least six months before an intended trial begins, give notice of that trial in writing to—
 - (i) the European Commission, and
 - (ii) any port State concerned, and
 - (b) within six months of completion of the trial, provide the Commission with a copy of the full results referred to in sub-paragraph (6)(e).
- (5) For the purposes of sub-paragraph (4)(a)(ii), a port State concerned is a State to or from which a ship intends to operate during the intended trial.
- (6) Any permission granted under sub-paragraph (1) is subject to the following conditions—
- (a) tamper-proof equipment must be installed on the ship to monitor continuously funnel gas emissions and such equipment must be used throughout the trial,
 - (b) emission reductions must be achieved which are at least equivalent to those which would have been achieved by the use of any fuel oil which complied with paragraph 2(2)(a), 3(3) or 4(3) as applicable,
 - (c) proper waste management systems must be in place during the trial in respect of any waste generated by the emission abatement technologies,
 - (d) throughout the trial, the owner must carry out an assessment of the impacts on the marine environment, particularly the ecosystems in enclosed ports, harbours and estuaries, and
 - (e) within five months of completion of the trial, the owner must—
 - (i) provide full results of the assessment referred to in paragraph (d) to the Secretary of State, and
 - (ii) make those results publicly available.

Permission to use emission abatement technologies

7.—(1) The Secretary of State may on application in writing by the owner of a ship grant permission for the ship to use emission abatement technologies while paragraph 3 or 4 applies to it.

- (2) A permission under sub-paragraph (1) is valid only if it is in writing.
- (3) Subject to sub-paragraphs (4) and (5), a permission under sub-paragraph (1) may—
 - (a) include such conditions as the Secretary of State believes appropriate, and
 - (b) be varied or revoked at any time by the Secretary of State giving written notice to the owner.
- (4) Where appropriate, the Secretary of State must include in any permission granted under sub-paragraph (1) a condition that ensures compliance with any criteria established under Article 4c(3) of the 1999 Directive and communicated to the IMO.

(5) Any permission granted under sub-paragraph (1) is subject to the following conditions—

- (a) emission reductions must be continuously achieved which are at least equivalent to those which would have been achieved by the use of fuel oil which complied with paragraph 2(2)(a), 3(3) or 4(3) as applicable,
- (b) the ship must be fitted with continuous emission monitoring equipment, and
- (c) there must be a record that thoroughly documents that any waste streams discharged into enclosed ports, harbours and estuaries have no impact on the ecosystems of those ports, harbours and estuaries based on any criteria communicated by the authorities of port States to the IMO.

Restriction on the marketing of marine diesel oil

8. The placing on the market of marine diesel oil is prohibited if the sulphur content exceeds 1.50 per cent by mass.

Restriction on the marketing of marine gas oil

9. The placing on the market of marine gas oil is prohibited if the sulphur content exceeds 0.10 per cent by mass.

Analysis

10.—(1) Analysis of marine fuel to determine its sulphur content must be in accordance with the provisions of sub-paragraphs (2) to (4).

(2) The reference method adopted for determining the sulphur content is to be that defined by PrEN ISO 14596(a) or ISO method 8754 (2003)(b) as appropriate.

(3) The arbitration method is to be that specified in PrEN ISO 14596.

(4) The statistical interpretation of the verification of the sulphur content of marine gas oil is to be carried out in accordance with ISO standard 4259 (2006)(c).”

SCHEDULE 2

Regulation 2(4)

Consequential and other amendments to the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

1. The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 are amended as follows.

2. In regulation 2 (interpretation) in paragraph (1)—

(a) for the definition of “fuel oil” substitute—

““fuel oil” means marine fuel as defined in paragraph 1 of Schedule 2A and such other substances as may be specified by the Secretary of State in a Merchant Shipping Notice;”;

(b) after the definition of “new installation” insert—

““North Sea sulphur oxide emission control area” means all sea areas within the following boundaries including the North Sea proper and the English Channel and its approaches—

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- (a) Described in the British Standard “Petroleum Products – Determination of Sulphur content – Wavelength-dispersive X-ray fluorescence spectrometry; BS EN ISO 14596 2007 and ISO 14596 2007, which came into effect on 31st October 2007.
 - (b) Described in the British Standard “Petroleum Products – Determination of Sulphur content – Energy-dispersive X-ray fluorescence methods; BS EN ISO 8754 2003 and ISO 8754 2003, which came into effect on 14th August 2003.
 - (c) Described in the British Standard “Petroleum Products – Determination and Application of precision data in relation to methods of test; BS EN ISO 4259 1996 and ISO 4259 2006, which came into effect on 31st January 2007.

