STATUTORY INSTRUMENTS

2016 No. 1026

MERCHANT SHIPPING

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Electromagnetic Fields) Regulations 2016

Made - - - -	*24th October 2016*
Laid before Parliament	*28th October 2016*
Coming into force - -	*21st November 2016*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 85(1), (3), (5), (6) and (7) and 86(1) of the Merchant Shipping Act 1995 [F1] ("the Act").

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to measures relating to the safety of ships, and the health and safety of persons on them [F3].

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

F1 1995 c. 21. Subsections (1) and (3) of section 85 were amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), **section 8** and Schedule 7 Part I. Sections 85 and 86 of the Merchant Shipping Act 1995 apply in relation to hovercraft as they apply in relation to ships, by virtue of article 4 of the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350) and section 17(2)(a) of the Interpretation Act 1978 (c.30).

F2 1972 c.68. By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183). Section 2(2) 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).

F3 S.I. 1993/595.

PART 1

INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Electromagnetic Fields) Regulations 2016 and come into force on 21st November 2016.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Merchant Shipping Act 1995;

"AL" means an action level set out in Part 2 or 3 of the Schedule;

"direct biophysical effect" means an effect on human body tissue caused by its presence in an electromagnetic field;

"electromagnetic field" means a static electric, static magnetic and time-varying electric, magnetic and electromagnetic field with a frequency up to 300 GHz;

"ELV" means an exposure limit value set out in Part 2 of the Schedule;

"employer" means a person by whom a worker is employed on a ship under a contract of employment;

"the General Duties Regulations" means the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 [F4];

"Government ship" has the meaning given in section 308(4) of the Act;

"health and safety" includes the occupational health and safety of persons while on board a ship and while boarding or leaving a ship;

"health effect" means a direct biophysical effect which is potentially harmful to human health;

"indirect effect" means an effect, caused by the presence of an object or a substance in an electromagnetic field, which may present a safety or health hazard;

"Merchant Shipping Notice" means 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;

"sensory effect" means a direct biophysical effect involving a transient disturbance in sensory perception or a minor and temporary change in brain function;

"ship" includes hovercraft;

"United Kingdom ship" means a ship which is—

(a) a United Kingdom ship within the meaning of section 85(2) of the Act,

(b) a Government ship, or

(c) a hovercraft registered under the Hovercraft Act 1968 [F5]; and

"worker at particular risk" means—

(a) a worker who has declared to his or her employer a condition which may lead to a higher susceptibility to the potential effects of exposure to electromagnetic fields; or

(b) a worker who works in close proximity to electro-explosive devices, explosive materials or flammable atmospheres.

(2) In these Regulations, a reference to workers is, in relation to an employer, to be treated as a reference to the workers of that employer while they are at work.

(3) In the application of these Regulations to a hovercraft, a reference to the master of a ship includes a reference to the captain of that hovercraft.

F4 S.I. 1997/2962; as amended by S.I. 1998/2411 and 2001/54. There are other amendments, but none is relevant.
F5 1968 c. 59.

Meaning of "worker"

3.—(1) In these Regulations, "worker" means a person employed under a contract of employment and includes a trainee or apprentice other than a person who is training in a vessel which is being used—

(a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship, or

(b) to provide instruction in navigation and seamanship for yachtsmen,

and which is operating under a relevant code.

(2) In paragraph (1), "a relevant code" means—

(a) the Large Commercial Yacht Code as set out in Merchant Shipping Notice MSN 1851(M) [F6];

(b) the Code of Practice for the Safety of Small Commercial Sailing Vessels [F7];

(c) the Code of Practice for the Safety of Small Commercial Motor Vessels [F8]; or

(d) the Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point [F9].

(3) In paragraph (2), each reference to a Code includes a reference to any document containing an amendment or replacement of that Code which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice which contains a statement to that effect.

F6 Published by the Maritime and Coastguard Agency on www.gov.uk.
F7 Published by the Stationery Office in 1993 (ISBN 0-11-551184-9).
F8 Published by the Stationery Office in 1993 (ISBN 0-11-551185-7).
F9 Published by the Stationery Office in 1999 (IBSN 0-11-551812-6).

Application of these Regulations

4.—(1) Without prejudice to regulation 5 (general duties) of the General Duties Regulations and subject to paragraph (2), these Regulations apply in relation to activities in which workers are subject to, or are potentially subject to exposure to, electromagnetic fields on United Kingdom ships.

