

**2016 No.**

**MERCHANT SHIPPING**

**The Merchant Shipping (Marine Equipment) Regulations 2016**

<i>Made</i> - - - -	2016
<i>Laid before Parliament</i>	2016
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THE SCHEDULE — Amendment of Regulations

The Secretary of State makes the following Regulations in exercise of the powers conferred by—

- (a) section 2(2) of the European Communities Act(a),
- (b) sections 85(1), (3), (5) to (7) and 86(1) of the Merchant Shipping Act 1995(b), and
- (c) article 3 of the Merchant Shipping (Prevention of Oil Pollution) Order 1983(c).

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(a) 1972 c.68.

(b) 1995 c.21. Sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 8 and are applied to hovercraft by the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350).

(c) S.I. 1983/1106 as amended by S.I. 1985/2002, 1991/2885 and 1993/1580. The provisions that can be made under the Order were extended by section 128 of the Merchant Shipping Act 1995 (c.21) and varied by section 7(6) and (7) of the Merchant Shipping and Maritime Security Act 1997 (c.28).

The Secretary of State is a Minister designated for the purposes of the European Communities Act 1972 in relation to measures relating to maritime transport<sup>(a)</sup> and measures relating to the safety of ships and the health and safety of persons on them<sup>(b)</sup>.

In accordance with section 86(4) of the Merchant Shipping Act 1995 the Secretary of State has consulted the persons referred to in that section.

## PART 1

### Preliminary

#### Citation and Commencement

1. The Regulations may be cited as the Merchant Shipping (Marine Equipment) Regulations 2016 and come into force on [18th September 2016].

#### Interpretation

2.—(1) The provisions of this regulation apply for the purposes of interpreting these Regulations.

(2) Where a word or expression is defined in the Directive and is not defined in these Regulations, it has the same meaning as in the Directive.

(3) The expressions mentioned in column 1 of the Table have the meanings given in column 2.

#### Table

<i>Column 1</i>	<i>Column 2</i>
“the Act”	The Merchant Shipping Act 1995.
“applicable international standards”	The design, construction and performance requirements of the international instruments which the equipment must satisfy as set out in Annex 1 or 2 of Merchant Shipping Notice MSN [ ].
“applicable UK standards”	The requirements for equipment not subject to applicable international standards as set out in Annex 3 of Merchant Shipping Notice MSN [ ].
“carriage requirement”	A requirement to carry equipment of a specified standard imposed by any of the instruments set out in Annex 4 to Merchant Shipping Notice MSN [ ].
“category C waters”	Has the meaning given in Merchant Shipping Notice MSN 1837(M).
“competent national authority”	The competent authority in each member State responsible for ensuring compliance with the requirements of the Directive.
“conformity mark”	The mark referred to in Article 9 of the Directive, the form of the mark being set out in Annex I to the Directive.
“the Directive”	Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC(c).
“domestic passenger ship”	A passenger ship which has been issued a certificate to embark on voyages on category C waters or seaward of those waters, but not for international voyages.
“EU conformity approval”	Approval by a notified body under regulation 12.
“fishing vessel”	A vessel used for catching fish or other living resources of the sea

(a) S.I. 1994/757.

(b) S.I. 1993/595.

(c) OJ L 257, 28.8.2014, p.146.

	with a registered length of 24 metres or more.
“international voyage”	A voyage from a port in one country to a port in another country, either of the countries being a country to which the 1974 Convention for the Safety of Life at Sea(a) applies.
“length”	Has the meaning given in the Merchant Shipping (Tonnage) Regulations 1997(b).
“market surveillance authority”	The authority in each member State responsible for undertaking market surveillance in accordance with the market surveillance framework set out in Chapter III of Regulation (EC) No 765/2008(c).
“Merchant Shipping Notice”	A notice described as such and issued by the Secretary of State and any reference to a particular Merchant Shipping Notice includes a reference to a Merchant Shipping Notice amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time.
“nominated body”	A person designated as a nominated body under regulation 4(2).
“notified body”	A person designated as a notified body under regulation 4(1).
“passenger”	Every person on a ship other than— <ul style="list-style-type: none"> <li>(a) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship,</li> <li>(b) a person on board the ship in pursuance of an obligation laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstance that neither the master or the owner could have prevented or forestalled, and</li> <li>(c) a child under one year of age.</li> </ul>
“passenger ship”	A ship which carries more than 12 passengers.
“relevant period”	A period of at least 10 years from the date that the conformity mark was affixed to the equipment and not less than the expected life of the equipment.
“United Kingdom Ship”	A ship which is— <ul style="list-style-type: none"> <li>(a) a United Kingdom ship within the meaning of section 85(2) of the 1995 Act,</li> <li>(b) a Government ship within the meaning of section 308(4) of that Act, or</li> <li>(c) a hovercraft registered under the Hovercraft Act 1968(d).</li> </ul>

(4) For the purposes of these Regulations, the competent national authority and market surveillance authority under the Directive for the United Kingdom is the Secretary of State for Transport.

(5) Where a ship is managed by a person other than the owner (whether on behalf of the owner, of some other person or on his own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that person.

(a) Cmnd 7874.

(b) S.I. 1997/1510. There are amendments, but none is relevant.

