Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972 and section 130D(3) of the Merchant Shipping Act 1995, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No.

MERCHANT SHIPPING

The Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003

Made - - - -	*2003*
Coming into force - -	*2003*

Whereas the Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to measures relating to the prevention, reduction and elimination of pollution of water and to maritime transport(**2**):

And whereas, in so far as the following Regulations are made in exercise of the powers conferred by section 130A of the Merchant Shipping Act 1995(**3**), the Secretary of State has consulted the organisations referred to in section 306(4) of that Act,

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 2(2) of the European Communities Act 1972 and sections 130A(1) and (2), 130B(1), (2) and (5) to (7), 130C(2) and (7) and 130D(1) and (2) of the Merchant Shipping Act 1995 and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 and shall come into force on the day after the day on which they are made.

(2) The Merchant Shipping (Port Waste Reception Facilities) Regulations 1997(**4**) are revoked.

Interpretation, etc.

2.—(1) In these Regulations—

(**1**) 1972 c. 68.
(**2**) S.I.1989/2393 and S.I. 1994/757.
(**3**) 1995 c. 21. Sections 130A, 130B and 130D were inserted by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 5, and section 306(4) was amended by paragraph 18 of Schedule 6 to the 1997 Act.
(**4**) S.I. 1997/3018, amended by S.I. 1998/531.

"the Act" means the Merchant Shipping Act 1995;

"cargo residues" means the remnants of any cargo material on board in cargo holds or tanks which remain after unloading procedures and cleaning operations are completed and includes excesses and spillage from loading or unloading;

"Category A, B, C or D substance" means any substance listed and identified as falling into Category A, B, C or D in column "c" in Chapter 17 and Chapter 18 of the IBC Code; and any substance which is provisionally assessed as a Category A, B, C or D substance; and a reference to any such substance shall include a reference to any mixture containing such substance;

"the Convention" means the International Convention for the Prevention of Pollution from Ships 1973(**5**) as revised from time to time;

"crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes—

(a) crude oil from which certain distillate fractions may have been removed; and

(b) crude oil to which certain distillate fractions may have been added;

"the Directive" means Directive 2000/59/EC of the European Parliament and Council on port reception facilities for ship-generated waste and cargo residues, as amended(**6**);

"fishing vessel" means any ship equipped or used commercially for catching fish or other living resources of the sea;

"fuel oil" means any oil used as fuel in connection with the propulsion and auxiliary machinery of the ship in which such oil is carried;

"IBC Code" means the 1998 Edition of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the International Maritime Organization;

"Maritime and Coastguard Agency" means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

"master", in the application of these Regulations to hovercraft, includes the captain of a hovercraft;

"Merchant Shipping Notice" means a Notice described as such and issued by the Maritime and Coastguard Agency; and any reference to a particular Merchant Shipping Notice includes a reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time;

"noxious liquid substance" means either a substance listed as such in MEPC Circular 2/CIRC.1 or a Category A, B, C or D substance, but does not include cargo residues; and for this purpose "MEPC Circular" means a circular of that description issued by the Marine Environment Protection Committee of the International Maritime Organization;

"oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products, other than oil-like substances which are subject to the Merchant Shipping (Dangerous or Noxious Substances in Bulk) Regulations 1996(**7**);

"oily mixture" means a mixture with any oil content;

"operational waste" means all cargo-associated waste and maintenance waste; and for this purpose "cargo-associated waste" means all materials which have become wastes as a result of use on board a ship for cargo stowage and handling and includes dunnage, shoring, pallets, lining and packing materials, plywood, paper, cardboard, wire and steel strapping;

(**5**) Cmnd. 5748; amended by the Protocol of 1978 (Cmnd. 7347).
(**6**) O.J. L332, 28.12.2000, p.81, amended by Directive 2002/84/EC of the European Parliament and of the Council amending the Directives on maritime safety and the prevention of pollution from ships (O.J. L324, 29.11.2002, p.53).
(**7**) S.I. 1996/3010; amended by S.I. 1997/2971, S.I. 1999/1953 and S.I. 2000/483.

"owner" means the owner, charterer, manager or operator of a ship;

"passenger" means any person carried in a ship except—

(a) a person employed or engaged in any capacity on board the ship on the business of the ship,

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

(c) a child under one year of age;

"prescribed wastes" means any waste of the following descriptions—

(a) cargo residues;

(b) noxious liquid substances; and

(c) ship-generated waste;

"recreational craft" means a ship of any type, regardless of the means of propulsion, which is intended for sports or leisure purposes;

"relevant inspector" means a person mentioned in paragraphs (a), (b) or (c) of section 258(1) of the Act;

"ship" means a sea-going vessel of any type whatsoever (including hydrofoils, hovercraft, submersibles and floating craft) operating in the marine environment beyond the limits of waters of categories A and B as categorised in Merchant Shipping Notice No.MSN 1776(M); and

"ship-generated waste" means all waste and residues which are generated during the service of a ship and which fall within the definitions of garbage, oil and oily mixtures, but does not include cargo residues; and for this purpose "garbage" means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except sewage originating from ships.

(2) For the purposes of these Regulations the "competent authority" shall be—

(a) in relation to the United Kingdom, the Maritime and Coastguard Agency;

(b) in relation to any other member State, the national maritime administration maintained by that State for the inspection of ships; and

(c) in relation to a state other than a member State, any authority designated as such by that State.

(3) Words and expressions used in these Regulations which are defined in the Act shall bear those meanings throughout these Regulations.

