
STATUTORY INSTRUMENTS

2020 No. 94

MARINE POLLUTION

The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020

<i>Made</i>	- - - -	<i>31st January 2020</i>
<i>Laid before Parliament</i>		<i>4th February 2020</i>
<i>Coming into force</i>	- -	<i>26th February 2020</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 130 of the Merchant Shipping Act 1995(1).

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020 and come into force on 26th February 2020.

Revocation

2. The regulations listed in column 1 of the Table in Schedule 4 (Revocations) are revoked to the extent specified in column 3 of that Table.

Interpretation

3. In these Regulations—

“appropriate authority” means the European Commission before IP completion day and the Secretary of State after IP completion day;

“bunkering operation” means the transfer between ships of a substance consisting wholly or mainly of oil for consumption by the engines of the ship receiving the substance;

“cargo transfer” means the transfer between two ships of a substance consisting wholly or mainly of oil which is transported by either or both of the ships for reward, but does not include—

- (a) a bunkering operation, or
- (b) a transfer of—

(1) 1995 c. 21, section 130(3) was amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations (S.I. 2015/664).

- (i) the remnants of any cargo material on board in cargo holds or tanks which remain after unloading procedures and cleaning operations are completed;
- (ii) excesses or spillages from loading or unloading, or
- (iii) ship-generated waste; and for this purpose, “ship generated waste” has the meaning given to it in regulation 2 (interpretation, etc.) of the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003⁽²⁾.

“the consultation bodies” means—

- (a) such of—
 - (i) Natural England,
 - (ii) the Natural Resources Body for Wales,
 - (iii) Scottish Natural Heritage, and
 - (iv) the Council for Nature Conservation and the Countryside,
 as the Secretary of State considers likely to have an interest in an OTL application by reason of their responsibilities, and
- (b) any authority or other body the Secretary of State considers likely to have an interest in an OTL application, whether by virtue of having specific environmental responsibilities under any enactment or otherwise;

“European site” has the meaning given in regulation 8(1) (European sites and European marine sites) of the Conservation of Habitats and Species Regulations 2017⁽³⁾, with the omission of the words “Subject to paragraph (2).”;

“European offshore marine site” has the meaning given in regulation 18 (meaning of “European offshore marine site”) of the Conservation of Offshore Marine Habitats and Species Regulations 2017⁽⁴⁾;

“environmental statement” means the environmental statement provided in accordance with paragraph 1(1)(c) of Schedule 2 (procedure for grant of an oil transfer licence);

“flag State”, in relation to a ship, means the State whose flag the ship is entitled to fly;

“general lighthouse authority” has the meaning given in section 193 (general and local lighthouse authorities) of the Merchant Shipping Act 1995⁽⁵⁾;

“the Habitats Directive” has the meaning given in regulation 2 (interpretation) of the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“harbour authority” has the meaning given in section 57(1) (interpretation) of the Harbours Act 1964⁽⁶⁾;

“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⁽⁷⁾ by virtue of an order of the Secretary of State made under section 1(3)(a) (pilotage function orders for areas outside harbour authority waters) of that Act;

“IP completion day” has the meaning given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020⁽⁸⁾;

(2) S.I. 2003/1809, amended by S.I. 2009/1176; there are other amending instruments but none is relevant.

(3) S.I. 2017/1012, amended by S.I. 2019/579.

(4) S.I. 2017/1013, amended by S.I. 2019/579.

(5) Section 193 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 6, paragraph 6 and by the Marine Navigation Act 2013 (c. 23), section 8(1).

(6) 1964 c. 40.

(7) 1987 c. 21.

(8) 2020 c. 1.

“licence decision” means the decision of the Secretary of State whether to grant an oil transfer licence or an amended oil transfer licence and, if so, as to the terms on which to do so;

“Merchant Shipping Notice” means a notice described as such and issued by the Maritime and Coastguard Agency (an executive agency of the Department for Transport), and includes a reference to that Merchant Shipping Notice as revised or re-issued from time to time;

“Natura 2000” has the meaning given by regulation 3(1) (interpretation) of the Conservation of Habitats and Species Regulations 2017;

“offshore installation” means—

- (a) an offshore installation within the meaning of section 44 (meaning of “offshore installation”) of the Petroleum Act 1998⁽⁹⁾, which is not a ship, or
- (b) a renewable energy installation within the meaning of section 104 (interpretation of Chapter 2 of Part 2) of the Energy Act 2004⁽¹⁰⁾;

“oil” means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;

“oil transfer licence” means a licence granted to a harbour authority by the Secretary of State, enabling the harbour authority to authorise cargo transfers—

- (a) of a substance or substances specified in the licence,
- (b) in a specified location or locations, and
- (c) subject to any conditions specified in the licence;

“OTL application” means, except as provided otherwise in regulation 8(4) (oil transfer licences), an application for an oil transfer licence submitted by a harbour authority to the Secretary of State under regulation 8(1).