(c) Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93 (OJ L281, 13.8.2008, p.30).

(d) 1968 c.59.

(6) Any approval, direction, prohibition or restriction given under these Regulations must be given in writing and must specify the date on which it takes effect and the conditions (if any) on which it is given.

### **Application**

3. These Regulations apply to any United Kingdom ship wherever it may be.

### **Designation of notified and nominated bodies**

4.—(1) The Secretary of State may designate any person as a notified body to carry out the procedures specified in article 15 of the Directive, providing that person satisfies the requirements specified in Annex III of the Directive.

(2) The Secretary of State may designate any person as a nominated body to carry out on his behalf procedures specified in paragraph 10 to 12 of Part II of Merchant Shipping Notice MSN [ ].

(3) A designation must be made in writing and set out—

- (a) the functions to be performed by the notified or nominated body under these Regulations,
- (b) the equipment to which the designation applies, and
- (c) any time limit or condition which applies to the designation.

(4) The Secretary of State may withdraw a designation—

- (a) on request by the notified or nominated body,
- (b) where the notified body ceases to comply with the requirements in Annex III of the Directive, or
- (c) where the notified or nominated body fails to comply with any condition imposed under paragraph (3) above.

(5) The Secretary of State may vary or amend a designation—

- (a) on request by the notified or nominated body, or
- (b) where it appears to him that it is necessary or expedient to do so.

(6) The Secretary of State may inspect from time to time a notified or nominated body to ensure it is performing its functions in accordance with its designation and the provisions of these Regulations and, where applicable, the Directive.

(7) The Secretary of State must inform in writing the person affected of the reasons for—

- (a) refusing an application for designation as a notified or nominated body,
- (b) imposing any condition more onerous than proposed by the applicant, or
- (c) withdrawing, varying or amending a designation.

## **PART 2**

### **Requirements for Equipment**

#### **Requirements for equipment**

5.—(1) Subject to paragraph (2), when equipment is placed on board a ship it must comply with applicable international standards, where that equipment is required by international instruments to be approved by the ship's flag state administration.

(2) When equipment is placed on board a domestic passenger ship or a fishing vessel and that equipment is specified in Annex 1 or 2 of Merchant Shipping Notice MSN [ ] it must comply with—

- (a) applicable international standards, or

(b) an alternative standard, where a carriage requirement allows the equipment to meet that standard.

(3) When equipment specified in Annex 3 of Merchant Shipping Notice MSN [ ] is placed on board a ship it must comply with applicable UK standards.

(4) Equipment specified in Annex 1 of Merchant Shipping Notice MSN [ ] is considered to comply with applicable international standards where—

(a) it is accompanied with a declaration of conformity under regulation 14, and

(b) it is affixed with a conformity mark under regulation 15.

(5) Equipment specified in Annex 2 of Merchant Shipping Notice MSN [ ] is considered to comply with applicable international standards or an alternative standard where it is accompanied by a certificate under regulation 19.

(6) In this regulation—

“alternative standard” mean a standard specified in a carriage requirement as an alternative to an applicable international standard.

### **Application of exemptions**

**6.** Regulations 7 to 9 apply to equipment to which regulation 5(1) applies that is specified in Annex 1 of Merchant Shipping Notice MSN [ ], except for regulation 9(2) which also applies to equipment to which regulation 5(2) applies that is specified in Annex II of Merchant Shipping Notice MSN [ ].

### **Exemptions for technical innovation**

**7.—**(1) In exceptional circumstances of technical innovation, the Secretary of State may allow equipment that does not comply with applicable international standards to be placed on board a ship, providing he is satisfied, by trial or otherwise, that such equipment is at least as effective as equipment which complies with those standards.

(2) The Secretary of State must issue a certificate for any equipment placed on board a ship under paragraph (1).

(3) A certificate issued under paragraph (2) must—

(a) confirm the Secretary of State’s approval of the equipment,

(b) specify any restrictions or conditions on the use of the equipment, and

(c) be carried with the equipment.

(4) The Secretary of State may withdraw a certificate where—

(a) a restriction or condition on the use of equipment is breached, or

(b) the European Commission require the withdrawal of the certificate under article 30(5) of the Directive.

(5) Where a ship registered in a country other than the United Kingdom, with equipment on board approved by its flag state in accordance with article 30 of the Directive, is transferred to the United Kingdom register, the Secretary of State may take the necessary measures, which may include carrying out such tests or practical demonstrations as he considers necessary, to ensure that the equipment is at least as effective as equipment which complies with the EU conformity assessment procedures.

### **Exemptions for testing or evaluation**

**8.—**(1) The Secretary of State may allow, for a short period of time, equipment that does not comply with applicable international standards to be placed on board a ship to facilitate the testing or evaluation of such equipment, providing the equipment is not relied on in place of equipment which meets the applicable international standards or used to replace such equipment.

(2) The Secretary of State must issue a certificate for any equipment placed on board a ship under paragraph (1).

(3) A certificate issued under paragraph (2) must—

- (a) confirm the Secretary of State’s approval of the equipment,
- (b) specify any restrictions or conditions on the use of the equipment, and
- (c) be carried with the equipment.

(4) The Secretary of State may withdraw a certificate where a restriction or condition on the use of equipment is breached.