- (a) the North Sea southwards of latitude 62° N and eastwards of longitude 4° W,
 - (b) the Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57°44'.8 N, and
 - (c) the English Channel and its approaches eastwards of longitude 5° W and northwards of latitude 48°30' N;";
- (c) for the definition of "short voyage" substitute—

““short voyage” means a voyage which—

- (a) does not exceed 1000 nautical miles between the last port of call in the country in which the voyage begins and the last port of call in the voyage before beginning any return voyage, and
- (b) on any return voyage does not exceed 1000 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the country in which the voyage began,

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

- (d) for the definition of "sulphur oxide emission control area" substitute—

““sulphur oxide emission control area” means—

- (a) the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at latitude 57°44'.8 N;
- (b) the North Sea sulphur oxide emission control area; and
- (c) any other sea area, including a port area, designated as a sulphur oxide emission control area for the purposes of these Regulations by the Secretary of State in a Merchant Shipping Notice;"; and

- (e) after the definition of "UKAPP certificate" add—

““warship” means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and the crew of which is under regular armed forces discipline”.

3. In regulation 3 (application and exemptions)—

- (a) for paragraph (1) substitute—

“(1) Subject to—

- (a) paragraphs (2) to (12), and
- (b) paragraphs 2 to 4, 6 and 7 of Schedule 2A,

these Regulations apply to—

- (i) a United Kingdom ship wherever it may be, and
- (ii) any other ship while it is within United Kingdom waters.”;

- (b) for paragraph (6) substitute—

“(6) Regulation 16(1) and (2) also applies to a ship which—

- (a) is not a United Kingdom ship,
- (b) is engaged in voyages to ports or offshore terminals under the jurisdiction of a Contracting Government other than the United Kingdom,
- (c) is of 400 GT or above, unless it is a drilling rig, and
- (d) is—

- (i) in a port in the United Kingdom,
- (ii) at an offshore terminal in United Kingdom or controlled waters, or
- (iii) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit;

and regulation 16(6) has effect in relation to the application of regulation 16(1) and (2) to such a ship.”;

(c) omit paragraphs (10) and (11); and

(d) after paragraph (12) insert—

“(12A) These Regulations do not apply to fuel oil—

- (a) intended for the purpose of research and testing,
- (b) intended for processing prior to final combustion, or
- (c) to be processed in the refining industry.”.

4. In regulation 16 (procedure to be adopted when a ship is deficient)—

(a) for paragraph (1) substitute—

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

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

(b) for paragraph (6) substitute—

“(6) In the application of paragraphs (1) and (2) to a ship of the kind specified in regulation 3(6)—

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

5. In regulation 17 (arbitration)—

(a) at the beginning of paragraph (2) insert “Subject to paragraph (2A),”;

(b) after paragraph (2) insert—

“(2A) In default of agreement between the applicant and the responsible person, the arbitrator is such person as may be appointed by the President or Vice-President of the Chartered Institute of Arbitrators following a request made by—

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

but this paragraph does not apply in Scotland.”; and

(c) for paragraph (7)(b) substitute—

“(b) “qualified person” means—

- (i) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis^(a),
- (ii) a person who is an advocate or solicitor in Scotland of at least 7 years’ standing, or
- (iii) a person who is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland of at least 7 years’ standing.”.