Cargo transfers in United Kingdom waters or controlled waters

4.—(1) Subject to regulations 6 (exceptions) and 11 (exemptions), a cargo transfer must not be carried out in United Kingdom waters unless the ships carrying out the cargo transfer are—

- (a) within harbour authority waters; or
- (b) within the permit area, and a permit has been obtained from the Secretary of State in accordance with the procedure set out in Merchant Shipping Notice 1829⁽¹¹⁾.

(2) A cargo transfer to or from a ship of 150 GT or more must not be carried out in the permit area unless the requirements of paragraph (4) have been met.

(3) A cargo transfer to or from a ship of 150 GT or more must not be carried out in controlled waters unless—

- (a) the Secretary of State has been notified in accordance with the procedure specified in Merchant Shipping Notice 1829; and
- (b) the requirements of paragraph (4) have been met.

(4) The requirements are that—

- (a) a ship-to-ship transfer operations plan has been approved by the ship’s flag State;
- (b) a copy of that ship-to-ship transfer operations plan is on board the ship; and

⁽⁹⁾ 1998 c. 17; section 44 was amended by the Energy Act 2008 (c. 32), Schedule 1, paragraph 11.

⁽¹⁰⁾ 1994 c. 20; section 104 was amended by the Wales Act 2017 (c. 4), section 41(6).

⁽¹¹⁾ Merchant Shipping Notices are published by the Maritime and Coastguard Agency (“MCA”). Copies of MSN 1829 may be obtained free of charge at <https://www.gov.uk/government/collections/merchant-shipping-notice-msns#contents> or in hard copy from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG. MSN 1829 has been revised and updated as a result of the introduction of these Regulations.

- (c) the cargo transfer is carried out in compliance with that ship-to-ship transfer operations plan.
- (5) In this regulation—
- “controlled waters” means the areas of sea specified by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2014(12) as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea (protection and preservation of the marine environment)(13);
- “GT” means gross tonnage and the gross tonnage of a ship is to be determined, for the purposes of these Regulations, in accordance with Schedule 3 (gross tonnage);
- “permit area” means the area of sea off Southwold in Suffolk defined by a circle of radius 1.5 nautical miles centred on position 52° 16’N. 01° 57.3’E; and
- “ship-to-ship transfer operations plan” means a document which—
- (a) is in the working language of the ship to which it relates; and
 - (b) sets out how cargo transfer operations should be conducted, based on best practice guidelines identified by the International Maritime Organization(14).

Cargo transfers within harbour authority waters

- 5.—(1) Subject to regulations 6 (exceptions) and 11 (exemptions), a cargo transfer must not be carried out in harbour authority waters unless it is—
- (a) carried out in accordance with an authorisation of the harbour authority that regulates or manages the waters in which the cargo transfer is carried out;
 - (b) a lightening operation; or
 - (c) a consolidation operation.
- (2) In this regulation—
- (a) “lightening operation” means a cargo transfer carried out—
 - (i) with the prior consent of the harbour authority that regulates or manages the waters in which the operation takes place, and
 - (ii) in order to reduce the draught of the ship transferring the cargo, to enable it to move to shallower waters in the harbour authority waters of that harbour authority; and
 - (b) “consolidation operation” means a cargo transfer carried out—
 - (i) between two ships which normally carry out bunkering operations in the harbour authority waters in which the operation takes place,
 - (ii) with the prior consent of the harbour authority that regulates or manages the waters in which the operation takes place, and
 - (iii) for the purpose of rationalising cargo capacity.

(12) S.I. 2014/3306.

(13) This Convention (“UNCLOS”) was originally published in Cmnd. 8941, and subsequently in Cm. 4524. A hard copy of Cm. 4524 is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW (catalogue number: HL/PO/JO/10/11/3186/287). An electronic copy of Cm. 4524 can be found at <https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=69421>. A copy of UNCLOS may be obtained from the United Nations (email doalos@un.org), and at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

(14) The current best practice guidelines identified by the IMO are contained in the Manual on Oil Pollution, Section I – Prevention, 2011 edition (ISBN: 978-92-801-4244-0) which can be obtained from or viewed at the International Maritime Organization (“the IMO”) at IMO Publishing, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications; email: sales@imo.org; telephone: 0207 735 7611.