### **Exemptions in exceptional circumstances**

**9.**—(1) Where equipment carried on a ship must be replaced in a port outside the European Union and it is not practicable for reasons of time, delay or cost to replace the equipment with compliant equipment, equipment which does not comply with applicable international standards may be placed on board the ship, providing—

- (a) the equipment is accompanied by documentation issued by a member State of the International Maritime Organisation which is a party to the relevant international convention, certifying that the equipment complies with the relevant IMO requirements, and
- (b) the flag administration is informed immediately of the nature and characteristics of the replacement equipment.

(2) Where the Secretary of State is satisfied that compliant equipment is not available on the market, the Secretary of State may issue a certificate to allow other equipment to be placed on board a ship until such time as compliant equipment is available.

(3) When issuing a certificate, the Secretary of State must ensure that, as far as possible, the equipment complies with applicable international standards.

(4) A certificate must set out—

- (a) the compliant equipment being replaced,
- (b) the reasons for which the certificate is issued,
- (c) the design, construction and performance requirements against which the equipment is approved, and
- (d) the testing standards applied, if any, when approving the equipment.

(5) The Secretary may withdraw a certificate where—

- (a) compliant equipment is made available on the market, or
- (b) the European Commission requires the certificate to be withdrawn under Article 32(8) of the Directive.

(6) In this regulation—

“compliant equipment” means equipment that complies with applicable international standards.

### **Transfer of a ship**

**10.**—(1) Where a ship is transferred to the United Kingdom register, the Secretary of State must inspect, or have inspected, any relevant equipment to ensure—

- (a) the condition of such equipment corresponds to its safety certificates, and
- (b) the equipment complies with applicable international standards or is equivalent.

(2) Where, following inspection of equipment under paragraph (1), the Secretary of State is not satisfied that the equipment complies with the applicable international standards or is equivalent, the Secretary of State must direct the owner in writing to replace the equipment.

(3) Where, following inspection under paragraph (1), the Secretary of State considers that the equipment does not comply with applicable international standards but is equivalent, the Secretary of State must issue a certificate for that equipment, which must—

- (a) confirm the Secretary of State’s approval of the equipment,
- (b) specify any restrictions or conditions on the use of the equipment, and
- (c) be carried with the equipment.

(4) The Secretary of State may withdraw a certificate where a restriction or condition on the use of equipment is breached.

(5) In this regulation—

“relevant equipment” means any equipment—

- (a) to which regulation 5(1) applied at the time the equipment was placed on board the ship, and
- (b) that is specified in Annex 1 of Merchant Shipping Notice MSN [ ].

## PART 3

### EU Conformity Assessment Procedures

#### **Applications for grant of EU conformity approval**

**11.**—(1) A manufacturer requiring EU conformity approval of equipment must apply to a notified body in accordance with the procedures set out in Annex II (conformity assessment procedures) of the Directive.

(2) A manufacturer may not apply under paragraph (1) where an application for an EU conformity assessment has been made (whether by that manufacturer or another), in respect of that type of equipment, under these Regulations or in another Member State, and that application has not been withdrawn.

(3) An application under paragraph (1) must be—

- (a) in writing, and
- (b) accompanied by the documentation required by Annex II of the Directive.

(4) A manufacturer applying under paragraph (1) must comply with any requirement made in pursuance of Annex II of the Directive.

#### **Grant of EU conformity approval: obligations of notified bodies**

**12.**—(1) A notified body must—

- (a) decide whether to grant or refuse EU conformity approval in accordance with the provisions of Annex II of the Directive, and
- (b) produce an evaluation report recording the activities undertaken to reach a decision on an application made under Module B of Annex II of the Directive.

(2) Where a notified body decides to grant EU conformity approval, it must—

- (a) for the type approval of equipment under Module B of Annex II of the Directive, issue a type approval certificate containing the information specified in paragraph 6 of that module,
- (b) for approval of a quality system under Module D or E of Annex II of the Directive, notify the manufacturer of its decision in accordance with paragraph 3.3 of the respective module,
- (c) where verifying a product under Module F of Annex II of the Directive, issue a certificate of conformity in accordance with paragraph 4.2 of that module, or

- (d) where verifying a unit under Module G of Annex II of the Directive, issue a certificate of conformity under paragraph 4 of that module.
- (3) Where a notified body decides to refuse EU conformity approval, it must notify the manufacturer, giving detailed reasons for its decision.
- (4) A notified body must—
  - (a) periodically audit a quality system that it has approved, and
  - (b) provide the manufacturer with a report containing the results of the audit.
- (5) Where a notified body knows or has reason to believe that—
  - (a) equipment to which it has granted EU conformity approval no longer complies with applicable international standards, or
  - (b) a manufacturer has failed to comply with an obligation under regulation 21(1) to (7),it must—
  - (c) require the manufacturer to take immediate corrective measures to ensure that the equipment complies with applicable international standards, and
  - (d) where necessary, suspend or withdraw its approval for that equipment.
- (6) Following the grant of EU conformity approval, notified bodies must comply with the notification and provision of information requirements in article 24 and Annex II of the Directive.