(a) The meaning of “a person who satisfies the judicial-appointment eligibility condition on an N-year basis” (where N is the number stated in the provision) is defined in section 50 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

- 6.** In regulation 25 (fuel oil quality) for paragraph (6) substitute—
- “(6) For the purposes of paragraph (5), the appropriate sulphur content limit means—
- (a) subject to paragraph (c), in the case of fuel oil used or intended to be used in a sulphur oxide emission control area, not more than 1.50 per cent by mass,
 - (b) subject to paragraph (c), in the case of fuel oil not intended to be used in a sulphur oxide emission control area, not more than 4.50 per cent by mass, and
 - (c) in the case of marine fuel used or intended to be used by a ship while paragraph 4(3) of Schedule 2A applies to that ship, not more than 0.10 per cent by mass.”.

7. In regulation 26 (inspection of ships)—

 - (a) in paragraph (1) after the words “any of these Regulations apply” insert “or any ship delivering fuel oil for combustion purposes”;
 - (b) in paragraph (2)(e) for “regulation 22(5)” substitute “paragraph 5 of Schedule 2A”; and
 - (c) for paragraph (3) substitute—

“(3) The power in those sections to go on board a ship may only be exercised if the ship in question 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.”.

8. In regulations 28 (general provisions on detention), 29 (powers for harbour master to detain) and 34 (enforcement and application of fines)—

 - (a) for “offence under regulation 20(1), 21(4), 22(1), (2) or (4),” wherever those words occur substitute “offence comprising a contravention of regulation 20(1), 21(4),”; and
 - (b) after “or (7)” wherever it occurs insert “or paragraph 2(2), (3) or (5) of Schedule 2A”.

9. In regulation 28 (general provisions on detention)—

 - (a) in paragraph (1), for “Where regulation 16(1) has effect” substitute “Where a determination is made of the kind mentioned in regulation 16(1)”;
 - (b) for paragraph (4) substitute—

“(4) The power under this regulation to detain a ship may only be exercised if the ship in question 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.”;
 - (c) in paragraph (8)(b) for “any offence under those regulations” substitute “any such offence”; and
 - (d) in paragraph (8)(d) for “an offence under that regulation” substitute “any such offence”.

10. In regulation 29 (power for harbour master to detain)—

 - (a) in paragraph (4)(b) for “an offence under that regulation” substitute “any such offence”;
 - (b) in paragraph (4)(d) for “an offence under any of those regulations” substitute “any such offence”; and
 - (c) in paragraph (5)(b) after “any” insert “such”.

11. After regulation 31 (right of appeal and compensation) insert—

“Non-compliant fuel oil for combustion purposes

31A.—(1) Where any person exercising a power of inspection under section 258 or 259 of the 1995 Act finds on a ship fuel oil for combustion purposes that does not comply with these Regulations and which is intended for use on a relevant ship, that person may require the relevant local supplier of fuel oil—

- (a) to bring that fuel oil into compliance, or
- (b) not to deliver that fuel oil to the relevant ship.

(2) Where any person exercising a power of inspection under section 258 or 259 of the 1995 Act finds on a relevant ship fuel oil for combustion purposes that does not comply with these Regulations that person may require that it be brought into compliance or removed.

(3) In this regulation “local supplier of fuel oil” and “relevant ship” have the same meaning as in regulation 25.”.

12. In regulation 32 (offences)—

- (a) in paragraph (1)(a) for “of these Regulations” substitute “, or paragraph 5(6) of Schedule 2A,”;
- (b) in paragraph (1)(b) for “18(5)” substitute “16(5)”;
- (c) in paragraph (1)(c)—
 - (i) omit “22,”, and
 - (ii) before “is” insert “or paragraph 2(2) to (6), 3(3), 4(3) or 5(1) to (5) of Schedule 2A”;
- (d) after paragraph (3) add—

“(3A) Where a ship uses emission abatement technologies which are not—

- (a) permitted in accordance with paragraph 7 or 8 of Schedule 2A,
- (b) authorised for the purposes of article 4c of the 1999 Directive by an EEA State other than the United Kingdom, or
- (c) authorised for the purposes of Annex VI by a Contracting Government other than the United Kingdom,

the owner and master are guilty of an offence and punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine.

(3B) A person who—

- (a) places on the market marine diesel oil that has a sulphur content exceeding 1.50 per cent by mass, or
- (b) places marine gas oil on the market in contravention of paragraph 9 of Schedule 2A,

is guilty of an offence and punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine.