Exceptions

6. Regulations 4 (cargo transfers within United Kingdom waters or controlled waters) and 5 (cargo transfers within harbour authority waters) do not apply to a cargo transfer—

- (a) between a ship and an offshore installation;
- (b) to or from a warship or naval auxiliary ship;
- (c) to or from any other ship owned or operated by a State and used solely, for the time being, on government non-commercial service; or
- (d) carried out by or on behalf of a general lighthouse authority.

Authorisation of cargo transfers

7.—(1) A harbour authority may only authorise a cargo transfer which is within the scope permitted by the harbour authority's oil transfer licence.

- (2) The authorisation of a cargo transfer by a harbour authority is valid only if given—
 - (a) on receipt of a written application for authorisation,
 - (b) in advance of a cargo transfer, and
 - (c) in writing.

Oil transfer licences

8.—(1) Before a harbour authority may obtain an oil transfer licence, the harbour authority must—

- (a) determine, in accordance with the procedure in Schedule 1 (initial determination of likely effects on European sites), whether the cargo transfers to be authorised pursuant to the licence would be likely to have a significant effect on any European site; and
 - (b) apply for the licence to the Secretary of State in accordance with the procedure in Schedule 2 (procedure for grant of an oil transfer licence).
- (2) Subject to regulation 9(2) (transitional provisions), in harbour authority waters where—
- (a) an oil transfer licence has effect, and
 - (b) the harbour authority which regulates or manages those harbour authority waters becomes aware of circumstances which render the information provided in the OTL application inaccurate to what is or may be a material extent,

the harbour authority must apply to the Secretary of State for an amended oil transfer licence.

(3) The harbour authority must make the application under paragraph (2) within 3 months of becoming aware of the circumstances referred to in that paragraph.

(4) A harbour authority applying for an amended oil transfer licence must use the procedure in Schedules 1 (initial determination of likely effects on European sites) and 2 (procedure for grant of an oil transfer licence), and for this purpose references in Schedules 1 and 2—

- (a) to the oil transfer licence are to be taken as references to the amended oil transfer licence;
- (b) to the OTL application are to be taken as references to the application for the amended oil transfer licence; and
- (c) to the licence decision are to be taken as references to the decision whether to issue an amended oil transfer licence.

(5) Where a harbour authority applies for an amended oil transfer licence under paragraph (2) the Secretary of State may—

- (a) issue an amended oil transfer licence in such terms as the Secretary of State considers appropriate;
 - (b) decline to issue an amended oil transfer licence, leaving the existing oil transfer licence to continue in effect; or
 - (c) decline to issue an amended oil transfer licence and revoke the existing oil transfer licence.
- (6) If the Secretary of State is satisfied that—
- (a) a harbour authority should have made an application under paragraph (2); and
 - (b) that harbour authority has not made the application within the time period specified in paragraph (3),

the Secretary of State may suspend an oil transfer licence until the application has been made and a decision has been made regarding the action to take as a result of the application.

(7) Where the Secretary of State suspends an oil transfer licence in accordance with paragraph (6), the Secretary of State must immediately give notice of the suspension in writing to the harbour authority.

Transitional provisions

9.—(1) If a harbour authority was granted an oil transfer licence under regulation 5 (oil transfer licences) of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010⁽¹⁵⁾ then, for the purposes of these Regulations, that harbour authority shall be treated as though that oil transfer licence was granted under regulation 8 (oil transfer licences).

- (2) In harbour authority waters where—
- (a) an oil transfer licence has effect by virtue of paragraph (1) at the time at which these Regulations come into force, and
 - (b) the harbour authority which regulates or manages those harbour authority waters is aware, at that time, of circumstances which render the information provided in the original application for an oil transfer licence under regulation 5(1) (oil transfer licences) of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 inaccurate to what is or might be a material extent,

the harbour authority must apply to the Secretary of State for an amended oil transfer licence.

(3) The harbour authority must make the application under paragraph (2) within three months of the date on which these Regulations come into force.

(4) Regulation 8(4) to (7) (oil transfer licences) apply to an application under paragraph (2) as they would to an application under regulation 8(2).