#### **Amendments to EU conformity approvals**

- 13.**—(1) The manufacturer of equipment granted an EU type approval certificate by a notified body must notify that body of any changes that may affect the conformity of the equipment with applicable international standards or the conditions for validity of the certificate.
- (2) The manufacturer must notify the notified body that approved a quality system of any intended changes to that system.
- (3) Following receipt of a notification under paragraph (1) or (2), the notified body must determine whether an amendment to the conformity approval certificate or the approval of the quality system is required and notify the manufacturer accordingly.
- (4) An application for an approval to be amended must be—
  - (a) in writing, and
  - (b) accompanied by such documents as requested by the notified body.

#### **Certificates of conformity**

- 14.**—(1) A manufacturer must provide a declaration of conformity with all equipment for which EU conformity approval has been granted under regulation 12(2).
- (2) The declaration of conformity must be in the form specified in Annex III of Decision 768/2008/EC(a).
- (3) A copy of the declaration of conformity must be—
  - (a) provided by the manufacturer in a language or languages required by the flag Member State,
  - (b) kept with the equipment when it is placed on board a ship, and
  - (c) sent to the notified body which granted the type approval certificate.

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(a) Decision No.768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EC (OJ L218, 13.8.2008, p.82).

### **Affixing the conformity mark**

**15.**—(1) The manufacturer must, at the end of the production stage, affix the conformity mark to—

- (a) each item of equipment for which a declaration of conformity is required, or
- (b) a data plate attached to that equipment, and

where relevant, embed the conformity mark in the equipment's software.

(2) Where it is not possible or warranted due to the nature of the item of equipment to affix the conformity mark in accordance with paragraph (1), it must be affixed to—

- (a) the packaging of the item of the equipment,
- (b) a label on the item of the equipment or its packaging, or
- (c) a document distributed with the item of equipment.

(3) The conformity mark must be—

- (a) in the form specified in Annex I of the Directive,
- (b) affixed so that it is visible, legible and indelible for the expected life of the equipment, and
- (c) followed by—
  - (i) the identification number of the notified body which approved the equipment, where that body is involved in the production control phase, and
  - (ii) the last two digits of the year in which the mark was affixed.

(4) Where the number of the notified body is to be affixed under paragraph (3)(c)(i), it must be affixed by—

- (a) the notified body itself, or
- (b) the manufacturer on instruction of the notified body.

(5) No mark or inscription which is likely to mislead any person with regard to the meaning or the graphics of the mark may be affixed.

### **Electronic tags**

**16.**—(1) For equipment specified by the Secretary of State, a manufacturer may use an electronic tag instead of, or in addition to, affixing a conformity mark in accordance with regulation 15.

(2) An electronic tag must comply with technical requirements specified by the Secretary of State.

(3) The Secretary of State will determine the dates from which an electronic tag may be used instead of, or in addition to, affixing a conformity mark in accordance with paragraphs (5) and (6) of Article 11 of the Directive.

### **Authorised Representatives**

**17.**—(1) A manufacturer may appoint by written mandate an authorised representative to carry out on its behalf any of the obligations referred to—

- (a) in paragraph 10 of Module B of Annex II to the Directive,
- (b) in paragraphs 8 of Modules D and E of Annex II to the Directive,
- (c) in paragraph 8 of Module F of Annex II to the Directive, except for paragraphs 2 and 5.1 of that Module, and
- (d) in paragraph 6 of Module G of Annex II to the Directive.

(2) An obligation delegated to an authorised representative must be specified in the mandate.

(3) Where a manufacturer of equipment is not located in the territory of at least one Member State of the European Union, that manufacturer must appoint an authorised representative for the European Union by written mandate.

(4) A written mandate must allow to an authorised representative to carry out on behalf of the manufacturer at least the obligations under regulation 22(1)(c) and 24(2).

## PART 4

### Other Conformity Assessment Procedures

#### **Application for grant of conformity approval**

**18.**—(1) A manufacturer requiring conformity approval for equipment specified in Annex 2 of Merchant Shipping Notice MSN [ ] must apply to a nominated body.

(2) An application under paragraph (1) must be—

- (a) in writing, and
- (b) accompanied by the documentation required by Part II of Merchant Shipping Notice MSN [ ].

#### **Grant of conformity approval: obligations of nominated bodies**

**19.**—(1) A nominated body must decide whether to grant or refuse conformity approval for equipment in accordance with the requirements of Part II of Merchant Shipping Notice MSN [ ].

(2) Where a nominated body decides to grant conformity approval for equipment, it must issue a certificate containing the information specified in Part II of Merchant Shipping Notice MSN [ ].

(3) Where a nominated body decides to refuse conformity approval, it must notify the manufacturer, giving detailed reasons for its decision.

## PART 5

### Obligations of Economic Operators

#### **Application of Part 5**

**20.** This Part applies only to equipment to which regulation 5(1) applies that is specified in Annex 1 of Merchant Shipping Notice MSN [ ].

#### **Obligations of Manufacturers**

**21.**—(1) A manufacturer must—

- (a) ensure an EU conformity assessment is carried out using one of the procedures referred to in Article 15(2) of the Directive,
- (b) ensure equipment is marked in accordance with regulation 15, and
- (c) keep the technical documentation specified in Annex II of the Directive and the EU declaration of conformity for the relevant period.

(2) A manufacturer must undertake to fulfil any obligations arising from a quality system approved under regulation 12(2)(b) and ensure that quality system is maintained.

