

2008 No.

MARINE POLLUTION

**The Merchant Shipping (Ship-to-Ship Transfers) Regulations
2008**

<i>Made</i>	- - - -	2008
<i>Laid before Parliament</i>		2008
<i>Coming into force</i>	- -	2008

The Secretary of State, in exercise of the powers conferred by section 130 of the Merchant Shipping Act 1995(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2008 and shall come into force on [] 2008.

Interpretation

2. In these Regulations—

“application” means an application for environmental consent submitted by a harbour authority to the Secretary of State in accordance with regulation 3(3)(b);

“bunkering operation” means the transfer between ships of a substance for consumption by the engines of the ship receiving the substance;

“cargo transfer” means the transfer between ships of goods or substances which are transported by either or both of the ships for pay and does not include a bunkering operation;

“the consultation body or bodies” means—

(a) such of

(i) Natural England,

(ii) the Countryside Council for Wales,

(iii) Scottish National Heritage and

(iv) the Council for Nature Conservation and the Countryside

as the Secretary of State considers likely to have an interest in a programme of transfers by reason of their responsibilities;

(b) any relevant authority; and

(c) such other bodies as the Secretary of State considers likely to have an interest in a programme of transfers (whether by virtue of their having specific environmental responsibilities under an enactment or otherwise);

(a) 1995 c. 21.

“environmental consent” means the approval by the Secretary of State of a programme of transfers in accordance with these Regulations on the basis of an assessment of the programme of transfer’s effects on the environment;

“environmental decision” means a decision whether to give environmental consent and (where the decision is to give consent) as to the terms on which to do so;

“European site” has the meanings given to “European site” and “European marine site” by Regulations 2 and 10 of the Conservation (Natural Habitats, &c) Regulations 1994(a);

“harbour authority” has the meaning given to it in section 57(1) of the Harbours Act 1964(b);

“harbour authority waters” means waters regulated or managed by a harbour authority, excluding any areas outside a harbour over which a harbour authority exercises control in accordance with the Pilotage Act 1987(c) by virtue of an order of the Secretary of State made under section 1(3)(a) of that Act;

“the Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora(d);

“hazardous substance” has the meaning given to it by paragraph 22(2) of Schedule 3A to the Merchant Shipping Act 1995(e);

“offshore installation” means—

- (a) an offshore installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995(f) which is not a ship; or
- (b) a renewable energy installation within the meaning of section 104 of the Energy Act 2004(g);

“programme of transfers” means a planned cargo transfer, or a planned series of cargo transfers, in a specified location or locations.

Prohibited transfers

3.—(1) Subject to paragraphs (2), (3) and (4) and Regulation 4, a cargo transfer or bunkering operation consisting wholly or mainly of a hazardous substance must not be carried out in United Kingdom waters unless the ships carrying out the cargo transfer or bunkering operation are within harbour authority waters.

(2) Subject to regulations 4 and 6, a cargo transfer within harbour authority waters, consisting wholly or mainly of a hazardous substance, may only be carried out as part of a programme of transfers which has been authorised by the relevant harbour authority.

(3) Before a harbour authority may authorise a programme of transfers the harbour authority must—

- (a) determine whether the programme of transfers would be likely to have a significant effect on any European site in accordance with the procedure set out in Schedule 1; and
- (b) obtain the environmental consent of the Secretary of State to the programme of transfers by submitting an application in accordance with the procedure set out in Schedule 2.

(4) Paragraphs (1) to (3) of this regulation do not apply to a cargo transfer or bunkering operation—

- (a) between a ship and an offshore installation; or
- (b) to or from a warship, naval auxiliary ship or other ship owned or operated by a State and used solely, for the time being, on government non-commercial service.

(a) S.I. 1994/2716.

(b) 1964 c. 40.

(c) 1987 c. 21.

(d) O.J. No. L 206, 22.7.92, p.7.

(e) 1995 c. 21; Schedule 3A was inserted by the Marine Safety Act 2003 (c. 16), section 1.

(f) S.I. 1995/738.

(g) 2004 c. 20.

Exemptions

4.—(1) Subject to paragraph (3), the Secretary of State may exempt a cargo transfer or bunkering operation from the provisions of regulation 3(1).

(2) Such exemption may be subject to such conditions as the Secretary of State considers appropriate.