(3C) A local supplier of fuel oil who fails to comply with a requirement under regulation 31A(1) is guilty of an offence and punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine.

(3D) A person to whom a requirement under regulation 31A(2) is addressed who fails to comply with that requirement is guilty of an offence and punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine.”; and

- (e) at the start of paragraph (5) insert “In this regulation”.

13. In regulation 35 (restriction on jurisdiction over offences outside United Kingdom limits) in paragraph (1) for “an offence of a provision of regulation 2 1(4) or 22(1) or (2)” substitute “a contravention of regulation 21(4) or paragraph 2(2) or (3) of Schedule 2A”.

14. In regulation 36 (suspension of proceedings at flag state request) in paragraphs (1) and (3)(a) for “22(1) or (2)” substitute “paragraph 2(2) or (3) of Schedule 2A”.

15. In regulation 37 (defences)—

- (a) in paragraph (2) for “under regulation 22(4) or 23(1) or (2)” substitute “comprising a contravention of regulation 21(4) or paragraph 2(2) or (3) of Schedule 2A”;
- (b) at the end of paragraph (2)(b), for “United Kingdom waters.” substitute “United Kingdom waters, and”.

16. In Schedule 3, for paragraph 7 (information to be included in a bunker delivery note) substitute—

“7. Density at 15°C (kg/m³) where the fuel has been tested in accordance with ISO 3675(a).”.

(a) ISO Standard – Crude Petroleum and Liquid Petroleum Products – Laboratory Determination of Density – Hydrometer Method: ISO Publication: ISBN 0-580-38570-1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I. 2008/2924), primarily to implement provisions concerning the sulphur content of marine fuels contained in Council Directive 1999/32/EC of 26th April 1999 (O.J. No. L 121, 11.5.1999, p.13) relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (O.J. No. L 284, 31.10.2003, p.1) of 29th September 2003 and Directive 2005/33/EC (O.J. No. L 191, 22.7.2005, p.59) of the European Parliament and of the Council of 6th July 2005.

So far as these Regulations implement the amended 1999 Directive, they are made under section 2(2) of the European Communities Act 1972 (c.38). However, the Regulations also include (in paragraphs 2(c) and (d), 3(b), 4, 5, 7, 9, 10, 12(b), 13, 15 and 16 of Schedule 2) some minor adjustments that do not derive from that Directive, and to this extent are made under section 128 of the Merchant Shipping Act 1995 (c.21) as amended by the Merchant Shipping (Pollution) Act 2006 (c.8) and under the Merchant Shipping (Prevention of Air Pollution from Ships) Order 2006 (S.I. 2006/1248).

In relation to paragraph 4 of Schedule 2A of the 2008 Regulations, as inserted by Schedule 1 of these Regulations, Marine Guidance Note 400 (M+F) provides guidance on the term “hotelling” (which is used in the definition of “ship at berth”) and what is a period of time sufficient to allow crew to complete any necessary fuel changeover operations.

An impact assessment has been prepared and copies may be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG. A copy has also been placed in the library of each House of Parliament. The impact assessment and transposition note are also annexed to the Explanatory Memorandum which is available alongside these Regulations on the OPSI website at www.opsi.gov.uk.

Merchant Shipping Notices and Marine Guidance Notes are published by the MCA. Copies are available from M-Notices Subscriptions, P O Box 362, Europa Park, Grays, Essex RM17 9AY (telephone number 01375 484548; fax 01375 484556; e-mail orders mnotices@ecgroup.co.uk). They may also be accessed on the MCA’s website www.mcga.gov.uk, which also has details of any amendments or replacements.

The Revised Convention for Rhine Navigation can be obtained from the Central Commission for Navigation on the Rhine, Palais du Rhin 2, Place de la Republique, 67082 Strasbourg (telephone number + 33 (0)3 88 52 20 10; fax + 33 (0).

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STATUTORY INSTRUMENTS

2010 No. 895

MARINE POLLUTION

The Merchant Shipping (Prevention of Air Pollution from Ships)
(Amendment) Regulations 2010

£5.50