(3) A manufacturer must ensure—

- (a) their name,
- (b) a type, batch or serial number or other element allowing identification of their product,
- (c) their registered trade name or trade mark, and

(d) the address at which they can be contacted,  
is on any equipment or, where that is not possible, on the packaging of that equipment or in a document accompanying that equipment or both, as appropriate.

(4) A manufacturer must provide with any equipment—

- (a) clear instructions and all necessary information for that equipment to be installed and operated safely, and
- (b) any other documentation required by international instruments.

(5) Where a manufacturer knows or has reason to believe that equipment does not comply with applicable international standards, that manufacturer must—

- (a) take immediate corrective measures to ensure that the equipment complies with applicable international standards,
- (b) withdraw the equipment from the market, or
- (c) issue a recall of the equipment.

(6) Where a manufacturer considers that equipment presents a risk, that manufacturer must immediately inform the competent national authorities of EU Member States of the risk, including providing details of any non-compliance with applicable international standards and any action taken in accordance with paragraph (5).

(7) A manufacturer must—

- (a) allow a notified body access to its premises to enable that body to assess a quality system that it approved, and
- (b) provide that body with any information that it requires for the assessment.

(8) A manufacturer must allow a competent national authority access to its premises for market surveillance purposes in accordance with article 19(1) of Regulation (EC) No. 765/2008.

(9) On request by a competent national authority, a manufacturer must provide samples of equipment approved by a notified body or access to such samples at the manufacturer's own cost.

(10) This regulation applies to an importer or a distributor as if that person were a manufacturer where the importer or distributor—

- (a) places equipment on the market or on board a ship under the importer or distributor's own name or trademark, or
- (b) modifies equipment already placed on the market or on board a ship in such a way that compliance with applicable international standards may be affected.

(11) In this regulation—

“clear instructions” means instructions in a form and language which the intended user easily understands.

### **Obligations of importers**

**22.—**(1) An importer which places on the market or on board a UK ship any equipment affixed with a conformity mark under regulation 15 must ensure that—

- (a) their name,
- (b) registered trade name or trade mark, and
- (c) the address at which they can be contacted,

is on the equipment or, where that is not possible, on the packaging of the equipment or in a document accompanying the equipment or both, as appropriate.

### **Obligations of economic operators**

**23.—**(1) On receipt of a request from a market surveillance authority, an economic operator must identify any economic operator—

- (a) who has supplied it with equipment, or
  - (b) to whom it has supplied equipment,
- during the relevant period.

(2) On receipt of a reasoned request from a competent national authority, an economic operator must—

- (a) provide that authority, in a language that it easily understands, all information and documents necessary to show that the equipment meets applicable international standards; and
- (b) cooperate with that authority in any action it takes to eliminate risks posed by that equipment.

## PART 6

### Enforcement

#### **Restricting, suspending or withdrawing EU conformity approval**

**24.**—(1) A notified body may by giving notice to the manufacturer restrict, suspend or withdraw EU conformity approval of equipment or a quality system where a manufacturer fails—

- (a) to take corrective measures where required under regulation 12(5)(c), or
- (b) to comply with an obligation in regulation 21(1) to (7).

(2) Before issuing a notice under paragraph (1), a notified body must give the manufacturer an opportunity to make written representations.

(3) A notice under paragraph (1) must—

- (a) be in writing,
- (b) specify the date on which it is to take effect, and
- (c) specify the grounds for the decision.

(4) The notified body must send a copy of any notice given under paragraph (1) to the Secretary of State.

#### **Sample checks and testing of equipment**

**25.** The Secretary of State may carry out, or have carried out, sample checks on equipment marked in accordance with regulation 15 which is placed on the market or supplied for use in the United Kingdom, but not yet placed on board a ship to ensure that the equipment complies with the applicable international standards.

#### **Defective Equipment**

**26.**—(1) The Secretary of State may—

- (a) direct an economic operator to withdraw or recall defective equipment from the market,
- (b) prohibit or restrict the extent to which an economic operator may place defective equipment on the market, or
- (c) prohibit or restrict the use of defective equipment on ships.

(2) Before issuing a direction, prohibition or restriction, the Secretary of State must notify the economic operator in writing and give the economic operator a reasonable period of time, not being less than 10 calendar days, to make written representations.

(3) The Secretary of State may withdraw or vary a direction, prohibition or restriction.

(4) In this regulation—

“defective equipment” means equipment to which regulation 5(1) applies that is specified in Annex 1 of Merchant Shipping Notice MSN [ ] and complies with applicable international standards, but which, in the opinion of the Secretary of State—

- (a) may compromise the health and safety of the ship’s crew, passengers or other persons, or
- (b) adversely affect the marine environment.

### **Offences and penalties**

**27.**—(1) The owner and master of a ship are both guilty of an offence, where—

- (a) equipment is placed on a ship otherwise than in compliance with applicable international or UK standards under regulation 5, or
- (b) any of the restrictions or conditions imposed by a certificate issued under regulations 7(3), 8(3) or 10(3) are not complied with.