(5) If, prior to the coming into force of these Regulations, a harbour authority authorised a cargo transfer that is scheduled to take place after the Regulations come into force, that authorisation is to be treated as an authorisation for the purposes of these Regulations and remains valid provided that—

- (a) when carried out, the cargo transfer is within the scope permitted by the harbour authority's oil transfer licence; and
- (b) the requirements of regulation 7(2) (authorisation of cargo transfers) were satisfied in relation to the authorisation.

(15) [S.I. 2010/1228](#). These regulations have now ceased to have effect as a result of the sunset clause in regulation 1.

Prohibited bunkering operations

10.—(1) Subject to paragraph (2) and regulation 11 (exemptions), a bunkering operation must not be carried out in United Kingdom waters unless the ships carrying out the operation are within harbour authority waters.

(2) Paragraph (1) does not apply to a bunkering operation—

- (a) between a ship and an offshore installation;
- (b) between a ship and its rescue boat or tender;
- (c) to or from a warship or naval auxiliary ship;
- (d) to or from any other ship owned or operated by a State and used solely, for the time being, on government non-commercial service; or
- (e) carried out by or on behalf of a general lighthouse authority.

(3) In this regulation, “rescue boat” means a ship designed or used to rescue persons in distress and to marshal life rafts.

Exemptions

11.—(1) Subject to paragraph (3), the Secretary of State may exempt—

- (a) a cargo transfer from the provisions of regulation 4(1) (cargo transfers in United Kingdom waters or controlled waters);
- (b) a cargo transfer from the provisions of regulation 5(1) (cargo transfers within harbour authority waters); and
- (c) a bunkering operation from the provisions of regulation 10(1) (prohibited bunkering operations).

(2) The Secretary of State may make any such exemption subject to such conditions as the Secretary of State considers appropriate.

(3) Where the Secretary of State considers that a cargo transfer or bunkering operation is likely to have a significant effect on a European site, the Secretary of State must, before granting an exemption under paragraph (1), require the person applying for the exemption to provide sufficient information to enable the Secretary of State to carry out an appropriate assessment of the implications of the cargo transfer or bunkering operation for the European site, in view of the conservation objectives of the site.

(4) The procedure for the assessment referred to in paragraph (3) is the procedure for assessment of an OTL application in Schedules 1 (initial determination of likely effects on European sites) and 2 (procedure for grant of an oil transfer licence), and for this purpose references in Schedules 1 and 2—

- (a) to the harbour authority are to be taken as references to the person who applied for the exemption;
- (b) to the OTL application are to be taken as references to the application for the exemption;
- (c) to the oil transfer licence are to be taken as references to the proposed exempt cargo transfer or bunkering operation; and
- (d) to the licence decision are to be taken as references to the decision whether to grant the exemption.

(5) When considering an application for an exemption under paragraph (1)(b), the Secretary of State must—

- (a) seek the views of the harbour authority that regulates or manages the harbour authority waters in which the transfer is intended to take place;
- (b) provide that harbour authority with a reasonable time to respond; and

- (c) take into account any response received from the harbour authority when deciding whether to grant the exemption.

Offences

12.—(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 cargo transfer without an oil transfer licence;
- (b) fails to take all reasonable steps to prevent a cargo transfer, in the harbour authority waters of that harbour authority, which is prohibited under regulation 5 (cargo transfers within harbour authority waters); or
- (c) knowingly or recklessly provides false information in—
 - (i) an OTL application;
 - (ii) an application for an amended oil transfer licence under regulation 8(2) (oil transfer licences); or
 - (iii) an application for an amended oil transfer licence under regulation 9(2) (transitional provisions),

is guilty of an offence.

(3) A person who knowingly or recklessly provides false information to the Secretary of State in relation to an application for an exemption under regulation 11 (exemptions) is guilty of an offence.

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

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Scotland, to a fine not exceeding £25,000;
- (c) on summary conviction in Northern Ireland, to a fine not exceeding £25,000;
- (d) on conviction on indictment, to a fine.

(5) Where a person is charged with an offence under paragraph (1), (2)(a) or (2)(b), it is 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) saving life at sea; or
- (c) combating specific pollution incidents in order to minimise the damage from 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.

Consequential amendment

13. In regulation 63(7)(c)(iv) (assessment of implications for European sites and European offshore marine sites) of the Conservation of Habitats and Species Regulations 2017(16) for “the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010(17)” substitute “the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020”.

(16) S.I. 2017/1012, amended by S.I. 2019/579.

(17) S.I. 2010/1228. These Regulations ceased to have effect on 1st April 2019 as a result of a sunset clause.