(3) Where a cargo transfer or bunkering operation is likely in the opinion of the Secretary of State to have a significant effect on a European site, before an exemption under paragraph (1) may be granted, the cargo transfer or bunkering operation must undergo an appropriate assessment of its implications for the European site, in view of the conservation objectives of the site, in accordance with the procedure for assessment of a programme of transfers set out in Schedules 1 and 2, save that—

- (a) references in Schedules 1 and 2 to the harbour authority shall be taken as references to the person who applied for the exemption; and
- (b) references in Schedules 1 and 2 to the programme of transfers shall be taken as references to the proposed exempt cargo transfer or bunkering operation.

(4) Where paragraph (3) applies, regulation 5(2) apart from paragraphs (a) and (b) applies to the person who applied for the exemption as if that person were a harbour authority.

Offences

5.—(1) If a cargo transfer or bunkering operation is carried out in contravention of these Regulations, the owner, the manager and the master of each ship carrying out the cargo transfer or bunkering operation is guilty of an offence.

(2) A harbour authority which—

- (a) authorises a programme of transfers without having complied with regulation 3(3);
- (b) fails to take all reasonable steps to prevent a cargo transfer which is neither part of an authorised programme of transfers nor exempted under regulation 4; or
- (c) knowingly or recklessly provides false information in an application

is guilty of an offence.

(3) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding £25,000 and on conviction on indictment to a fine.

(4) Where a person is charged with an offence under (1), (2a) or 2(b), it shall be a defence for the person charged to prove that the cargo transfer or bunkering operation was for one or more of the following purposes—

- (a) securing the safety of any ship;
- (b) preventing damage to any ship or cargo;
- (c) saving life;
- (d) preventing pollution

unless the court is satisfied that the cargo transfer or bunkering operation was not necessary for any of those purposes and was not a reasonable step to take in the circumstances.

Transitional provision

6. A programme of transfers operational within harbour authority waters on the date these Regulations come into force is deemed to have environmental consent for the purposes of regulation 3(3)(b) until either—

- (a) the programme of transfers comes to an end;
- (b) the determination of an application in respect of the programme of transfers; or
- (c) the expiry of two years starting from the date these Regulations come into force,

whichever is the soonest.

Signed by authority of the Secretary of State for Transport

Parliamentary Under Secretary of State
Department for Transport

SCHEDULE 1

Regulation 3(3)(a)

Initial determination of potential effects on European sites

1. The harbour authority must—

(a) determine; and

(b) provide to the Secretary of State a written statement with reasons stating

whether a programme of transfers is likely to have a significant effect on any European site, either individually or in combination with other plans or projects.

2.—(1) If the harbour authority determines that the programme of transfers is not likely to have a significant effect on any European site the Secretary of State must, on receipt of the harbour authority's application, review that determination in the light of the environmental statement and any further information provided.

(2) If, following such review, the Secretary of State determines that the programme of transfers is likely to have a significant effect on any European site, the Secretary of State must give notice to the harbour authority to that effect.

3.—(1) If the harbour authority or the Secretary of State has determined that the programme of transfers is likely to have a significant effect on any European site, the procedure set out in Schedule 2 shall be modified as follows.

(2) Having considered the environmental statement provided in accordance with paragraph 1(1) of Schedule 2, the Secretary of State must make an appropriate assessment of the implications of the programme of transfers for the European site, in view of the conservation objectives of the site, for the purposes of Article 6 of the Habitats Directive.

(3) Where the Secretary of State determines that the programme of transfers will adversely affect the integrity of the site, the Secretary of State may not grant environmental consent unless the Secretary of State is satisfied that there are no alternative solutions and the programme of transfers must proceed in view of imperative reasons of overriding public interest which, subject to sub-paragraph (4), may be of a social or economic nature.

(4) Where the European site hosts a priority natural habitat type or a priority species as defined in Article 1 of the Habitats Directive, the reasons referred to in sub-paragraph (3) must be either—

(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or

(b) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

Procedure for environmental consents

Application

1.—(1) The application shall contain—

- (a) a chart or map (or both) sufficient to identify the locations of the operations comprised in the programme of transfers and the extent of any onshore infrastructure alterations which the programme of transfers would involve;
- (b) a description of the programme of transfers, including—
 - (i) the types of substances to be transferred;
 - (ii) the quantities of each substance to be transferred;
 - (iii) the frequency of transfers; and
 - (iv) the types of ship to be used to carry out the transfers; and
- (c) an environmental statement in respect of the programme of transfers which—
 - (i) is in writing; and
 - (ii) contains the information specified in paragraph 2.