(2) It is an offence for a person—

- (a) to affix a conformity mark to equipment which has not been granted EU conformity approval,
- (b) to fail to comply with regulations 14 and 15,
- (c) to forge, counterfeit or otherwise alter, deface or remove any conformity mark or identification number affixed to equipment under these Regulations,
- (d) to fail to comply with a direction, prohibition or restriction given under regulation 26,
- (e) to fail to fulfil an obligation under regulation 21, 22 or 23.

(3) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction—
  - (i) in England and Wales to a fine, and
  - (ii) in Scotland and Northern Ireland to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

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

(5) Where the affairs of the body corporate are managed by its members, paragraph (4) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if that member were a director of the body corporate.

(6) Where an offence under this regulation is committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of that offence.

(7) It is a defence in proceedings for an offence under this regulation for a person to prove that all reasonable steps were taken to avoid committing the offence.

### **Powers to detain**

**28.**—(1) A ship is liable to be detained where a surveyor of ships is satisfied that there is or has been a failure—

- (a) to comply with regulation 5(1), or
- (b) by the owner of a ship to comply with a direction issued under regulation 10(2).

(2) Section 284(1) to (6) and (8) of the Act (enforcing detention of ship)(a) applies to a ship which is liable to be detained under this regulation as if references to detention of a ship under the Act were references to detention of the ship in question under this regulation.

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

- (a) states that a surveyor of ships is of the opinion that, in relation to that ship, there is a failure to comply with the regulation 5(1) or a direction issued under regulation 10(2),
- (b) details the reasons that the surveyor is detaining the ship, and
- (c) requires with the terms of the notice to be complied with until the ship is released.

(4) Section 96 and 97 of the Act (which relate to arbitration and compensation in connection with detention of a ship) apply in relation to a detention notice under this regulation as those sections apply to a detention notice under section 95 of the Act with the following modifications—

- (a) the arbitrator must have regard in coming to a decision to any other matters not specified in the detention notice which appears to be relevant to whether or not the ship was liable to be detained under paragraph (1), and
- (b) the arbitrator must state in the decision whether or not there was a valid basis for detention of the ship.

### **Application of powers of inspectors in relation to Government ships**

**29.** Section 258 to 266 of the Act(b) apply to these Regulations as if they were for all purposes made under section 85 of the Act and accordingly those sections apply in relation to Government ships.

## **PART 7**

### **Miscellaneous**

#### **Market Surveillance**

**30.** The Secretary of State must carry out market surveillance of equipment to which regulation 5(1) applies and that is specified in Annex 1 of Merchant Shipping Notice MSN [ ] to ensure that equipment complies with applicable international standards in accordance with the EU market surveillance framework set out in Chapter III of Regulation (EC) No 765/2008 and the provisions of article 25 of the Directive.

#### **Review**

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

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonably practicable, have regard to how the Directive is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the Directive and by these Regulations,

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(a) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 1, paragraph 5.

(b) These sections provide powers to inspect ships and their equipment, powers of inspectors in relation to premises and ships, for the service of improvement and prohibition notices and their reference to arbitration, compensation for invalid prohibition notices and offences for failing to comply with improvement and prohibition notices.

- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation must afterwards be published at intervals not exceeding five years.

### **Amendment of Regulations**

**32.** The Regulations specified in the Schedule are amended in accordance with the Schedule.

### **Revocations**

**33.—**(1) The following instruments are revoked—

- (a) The Merchant Shipping (Delegation of Type Approval) Regulations 1996**(a)**, and
- (b) The Merchant Shipping (Marine Equipment) Regulations 1999**(b)**.

(2) Notwithstanding the revocation of the instruments specified in paragraph (1), they continue in force for any equipment placed on board a ship prior to the coming into force of these Regulations.

Signed by authority of the Secretary of State for Transport

Date

Minister of State  
Department for Transport

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**(a)** S.I. 1996/147 as amended by S.I. 1997/2971.

**(b)** S.I. 1999/1957 as amended by S.I. 2001/1638, 2004/302, 2004/1266, 2009/2021 and 2011/1043.

# THE SCHEDULE

Regulation 32

## Amendment of Regulations

### **The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996**

1. In regulation 1 of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 (interpretation)(a), for the definition of “approved”, substitute—

““approved” means, in relation to an item of equipment, approved under the Merchant Shipping (Marine Equipment) Regulations 2016;”.

### **The Merchant Shipping (Crew Accommodation) Regulations 1997**

2. In regulation 36 of the Merchant Shipping (Crew Accommodation) Regulations 1997 (equipment to be of an approved type)(b), for paragraph (2), substitute—

“(2) In this regulation—

“approved” means, in relation to an item of equipment, approved under the Merchant Shipping (Marine Equipment) Regulations 2016.”

### **The Merchant Shipping (Fire Protection: Small Ships) Regulations 1998**

3. In regulation 1 of the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998 (Interpretation)(c), for the definition of “approved”, substitute—

““approved” means, in relation to an item of equipment, approved under the Merchant Shipping (Marine Equipment) Regulations 2016;”.

### **The Merchant Shipping (Fire Protection: Large Ships) Regulations 1998**

4. In regulation 1 of the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998 (Interpretation)(d), for the definition of “approved”, substitute—

““approved” means, in relation to an item of equipment, approved under the Merchant Shipping (Marine Equipment) Regulations 2016;”.