Review

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

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 26th February 2025.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015⁽¹⁸⁾ requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under Chapter 8 of Annex I to the International Convention for the Prevention of Pollution from Ships 1973⁽¹⁹⁾ are implemented in other countries which are subject to the obligations.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Signed by authority of the Secretary of State for Transport

Nusrat Ghani
Parliamentary Under Secretary of State
Department for Transport

31st January 2020

⁽¹⁸⁾ 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12) and Schedule 8, Part 2, paragraph 36 of the European Union (Withdrawal) Act 2018 (c. 16).

⁽¹⁹⁾ The Convention (“MARPOL”) was published in Cmnd. 5748, and amended by the Protocols of 1978 (Cmnd. 7347) and 1997 (Cm. 4427). Hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW. The Parliamentary Archives catalogue numbers are as follows: HL/PO/JO/10/11/1853/505 (Cmnd. 5748), HL/PO/JO/10/11/1959/2033 (Cmnd. 7347) and HL/PO/JO/10/11/3156/2285 (Cm. 4427). Annex I of MARPOL has been amended by a number of IMO Resolutions, most recently by MEPC.314(74). The text of IMO Resolutions may be obtained from or viewed at the IMO Library at 4 Albert Embankment, London SE1 7SR.

SCHEDULE 1

Regulation 8(1)(a) and (4) and 11(4)

Initial Determination of Likely Effects on European Sites

1. The harbour authority must—

- (a) determine, and
- (b) provide to the Secretary of State a written statement with reasons specifying,

whether the cargo transfers to be carried out under the requested oil transfer licence are 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 cargo transfers are not likely to have a significant effect on any European site, the Secretary of State must, on receipt of the OTL 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 cargo transfers are 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 cargo transfers are likely to have a significant effect on any European site, the procedure set out in Schedule 2 (procedure for grant of an oil transfer licence) shall be modified as follows.

(2) Having considered the environmental statement, the Secretary of State must make an appropriate assessment of the implications of the proposed cargo transfers for the European site, in view of the conservation objectives of the site, for the purposes of Article 5 of the Habitats Directive.

(3) Before the Secretary of State may grant an oil transfer licence without having concluded that the proposed cargo transfers will not adversely affect a European site, the Secretary of State must be satisfied that—

- (a) there is no appropriate alternative to granting the oil transfer licence in the proposed terms, and
- (b) the oil transfer licence must be granted 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 referred to in sub-paragraph (3) hosts a priority natural habitat type or a priority species as defined in Article 1 of the Habitats Directive, the reasons referred to in that sub-paragraph must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) reasons which are, in the opinion of the appropriate authority, imperative reasons of overriding public interest.

(5) Before IP completion day, when considering an OTL application the Secretary of State may seek the opinion of the European Commission in connection with sub-paragraph (4)(b).

(6) Where the Secretary of State considers that any adverse effects of the proposed cargo transfers on the integrity of a European site would be avoided by granting an oil transfer licence subject to conditions, the Secretary of State must not grant the licence except subject to those conditions.

(7) If, in spite of a negative assessment of the environmental implications for the European site and in the absence of alternative solutions, the Secretary of State decides to grant the oil transfer licence for imperative reasons of overriding public interest, the Secretary of State must—

- (a) ensure that all compensatory measures necessary to ensure the overall coherence of Natura 2000 are taken; and
- (b) if the decision is made before IP completion day, inform the European Commission of the compensatory measures adopted.

SCHEDULE 2

Regulation 8(1)(b) and (4) and 11(4)

Procedure for Grant of an Oil Transfer Licence

OTL application

- 1.—(1) The OTL application must contain—
- (a) a chart or map, or both, sufficient to identify the locations of the proposed cargo transfers to be carried out under the oil transfer licence and the extent of any onshore infrastructure alterations which the cargo transfers would involve;
 - (b) a description of the proposed cargo transfers, including—
 - (i) the types of substances to be transferred;
 - (ii) the maximum quantities of each substance to be transferred in any single operation and/or within any specified time period;
 - (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 cargo transfers which—
 - (i) is in writing; and
 - (ii) contains the information specified in paragraph 2 (environmental statement).
- (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 sub-paragraph (1); and
 - (b) the number of copies of the material in that format that the harbour authority must provide to the Secretary of State.
- (3) If the Secretary of State has made a request under sub-paragraph (2), the Secretary of State need not—
- (a) deal further with the OTL application; or
 - (b) exercise any functions under these Regulations in relation to the OTL application,
- until the harbour authority has complied with that request.