(2) The harbour authority must comply with any reasonable request made by the Secretary of State as to—

- (a) the format in which the harbour authority must provide the material referred to in subparagraph (1);
- (b) the number of copies of the material in that format that the harbour authority must provide to it; and

until this has been done the Secretary of State need not deal further with, or exercise any functions under these Regulations in relation to, the application.

Environmental statement

2.—(1) The environmental statement must contain—

- (a) a description of the aspects of the environment likely to be significantly affected by the programme of transfers, including—
 - (i) human beings, fauna and flora;
 - (ii) soil, water, air, climate and the landscape;
 - (iii) material assets and the cultural heritage; and
 - (iv) the interaction between any two or more of the things mentioned in the subparagraphs (i) to (iii);
- (b) a description, complying with paragraph (2), of the likely significant effects of the programme of transfers on the environment resulting from—
 - (i) the nature of the activities to be carried out and the manner in which they are to be carried out;
 - (ii) the use of natural resources;
 - (iii) the emission of pollutants;
 - (iv) the creation of nuisances; and
 - (v) the elimination of waste;
- (c) the forecasting methods used by the harbour authority to assess the main effects that the programme of transfers is likely to have on the environment;

- (d) a description of the measures envisaged to prevent or reduce, and where possible offset, any significant adverse effects of the programme of transfers on the environment, including, if appropriate, any proposed changes to the harbour authority's oil pollution emergency plan maintained in accordance with regulation 4 of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation) Regulations 1998(a);
 - (e) if applicable, an outline of the main alternatives to the programme of transfers studied by the harbour authority and an indication of the main reasons for its choice, taking into account the environmental effects of those alternatives and the programme of transfers;
 - (f) a non-technical summary of the information provided under paragraphs (a) to (e); and
 - (g) any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any information specified in paragraphs (a) to (e).
- (2) The description referred to in sub-paragraph (1) must cover—
- (a) direct and indirect effects;
 - (b) secondary effects;
 - (c) cumulative effects;
 - (d) short-term, medium-term and long-term effects;
 - (e) permanent and temporary effects; and
 - (f) positive and negative effects.

Provision of further information

- 3.—(1) Where the Secretary of State reasonably considers that—
- (a) further information is required for the proper consideration of the likely environmental effects of the proposed programme of transfers covered by the application, and
 - (b) the harbour authority is (or should be) able to provide such information,

the Secretary of State must notify the harbour authority in writing of the matters on which further information is required.

(2) The Secretary of State need not deal further with, or exercise any functions under these Regulations in relation to, the application until any further information required in accordance with sub-paragraph (1) has been provided to the Secretary of State.

Consultation and publicity

- 4.—(1) The Secretary of State must either—
- (a) supply the following material to the consultation body or bodies—
 - (i) a copy of the application;
 - (ii) a copy of the environmental statement;
 - (iii) a copy of any further information supplied by the harbour authority to the Secretary of State; and
 - (iv) a letter stating that any representations in response to consultation regarding the application should be made in writing to the Secretary of State, at an address specified by the Secretary of State, within 42 days from the date of the letter (or such longer period as may be agreed between the consultation body or bodies and the Secretary of State); or
 - (b) direct the harbour authority to do so.
- (2) The Secretary of State must either—
- (a) publicise the application, the environmental statement and (where applicable) that further information has been provided—

(a) S.I. 1998/1056.