### **The Merchant Shipping (Radio Installations) Regulations 1998**

5. In regulation 6(4) of the Merchant Shipping (Radio Installations) Regulation 1998 (performance standards)(e), for “1999” substitute “2016”.

### **The Merchant Shipping (Life-Saving Appliances for Passenger Ships other than Ships of Classes III to VI(A)) Regulations 1999**

6. In regulation 83 of the Merchant Shipping (Life-Saving Appliances for Passenger Ships other than Ships of Classes III to VI(A)) Regulations 1999(f), for paragraph (1), substitute—

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- (a) S.I. 1996/2154. The definition of “approved” was substituted by S.I. 1999/1957, regulation 3, Schedule 1, paragraph 5.  
(b) S.I. 1997/1508.  
(c) S.I. 1998/1011. The definition of “approved” was substituted by S.I. 1999/1957, regulation 3, Schedule 1, paragraph 3.  
(d) S.I. 1998/1012. The definition of “approved” was substituted by S.I. 1999/1957, regulation 3, Schedule 1, paragraph 2.  
(e) S.I. 1998/2070. Regulation 6(4) was inserted by S.I. 1999/1957, regulation 3, Schedule 1, paragraph 1.  
(f) S.I. 1999/2721.

“(1) Life-saving appliances and arrangements required by these Regulations shall be of a type which has been approved under the Merchant Shipping (Marine Equipment) Regulations 2016.”.

**The Merchant Shipping (Life-Saving Appliances for Passenger Ships of Classes III to VI(A)) Regulations 1999**

7. In regulation 10 of the Merchant Shipping (Life-Saving Appliances for Passenger Ship of Classes III to VI(A)) Regulations 1999 (approval and replacement of appliances and arrangements)(a), for paragraph (1), substitute—

“(1) Life-saving appliances and arrangements required by these Regulations shall be of a type which has been approved under the Merchant Shipping (Marine Equipment) Regulations 2016.”.

**The Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999**

8. In Schedule 4 to the Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999(b)—

- (a) In paragraph 39, for “1999” substitute “2016”, and
- (b) In paragraph 59, for “Council Directive 96/98/EC on marine equipment, as amended by Commission Directives 98/35/EC, 2001/53/EC and 2002/75/EC”, substitute “Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC(c)”.

**The Merchant Shipping (Radio) (Fishing Vessels) Regulations 1999**

9. In regulation 7(1) of the Merchant Shipping (Radio) (Fishing Vessels) Regulations 1999 (performance standards)(d), for paragraph (c), substitute—

“(c) in either case, be of a type approved under the Merchant Shipping (Marine Equipment) Regulations 2016;.

**The Merchant Shipping (Fire Protection) Regulations 2003**

10. In regulation 7 of the Merchant Shipping (Fire Protection) Regulations 2003 (approvals)(e), after paragraph (4), add—

“(5) For equipment, approval must be granted by a notified or nominated body under the Merchant Shipping (Marine Equipment) Regulations 2016.”

**The Merchant Shipping (High Speed Craft) Regulations 2004**

11. In regulation 6(4) of the Merchant Shipping (High Speed Craft) Regulations 2004 (high speed craft code)(f), for “1999” substitute “2016”.

**The Merchant Shipping (Fees) Regulations 2006**

12. In the Table in Schedule 1 to the Merchant Shipping (Fees) Regulations 2006 (fees under the Merchant Shipping Act 1995), for the entry relating to the Merchant Shipping (Marine Equipment) Regulations 1999, substitute—

- (a) in column 1, “the Merchant Shipping (Marine Equipment) Regulations 2016”, and

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(a) S.I. 1999/2723.  
(b) S.I. 1999/2998.  
(c) O.J. L 257, 28.8.2014, p.146.  
(d) S.I. 1999/3210.  
(e) S.I. 2003/2950.  
(f) S.I. 2004/302.

(b) in column 2, “S.I. 2016/ [add]”.

### **The Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006**

13. In the Table in Schedule 1 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 (instruments which give effect to Community Directives concerning the safety of products)(a), omit the entry for the Merchant Shipping (Marine Equipment) Regulations 1999 and, in the appropriate place, add—

(a) in column 1, “The Merchant Shipping (Marine Equipment) Regulations 2016”, and

(b) in column 2, “S.I. 2016/ [add]”.

### **The Legislation and Regulatory Reform (Regulatory Functions) Order 2007**

14. In Part 2 of the Schedule to the Legislation and Regulatory Reform (Regulatory Functions) Order 2007 (regulatory functions)(b), under the heading “Marine Transport”, omit “Merchant Shipping (Marine Equipment) Regulations 1999 and, in the appropriate place, add “Merchant Shipping (Marine Equipment) Regulations 2016”.

### **The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008**

15. In regulation 21(1)(a) of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 (sewage systems)(c), for “1999” substitute “2016”.

### **The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008**

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

(2) In regulation 21(7) (nitrogen oxides), for “Merchant Shipping Notice 1734(M + F) or Merchant Shipping Notice 1735 (M + F) as appropriate”, substitute “the Merchant Shipping (Marine Equipment) Regulations 2016”.

(3) In regulation 24 (shipboard incineration), for “Merchant Shipping Notice 1734 (M + F)”, wherever occurring, substitute “the Merchant Shipping (Marine Equipment) Regulations 2016”.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L257, 28.8.2014, p. 146) (“the Directive”).