(4) Any direction given under these Regulations shall be in writing.

Application

3.—(1) These Regulations apply to any harbour or terminal within a harbour in the United Kingdom.

(2) Subject to paragraphs (3) and (4) these Regulations apply to all ships calling at or operating within a harbour or terminal to which these Regulations apply.

(3) These Regulations do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

(4) Regulations 11 and 13 do not apply to a ship which is—

(a) a fishing vessel, or

(b) a recreational craft authorised to carry, or designed to carry, no more than 12 passengers.

Requirement to provide adequate waste reception facilities

4.—(1) Every harbour authority and terminal operator shall provide waste reception facilities adequate to meet the needs of ships normally using the harbour or terminal in question without causing undue delay to ships.

(2) In paragraph (1) "adequate" means capable of receiving the types and quantities of prescribed wastes from ships normally using that harbour or terminal taking into account the operational needs of the users of the harbour or terminal, its size and geographical location, the types of ships calling there and any exemptions provided for under regulation 15.

(3) A harbour authority or terminal operator may, in discharging their duty under paragraph (1), join with any other person in providing the waste reception facilities, and references in these Regulations to the provision of such facilities by a harbour authority or terminal operator shall be construed accordingly; and any such power shall also include power to arrange for the provision of such reception facilities by any other person.

(4) This regulation is subject to regulation 15(1).

Direction to provide adequate waste reception facilities

5. Where in respect of any harbour or terminal it appears to the Secretary of State, after consultation with the relevant harbour authority or terminal operator, that—

(a) the harbour or terminal has no waste reception facilities; or

(b) if the harbour or terminal has such facilities, those facilities are not adequate within the meaning in regulation 4,

the Secretary of State may direct the harbour authority or terminal operator to provide, or arrange for the provision of, such waste reception facilities as may be specified in the direction.

Requirements regarding waste management plans

6.—(1) Subject to paragraph (3), every harbour authority shall prepare a waste management plan with respect to the provision and use of waste reception facilities in the harbour and the use of those facilities by ships using the harbour and shall submit the plan to the Secretary of State for approval.

(2) The Secretary of State may direct that a terminal operator shall prepare a waste management plan with respect to the provision and use of waste reception facilities for any terminal operated by the terminal operator within a harbour and specified in the direction and submit it to the Secretary of State for approval.

(3) Where the Secretary of State gives a direction under paragraph (2), in preparing a waste management plan under paragraph (1) the harbour authority for the harbour in which the terminal in question is situated shall not be required to deal with the provision and use of waste reception facilities for that terminal in the waste management plan which it prepares.

(4) In preparing a waste management plan the harbour authority or terminal operator shall consult —

(a) persons appearing to the harbour authority or terminal operator to represent the interests of—

(i) persons using the harbour or terminal,

(ii) persons using the waste reception facilities at the harbour or terminal; and

(b) such other persons (if any) as the harbour authority or terminal operator thinks fit.

(5) A plan prepared under this regulation shall comply with the requirements in Schedule 1 to these Regulations.

(6) A harbour authority may, in discharging their duty under paragraph (1) and where required for reasons of efficiency, join with one or more other harbour authorities to prepare a waste management plan with respect to the provision and use of waste reception facilities at the harbours in question.

(7) Where a plan is prepared under paragraph (6) the need for, and availability of, waste reception facilities shall be specified for each individual harbour.

(8) This regulation is subject to regulation 15(2).

Requirements regarding waste management plans: time for submission of first and subsequent plans

7.—(1) Subject to paragraph (2), a harbour authority or terminal operator shall submit its first waste management plan to the Secretary of State for approval in accordance with regulation 6(1) or (2), as the case may be—

(a) within three years of the date on which the Secretary of State approved a waste management plan for the harbour or terminal in question under regulation 10(2)(b) of the Merchant Shipping (Port Waste Reception Facilities) Regulations 1997; or

(b) within three years of the date on which the Secretary of State prepared such a plan for the harbour or terminal in question pursuant to regulation 11 of those Regulations.

(2) A harbour authority for a new harbour, or a terminal operator for a new terminal to which a direction under regulation 6(2) applies, shall submit a waste management plan to the Secretary of State for approval in accordance with regulation 6(1) or (2), as the case may be, within nine months of the date on which the new harbour or terminal was opened; and for this purpose "new", in relation to a harbour or terminal, means a facility which commences operations after the coming into force of these Regulations.

(3) A harbour authority or terminal operator shall submit subsequent waste management plans to the Secretary of State for approval in accordance with regulation 6(1)—

(a) within nine months of any significant change to the operation of the harbour or terminal since the most recent plan was approved by the Secretary of State pursuant to regulation 8(1) or prepared by him pursuant to regulation 9; or

(b) no later than three years after the most recent plan was approved by the Secretary of State pursuant to regulation 8(1) or prepared by him pursuant to regulation 9,

whichever is the sooner.

Approval and implementation of waste management plans

8.—(1) The Secretary of State may either—

(a) reject a plan submitted in accordance with regulation 6; or

(b) approve the plan with or without modifications.

(2) A plan which has been approved by the Secretary of State pursuant to paragraph (1) or prepared by the Secretary of State pursuant to regulation 9 shall be implemented by the harbour authority or the terminal operator for the harbour or terminal to which the plan relates.

Power of the Secretary of State to prepare a waste management plan

9. If the Secretary of State is satisfied that a person who is required to prepare a waste management plan is not taking any steps necessary in connection with the preparation of the plan the Secretary of State may prepare such a plan.