Environmental statement

- 2.—(1) The environmental statement must contain—
- (a) a description of any aspects of the environment likely to be significantly affected by the proposed cargo transfers, including—
 - (i) human beings, fauna and flora;
 - (ii) soil, water, air, climate and the landscape;
 - (iii) material assets and cultural heritage; and

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- (iv) the interaction between any two or more of the things mentioned in sub-paragraphs (i) to (iii);
 - (b) a description complying with sub-paragraph (2), of any significant effects the proposed cargo transfers are likely to have 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; or
 - (v) the elimination of waste;
 - (c) a description of the forecasting methods used by the harbour authority to assess any effects that the proposed cargo transfers are likely to have on the environment;
 - (d) a description of the measures envisaged to prevent or reduce, and where possible offset, any significant effects of the proposed cargo transfers on the environment, including, if appropriate, any changes proposed to the harbour authority's oil pollution emergency plan maintained in accordance with regulation 4 (oil pollution emergency plans) of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998⁽²⁰⁾;
 - (e) if applicable, an outline of the main alternatives to the proposed cargo 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 proposed cargo transfers;
 - (f) a non-technical summary of the information provided under paragraphs (a) to (e); and
 - (g) a description of 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)(b) 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 cargo transfers, 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) If the Secretary of State has provided the notification mentioned in sub-paragraph (1), the Secretary of State need not—

- (a) deal further with the OTL application; or

⁽²⁰⁾ S.I. 1998/1056; relevant amending instruments are S.I. 2015/386, 2015/398, 2016/992.

(b) exercise any functions under these Regulations in relation to the OTL application, until the harbour authority has provided that information.

Consultation and publicity

- 4.—(1) The Secretary of State must either—
- (a) supply the documents set out in sub-paragraph (2) to the consultation bodies, or
 - (b) direct the harbour authority to supply them to the consultation bodies.
- (2) The documents referred to in sub-paragraph (1) are—
- (a) a copy of the OTL application;
 - (b) a copy of any further information supplied by the harbour authority to the Secretary of State under paragraph 3 (provision of further information); and
 - (c) a letter stating that any representation regarding the OTL application should be made in writing to the Secretary of State, at an address specified in the letter, within the period of 42 days beginning with the date of the letter, or such longer period as may be agreed between the consultation bodies and the Secretary of State.
- (3) The Secretary of State must either—
- (a) publicise the OTL application by the method set out in sub-paragraph (4), or
 - (b) direct the harbour authority to publicise the OTL application by the method set out in sub-paragraph (4).
- (4) The method referred to in sub-paragraph (3) is—
- (a) the publication, in two successive weeks, of a notice containing the information set out in sub-paragraph (5) in such newspapers or other publications as the Secretary of State considers appropriate, and
 - (b) such other steps as the Secretary of State considers appropriate.
- (5) The information referred to in sub-paragraph (4) is—
- (a) the harbour authority's name and correspondence address;
 - (b) confirmation that an environmental statement has been submitted in connection with the OTL application and that further information, if any, has been provided to the Secretary of State;
 - (c) a description of the proposed cargo transfers, including—
 - (i) the types of substances to be transferred;
 - (ii) the maximum quantities of each substance to be transferred in any single operation and/or within any specified time period;
 - (iii) the anticipated 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 OTL application and the further information, if any, may be inspected free of charge at all reasonable hours, within the period of 42 days beginning with the date of publication of the notice;
 - (e) the address from which copies of the OTL application 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 OTL application and the further information, if any, should make them in writing to the Secretary of State

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at an address specified in the notice, within the period of 42 days beginning with the date of publication of the notice.

- (6) The Secretary of State need not deal further with, or exercise any functions under these Regulations in relation to, the OTL application until—
- (a) the harbour authority has complied with any directions given in accordance with sub-paragraph (1)(b) or (3)(b); and
 - (b) the expiry of—
 - (i) the consultation period, including any extension agreed in accordance with sub-paragraph (2)(c); and
 - (ii) the period for the making of representations in accordance with sub-paragraph (5)(f).

