Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Merchant Shipping (Marine Equipment) Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2016 No. 1025

MERCHANT SHIPPING

The Merchant Shipping (Marine Equipment) Regulations 2016

Made - - - -	*31st October 2016*
Laid before Parliament	*9th November 2016*
Coming into force - -	*5th December 2016*

The Secretary of State, with the consent of the Treasury, makes the following Regulations in exercise of the powers conferred by—

(a) section 2(2) of the European Communities Act 1972 [F1];

(b) sections 85(1), (3), (5) to (7), 86(1) and 302 of the Merchant Shipping Act 1995 [F2]; and

(c) article 3 of the Merchant Shipping (Prevention of Oil Pollution) Order 1983 [F3].

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 [F4] and measures relating to the safety of ships and the health and safety of persons on them [F5].

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.

F1 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

F2 1995 c.21. Section 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).

F3 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).

F4 S.I. 1994/757.

F5 S.I. 1993/595.

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 5th December 2016.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Merchant Shipping Act 1995;

"applicable international standards" means 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 1874;

"applicable UK standards" means the requirements set out in Annex 3 of Merchant Shipping Notice MSN 1874 for equipment which is not subject to applicable international standards;

"category C waters" has the meaning given in Merchant Shipping Notice MSN 1837(M) Amendment 1;

"competent national authority" means the competent national authority in each member State responsible for ensuring compliance with the requirements of the Directive;

"conformity mark" means the mark affixed to equipment by the manufacturer in accordance with regulation 15;

"the Directive" means Directive 2014/90/EU of the European Parliament and of the Council of 23rd July 2014 on marine equipment and repealing Council Directive 96/98/EC[F6];

"domestic passenger ship" means a passenger ship which has been issued a certificate to embark on voyages in category C waters or seaward of those waters, but not for international voyages;

"economic operator" means a manufacturer, authorised representative, importer or distributor;

"EU conformity approval" means approval by a notified body under regulation 12;

"fishing vessel" means a vessel used to catch fish or other living resources of the sea with a registered length of 24 metres or more;

"international voyage" means 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 [F7] applies;

"length" means the greater of the following distances—

(a) the distance between the fore side of the stem and the axis of the rudder stock, or

(b) 96 per cent of the distance between the fore side of the stem and the aft side of the stern,

the points and measurements being taken respectively at and along the waterline at 85 per cent of the least moulded depth of the ship; in the case of a ship with a rake of keel, the waterline must be parallel to the designated waterline;

"market surveillance authority" means 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[F8];

"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;

"nominated body" means a person designated as a nominated body under regulation 4(2);

"notified body" means a person designated as a notified body under regulation 4(1);

"passenger" means every person on a ship other than—

(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,

(b) a person on board the ship in pursuance of an obligation on the master to carry shipwrecked, distressed or other persons or by reason of any circumstance that neither the master nor the owner could have prevented, and

(c) a child under one year of age;

"passenger ship" means a ship which carries more than 12 passengers;

"relevant period" means 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" means a ship which is—

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

(b) a Government ship within the meaning of section 308(4) of the Act, or

(c) a hovercraft registered under the Hovercraft Act 1968 [F9].

(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) 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.

(4) For the purposes of these Regulations, the competent national authority and the 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, some other person or on his own behalf), a reference in these Regulations to the owner is construed as including a reference to that person.

(6) Any 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.

F6 OJ L257, 28.8.2014, p.146.
F7 Cmnd 7874.
F8 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).
F9 1968 c.59.

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 Annex II of the Directive, provided that the Secretary of State is satisfied that person meets 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 the procedures specified in paragraphs 11 and 12 of Part II of Merchant Shipping Notice MSN 1874.

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

(a) the functions to be performed by the notified or nominated body;

(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 a designation—

(a) on request by the notified or nominated body; or

(b) where it appears necessary or expedient to do so.

(6) The Secretary of State may inspect a notified or nominated body to ensure it is performing its functions—

(a) under regulation 12 or 18; and

(b) in accordance with the conditions of its designation.

(7) Where a person applies for designation under paragraph (1) or (2), the Secretary of State must inform that person in writing of the reasons for—

(a) refusing to designate that person as a notified or nominated body;

(b) imposing any condition more onerous than proposed by the applicant; or

(c) withdrawing or varying a designation.

PART 2

Requirements for Equipment

Requirements for equipment

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

(2) When equipment is placed on board a domestic passenger ship or a fishing vessel and that equipment is listed in Annex 1 or 2 of Merchant Shipping Notice MSN 1874 it must comply with—

(a) applicable international standards;

(b) an alternative standard; or

(c) (where there is no requirement to place that equipment on board a ship but it is placed on board voluntarily) the standard specified by the Secretary of State.

(3) When equipment listed in Annex 3 of Merchant Shipping Notice MSN 1874 is placed on board a ship it must comply with applicable UK standards.

(4) Equipment listed in Annex 1 of Merchant Shipping Notice MSN 1874 must be taken to comply with applicable international standards where it is—

(a) accompanied by a declaration of conformity under regulation 14; and

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

(5) Equipment listed in Annex 2 of Merchant Shipping Notice MSN 1874 must be taken to comply with applicable international standards or an alternative standard where it is accompanied by a certificate under regulation 18.

(6) In this regulation—
"alternative standard" means a standard specified as an alternative to an applicable international standard in any instrument listed in Annex 4 of the Merchant Shipping Notice MSN 1874.

Application of exemptions

6.—(1) Subject to paragraph (2), regulations 7 to 9 apply to equipment to which regulation 5(1) applies that is listed in Annex 1 of Merchant Shipping Notice MSN 1874.

(2) Regulation 9(2) applies to equipment to which regulations 5(1) and (2) apply that is listed in Annexes 1 or 2 of Merchant Shipping Notice MSN 1874.

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, provided that the Secretary of State 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 administration in accordance with article 30 of the Directive, is transferred to the United Kingdom register, the Secretary of State may take any necessary measures, which may include carrying out such tests or practical demonstrations that the Secretary of State considers necessary, to ensure the equipment is at least as effective as equipment which complies with the EU conformity assessment procedures in Annex II of the Directive.

Exemptions for testing or evaluation

8.—(1) The Secretary of State may allow equipment that does not comply with applicable international standards to be placed on board a ship to facilitate the testing or evaluation of such