*Part 1 (regulations 1 to 4)* contains introductory provisions and a power to designate notified and nominated bodies. *Regulation 2* contains interpretation provisions. *Regulation 3* sets out the manner in which the Regulations apply. *Regulation 4* gives the Secretary of State a power to designate notified and nominated bodies to carry out conformity assessment procedures.

*Part 2 (regulations 5 to 10)* provides for requirements to apply to equipment placed on board a ship and for exemptions from those requirements.

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(a) S.I. 2006/2183.

(b) S.I. 2007/3544. There are amendments to his Order, but none is relevant.

(c) S.I. 2008/3257.

(d) S.I. 2008/2924.

*Regulation 5* requires equipment placed on board ships to meet the design, construction and performance standards specified in Annexes 1 to 3 of Merchant Shipping Notice MSN [ ] and to be approved in accordance with the conformity assessment procedures in Parts 3 and 4 of the Regulations. *Regulation 6* sets out the manner in which regulations 7 to 9 apply. *Regulations 7 to 9* enables the Secretary of State to allow equipment that does not meet applicable international standards to be placed on board a ship in certain specified circumstances, subject to any restrictions or conditions imposed by him. *Regulation 10* requires the Secretary of State to inspect equipment on a ship that transfers to the UK Register to ensure the equipment on board complies with its safety certificates and with applicable international standards or is equivalent.

*Part 3 (regulations 11 to 17)* makes provision for EU conformity procedures and related matters.

*Regulation 11* provides for applications for EU conformity approval by reference to Annex II of the Directive. *Regulation 12* provides for the approval procedure and prescribes (also by reference to Annex II of the Directive) the requirements that must be fulfilled for the grant of EU conformity approval. *Regulation 13* provides for amendment of conformity approvals. *Regulations 14 and 15* require manufacturers of equipment that is type approved to issue certificates of conformity and affix conformity marks as prescribed. *Regulation 16* allows the Secretary of State to prescribe the technical requirements for and the use of electronic tags. *Regulation 17* permits manufacturers to delegate some of their obligations to an authorised representative and prescribes the conditions under which they may do so.

*Part 4 (regulations 18 and 19)* makes provision for conformity approval of equipment on UK ships to which EU conformity approval procedures do not apply and for related matters.

*Regulation 18* provides for application for conformity approval of equipment by reference to Part II of Merchant Shipping Notice [], and *regulation 19* provides for the conformity approval procedure and prescribes, by reference to Merchant Shipping Notice [ ], the procedural and technical requirements which must be fulfilled for the grant of conformity approval.

*Part 5 (regulations 20 to 23)* sets out the obligations on economic operators.

*Regulation 20* sets out the manner in which regulations 21 to 23 apply. *Regulation 21* imposes obligations of manufactures during and after the EU conformity approval process and applies these obligations to distributors and importers in specified circumstances. *Regulation 22* imposes an obligation on importers which place equipment on the market. *Regulation 23* imposes obligations on economic operators generally to comply with certain requests from market surveillance authorities and competent national authorities.

*Part 6 (regulations 24 to 29)* makes provision for enforcement.

*Regulation 24* enables notified bodies to suspend or withdraw their EU conformity approvals in certain circumstances. *Regulations 25* allows the Secretary of State to carry out sample checks of equipment for market surveillance purposes. *Regulation 26* enables the Secretary of State to take action where equipment complies with applicable international standards, but is nonetheless considered a threat to the safety of persons on board a ship or to the marine environment. *Regulation 27* creates offences and provides penalties for breach of provisions of the Regulations. *Regulation 28* provides for the detention of ships in certain circumstances. *Regulation 29* enables the enforcement powers in sections 258 to 266 of the Merchant Shipping Act 1995 to be used in relation to Government ships.

*Part 7 (regulations 30 to 33)* contains miscellaneous provisions.

*Regulation 30* requires the Secretary of State to carry out market surveillance in accordance with the EU market surveillance framework. *Regulation 31* requires the Secretary of State to review the operation and effect of the Regulations and publish a report within 5 years after they come into force and every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should continue in force with or without amendment. A further instrument would be needed to revoke the Regulations. *Regulation 32* introduces the Schedule which make consequential amendments to other legislation. *Regulation 33* revokes the Merchant

Shipping (Delegation of Type Approval) Regulations 1996 and the Merchant Shipping (Marine Equipment) Regulations 1999, and makes a savings provision in respect of the revoked Regulations for equipment placed on board a ship before the Regulations come into force.

A full impact assessment of the effect of these Regulations on the cost to business has been prepared and copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG. A copy has been placed in the library of each House of Parliament. A copy of the Transposition Note is also available from the Maritime and Coastguard Agency. These documents are also annexed to the Explanatory Memorandum which is available on the website, [www.legislation.gov.uk](http://www.legislation.gov.uk). Merchant Shipping Notices can be obtained from the Marine Information Centre of the Maritime and Coastguard Agency. A copy of the Directive is available on the website, <http://eur-lex.europa.eu>, and copies of the international instruments can be obtained from the International Maritime Organisation, 4 Albert Embankment, London, SE1 7SR.