Licence decision, notification and publication

- 5.—(1) In reaching a licence decision, the Secretary of State must—
- (a) have regard to—
 - (i) the OTL application;
 - (ii) any further information provided by the harbour authority pursuant to a notification under paragraph 3;
 - (iii) any representations received in accordance with the letter referred to in paragraph 4(2)(c); and
 - (iv) any representations received in accordance with the statement referred to in paragraph 4(5)(f); and
 - (b) take into account the direct and indirect effects of the proposed cargo 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 the licence decision to—
- (a) the harbour authority;
 - (b) any consultation body which responded to the consultation in accordance with the letter referred to in paragraph 4(2)(c); and
 - (c) any person from whom the Secretary of State received representations in accordance with the statement referred to in paragraph 4(5)(f).
- (3) The written confirmation must include—
- (a) the main reasons and considerations on which the licence decision was based, including any opinion of the European Commission on matters of overriding public interest obtained under paragraph 3(5) of Schedule 1;
 - (b) if the licence decision involves granting the oil transfer licence, a description of any measures that must be taken in consequence of the grant to avoid or reduce, and where possible offset, any environmental effects of the cargo transfers; and
 - (c) such maximum duration of the oil transfer licence, if any, as the Secretary of State considers appropriate.

(4) The Secretary of State must ensure, as soon as possible after written confirmation is sent to the harbour authority pursuant to sub-paragraph (2)(a), that the licence decision is publicised in such manner as the Secretary of State considers appropriate.

SCHEDULE 3

Regulation 4

Gross Tonnage

1. The “gross tonnage” of a United Kingdom ship is to be determined in accordance with paragraphs 3 to 5, and the “gross tonnage” of a ship other than a United Kingdom ship is to be determined in accordance with paragraphs 6 to 8.

2. In this Schedule—

“the 1997 Regulations” means the Merchant Shipping (Tonnage) Regulations 1997⁽²¹⁾;

“length” has the same meaning as in the 1997 Regulations; and

“the Tonnage Convention” means the International Convention on Tonnage Measurement of Ships, 1969⁽²²⁾.

United Kingdom ships

3. In the case of a ship of 24 metres in length or over for which the Secretary of State permits the continuing use of a gross tonnage pursuant to regulation 12(1) (use of gross tonnage ascertained under previous Regulations) of the 1997 Regulations, the “gross tonnage” is the smaller of—

(a) the largest gross tonnage permitted for that ship pursuant to regulation 12(1) of the 1997 Regulations; and

(b) the gross tonnage of the ship determined in accordance with regulation 6 (gross tonnage) of the 1997 Regulations.

4. In the case of any other ship of 24 metres in length or over, the “gross tonnage” is the gross tonnage of the ship determined in accordance with regulation 6 (gross tonnage) of the 1997 Regulations.

5. In the case of a ship of less than 24 metres in length, the “gross tonnage” is the tonnage of the ship determined in accordance with regulation 14(2) (measurement and certification) of the 1997 Regulations.

Ships other than United Kingdom ships

6. Subject to paragraph 7, in the case of a ship which has a gross tonnage determined in accordance with the Tonnage Convention, the “gross tonnage” is that gross tonnage.

7. Where a ship has a gross tonnage determined in accordance with the Tonnage Convention but the ship’s flag State permits the use of some other gross tonnage, the “gross tonnage” of the ship is the smaller of—

(a) the largest gross tonnage permitted by the flag State to be used for that ship; and

(b) the gross tonnage determined in accordance with the Tonnage Convention.

(21) [S.I. 1997/1510](#), amended by [S.I. 1998/1916](#), [1999/3206](#) and [2005/2114](#).

(22) The Tonnage Convention was published in Cmnd. 4332 and subsequently in Cmnd. 8716. An electronic copy of the Tonnage Convention is available via the Foreign and Commonwealth Office treaties database (<https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=68110>). A hard copy of Cmnd. 8716 is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW (catalogue number: HL/PO/JO/10/11/2156/147).

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8. In the case of a ship which does not have a gross tonnage determined in accordance with the Tonnage Convention, the “gross tonnage” is the gross tonnage or equivalent measure determined in accordance with the law of the ship’s flag State, and where the ship has more than one such gross tonnage or equivalent measure, the “gross tonnage” is to be taken to be the largest of them.

SCHEDULE 4

Regulation 2

Revocations

Table

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Regulations revoked</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010	2010/1228	The whole instrument
The Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2010	2010/1769	The whole instrument
The Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2011	2011/974	The whole instrument
The Merchant Shipping (Ship-to-Ship Transfers) (Amendment) (No. 2) Regulations 2011	2011/2183	The whole instrument
The Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2012	2012/742	The whole instrument
The Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2017	2017/837	The whole instrument
The Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2014	2014/3306	Schedule 2, paragraph 9
The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015	2015/664	Schedule 4, paragraph 82
The Conservation of Habitats and Species Regulations 2017	2017/1012	Schedule 6, paragraph 18
The Conservation of Offshore Marine Habitats and Species Regulations 2017	2017/1013	Schedule 4, paragraph 6

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern transfers consisting wholly or mainly of oil between ships, known as ship-to-ship transfers. The two types of ship-to-ship transfer which are governed within the Regulations are cargo transfers and bunkering operations.