(2) Where—

(a) a ship is being used in the course of public service activities or activities for the purposes of the civil protection services, and

(b) characteristics peculiar to those activities inevitably conflict with a provision of these Regulations,

that provision does not apply in relation to activities on that ship to the extent of that conflict.

(3) To the extent that a provision of these Regulations does not apply in relation to activities on a ship because of paragraph (2), there is in relation to that ship a duty of the employer to ensure, so far as is reasonably practicable, the health and safety of the workers who are subject, or are potentially subject, to exposure on the ship.

(4) This regulation (other than paragraph (1)) and regulations 14 and 16 apply in relation to activities on ships other than United Kingdom ships, which are for the time being in United Kingdom waters, during which workers are subject, or potentially subject, to exposure to electromagnetic fields.

(5) In this regulation—

"civil protection service" includes the fire and rescue and ambulance services, and search and rescue services provided by any other person; and

"public service activities" includes the activities of the armed forces, HM Coastguard, HM Revenue and Customs, immigration officers, police, prison officers and the security and intelligence services.

PART 2

EXPOSURE AND RISK

Limitation on exposure to electromagnetic fields

5.—(1) Subject to paragraphs (2) and (3), an employer must ensure that workers are not exposed to electromagnetic field levels in excess of the ELVs.

(2) Exposure may exceed the sensory effect ELVs during work activities in respect of which the employer has taken the applicable safety measures contained in the Schedule [F10].

(3) Paragraph (1) does not apply in relation to the exposure of workers to electromagnetic fields during the development, testing, installation, use and maintenance of, or research related to, magnetic resonance imaging equipment for medical use, providing—

(a) the exposure of workers to electromagnetic fields is as low as is reasonably practicable; and

(b) workers are protected against any health effects and safety risks related to that exposure.

(4) In this regulation—
"sensory effect ELV" means the sensory effect ELVs set out in Part 2 of the Schedule.

F10 See paragraph 6 of Part 1 of the Schedule.

Exposure assessment

6.—(1) Subject to paragraph (5), the employer must make a suitable and sufficient assessment of the levels of electromagnetic fields to which workers may be exposed.

(2) Where regulation 5(1) applies—

(a) the assessment must demonstrate whether that regulation is complied with, if necessary through the use of calculations and measurements; and

(b) the employer may, in accordance with the Schedule [F11], assess exposure against the ALs in order to determine that specific ELVs are not exceeded.

(3) An assessment may take into account—

(a) emission information and other safety related data provided by the manufacturer or distributor of equipment;

(b) industry standards and guidelines;

(c) guidance produced by the European Commission; and

(d) guidance produced by the Secretary of State.

(4) The employer must review an assessment when—

(a) there is reason to suspect it is no longer valid, or

(b) there has been a significant change in the matters to which it relates,

and make such changes to it as are necessary to ensure it remains suitable and sufficient.

(5) Where an employer has made an assessment before the date on which these Regulations come into force, which assessment would have complied with the requirements of this regulation, that employer is to be treated, on and after that date, as having complied with paragraph (1).

F11 See paragraphs 3 and 4 of Part 1 of the Schedule.

Application of regulations 8 to 10

7.—(1) Regulation 8 does not apply—

(a) where the most recent exposure assessment under regulation 6 demonstrates compliance with regulation 5(1); or

(b) in relation to activities set out in regulation 5(3).

(2) Regulations 9 and 10 do not apply where—

(a) the most recent exposure assessment under regulation 6 demonstrates that workers are not exposed to electromagnetic field levels in excess of the ELVs;

(b) the indirect effect ALs are not exceeded; and

(c) there are no workers at particular risk.

(3) In this regulation—
"indirect effect ALs" means the Low ALs in Table AL1, and the ALs in Tables AL5 to AL7, in the Schedule.

Action plan

8.—(1) The employer must make and implement a suitable and sufficient action plan to ensure compliance with regulation 5(1).

(2) The action plan must include consideration of, where relevant—

(a) other working methods that entail lower exposure to electromagnetic fields;

(b) replacement equipment designed to reduce the level of exposure;

(c) technical measures to reduce the emission of electromagnetic fields, including, where necessary, the use of interlocks, screening or similar health protection mechanisms;

(d) demarcation and access control measures;

(e) maintenance programmes for work equipment, workplaces and workstation systems;

(f) the design and layout of workplaces and workstations;

(g) limitations on the duration and intensity of exposure; and

(h) the availability of suitable personal protection equipment.