- (i) by publishing, in two successive weeks, a notice containing the information set out in sub-paragraph (3) in such newspapers or other publications as the Secretary of State considers appropriate; and
 - (ii) in such other manner as the Secretary of State considers appropriate; or
 - (b) direct the harbour authority to do so.
- (3) The information referred to in sub-paragraph (2)(a) is—
- (a) the harbour authority's name and correspondence address;
 - (b) a statement that an environmental statement has been submitted in connection with an application and that further information (if any) has been provided to the Secretary of State;
 - (c) a description of the proposed programme of transfers, including—
 - (i) the types of substances to be transferred;
 - (ii) the quantities of each substance to be transferred;
 - (iii) the frequency of transfers; and
 - (iv) the types of ship to be used to carry out the transfers;
 - (d) the address of an office of the Secretary of State or other place nominated by the Secretary of State at which copies of the application and environmental statement and the further information (if any) may be inspected free of charge at all reasonable hours within 42 days beginning with the date of publication of the notice;
 - (e) the address from which copies of the application and environmental statement and the further information (if any) may be obtained from the Secretary of State and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying), of the charge; and
 - (f) a statement that any person wishing to make representations regarding the application and environmental statement and the further information (if any) should make them in writing to the Secretary of State at an address specified by the Secretary of State, within 42 days beginning with the date of publication of the notice.
- (4) The Secretary of State need not deal further with, or exercise any functions under these Regulations in relation to, the application until
- (a) the harbour authority has complied with any directions made in accordance with sub-paragraphs (1)(b) and (2)(b); and
 - (b) the expiry of
 - (i) the consultation period, including any extension agreed in accordance with sub-paragraph (1)(a)(iv); and
 - (ii) the period for the making of representations in accordance with sub-paragraph (3)(f).

Environmental decision, notification and publication

- 5.—(1) In reaching an environmental decision, the Secretary of State must—
- (a) do so on the basis of the following—
 - (i) the application;
 - (ii) the environmental statement;
 - (iii) any further information provided by the harbour authority pursuant to a notification under paragraph 3;
 - (iv) any representations received in accordance with the statement referred to in paragraph 4(3)(f);
 - (v) any representations received in accordance with the letter referred to in paragraph 4(1)(a)(iv); and

- (b) take into account the direct and indirect effects of the proposed programme of transfers on—
 - (i) human beings, fauna and flora;
 - (ii) soil, water, air, climate and the landscape;
 - (iii) material assets and the cultural heritage; and
 - (iv) the interaction between any two or more of the things mentioned in sub-paragraphs (i) to (iii).
- (2) The Secretary of State must send written confirmation of an environmental decision to—
 - (a) the harbour authority;
 - (b) any person from whom the Secretary of State received representations in accordance with the statement referred to in paragraph 4(3)(f); and
 - (c) any of the consultation bodies which responded to the consultation in accordance with the letter referred to in paragraph 4(1)(a)(iv).
- (3) The written confirmation must include—
 - (a) a reference to the environmental information that the Secretary of State has taken into consideration;
 - (b) the main reasons and considerations on which the environmental decision was based, including any opinion of the European Commission on matters of overriding public interest referred to in paragraph 3(3) of Schedule 1;
 - (c) if the environmental decision involves giving environmental consent, a description of any measures that must be taken in consequence of the environmental decision to avoid or reduce, and where possible offset, any adverse effects of the programme of transfers; and
 - (d) such maximum duration of the environmental consent, if any, as the Secretary of State considers appropriate.
- (4) The Secretary of State must, as soon as possible after written confirmation is sent to the harbour authority pursuant to paragraph (2), ensure that the environmental decision is publicised in such manner as the Secretary of State considers appropriate.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern transfers between ships, known as ship to ship transfers, of hazardous substances within the seaward limits of the territorial sea of the United Kingdom.

Regulation 3(1) prohibits ship to ship transfers consisting wholly or mainly of a hazardous substance unless they are carried out within harbour authority waters.

Under *regulation 3(2)* and *3(3)* ship to ship transfers of cargo of a hazardous nature are subject to prior authorisation by the relevant harbour authority as part of a programme of transfers in respect of which the Secretary of State has given environmental consent, having carried out an assessment of the programme's likely impact on the environment by the procedure set out in *Schedules 1 and 2* to the Regulations. Where a programme of transfers may have an effect on a European site, the procedure implements Article 6 of the Habitats Directive.

Regulation 3(4) excludes from the Regulations ship to ship transfers involving ships engaged in certain offshore activities and ships engaged at the relevant time on government non-commercial service.

Regulation 4 confers on the Secretary of State the power to grant exemptions to regulation 3(1).

Regulation 5 makes the contravention of certain provisions of the Regulations an offence.

Regulation 6 provides transitional arrangements under which pre-existing ship to ship transfer operations are deemed to have environmental consent for a maximum period of two years.

An impact assessment 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.