The Regulations prohibit cargo transfers unless they are carried out within harbour authority waters or within the permit area (regulation 4). They also provide that cargo transfers must not be carried out within harbour authority waters unless they are authorised by the harbour authority or the cargo transfer is a lightening operation (to lighten the ship to enable it to move to shallower waters) or a consolidation operation (to consolidate cargo for bunkering operations) (regulation 5).

The relevant harbour authority may provide authorisation under an oil transfer licence granted by the Secretary of State, having considered the programme's likely impact on the environment by the procedure set out in Schedules 1 and 2. Where cargo transfers are likely to have a significant effect on a European site, the procedure implements Article 6 of Council [Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (O.J. No. L 206, 22.07.1992, p. 7), which will continue to apply to the United Kingdom during the implementation period.

A harbour authority may only authorise a cargo transfer which is within the scope permitted by the harbour authority's oil transfer licence (regulation 7). If a harbour authority becomes aware of a material change in circumstances following the grant of their oil transfer licence, they are required to apply for an amendment to the existing licence within three months (regulation 8).

There are transitional provisions in the Regulations (regulation 9) which provide that oil transfer licences granted under the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 ([S.I. 2010/1228](#)) are to be treated as though they have been granted under these Regulations. A harbour authority must apply for an amended oil transfer licence within three months, if they are aware of a change of circumstances when the Regulations come into force. Any authorisation that a harbour authority provided prior to the Regulations coming into force for a cargo transfer to be carried out after the Regulations come into force, will be treated as valid for the purposes of these Regulations provided that certain criteria are met. The purpose of these provisions is to ensure a smooth transition to the new regime.

The Regulations prohibit ship-to-ship cargo transfers of oil to or from a ship of 150GT or more in controlled waters, unless prior notice has been given to the Secretary of State (regulation 4). A ship involved in a transfer to or from a ship of 150GT or more is also required to carry and comply with a ship-to-ship transfer operations plan approved by its flag State, if the transfer is carried out within United Kingdom waters or controlled waters (regulation 4). These provisions implement Chapter 8 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 ("MARPOL").

Bunkering operations in United Kingdom waters are prohibited, unless the ships carrying out the operation are within harbour authority waters (regulation 10).

The Secretary of State can grant exemptions in relation to prohibited cargo transfers and bunkering operations (regulation 11).

The Regulations provide that carrying out a cargo transfer or bunkering operation in contravention of the Regulations is an offence by the owner, manager and master of each ship involved in the transfer or operation and the Regulations also set out the offences which apply to harbour authorities (regulation 12).

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A consequential amendment is made to the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (regulation 13). The amendment simply substitutes a reference to the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 (S.I. 2010/1228) with a reference to these Regulations.

The Secretary of State must review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years thereafter (regulation 14). Following such a review, it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke the Regulations or to amend them.

Merchant Shipping Notices are published by the Maritime and Coastguard Agency and copies may be obtained from M-Notices, Subscriptions, PO Box 362, Europa Park, Grays, Essex RM17 9AY (telephone number 01375 484 548; fax 01375 484 556; email orders mnotices@ecgroup.co.uk). Copies may also be downloaded from <https://www.gov.uk/government/collections/merchant-shipping-notices-msns#contents> – that website also has details of any amendments or replacements.

MARPOL (including its Protocols, Annexes and amendments) and the International Convention on Tonnage Measurement of Ships, 1969, can be obtained from the International Maritime Organization (“the IMO”) at IMO Publishing, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications; email: sales@imo.org; telephone: 0207 735 7611. The text of IMO Resolutions may be obtained in hard copy from the IMO Library, at the same address as IMO Publishing. Unless otherwise specified, copies of the Command Papers referred to in this instrument are not available electronically but are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW; email archives@parliament.uk; telephone 0207 219 3074.

A hard copy of the United Nations Convention on the Law of the Sea for the protection and preservation of the marine environment is available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW (catalogue number: HL/PO/JO/10/11/3186/287). An electronic copy of Cm. 4524 can be found at <https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=69421>.

A full Impact Assessment has not been produced for this instrument as it is not expected to have a significant impact on the public or voluntary sectors and only minimal impact on the private sector is foreseen. A Regulatory Triage Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside these Regulations at www.legislation.gov.uk.