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STATUTORY INSTRUMENTS

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**2012 No. 742**

**MARINE POLLUTION**

**The Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2012**

<i>Made</i>	- - - -	<i>5th March 2012</i>
<i>Laid before Parliament</i>		<i>9th March 2012</i>
<i>Coming into force</i>	- -	<i>31st March 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 130 of the Merchant Shipping Act 1995<sup>(1)</sup>:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2012.

(2) They come into force on 31st March 2012.

**Expiry and review of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010**

2.—(1) After regulation 1(4) of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010<sup>(2)</sup>, insert—

“(5) These Regulations cease to have effect at the end of the period of seven years beginning with the day on which these Regulations come into force.

**Review**

1A.—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

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(1) 1995 c.21.  
(2) S.I. 2010/1228, last amended by S.I. 2011/2183.

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) “Review period” means the period of five years beginning with the day on which these Regulations come into force.”

### **Other amendments of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010**

**3.—**(1) The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 are amended as follows.

- (2) After regulation 1(3), insert—
  - “(3A) Regulation 5A(2) comes into force on 1st April 2012”.
- (3) In regulation 2—
  - (a) in paragraph (b) of the definition of “lightening operation”, for “at the direction” substitute “with the prior consent”;
  - (b) for paragraph (c) of that definition substitute—
    - “(c) in order to reduce the draught of the ship transferring the cargo, to enable it to move to shallower waters in a harbour authority area;”;
  - (c) after the definition of “lightening operation” insert—
    - ““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 any reference to a particular Merchant Shipping Notice includes a reference to that Merchant Shipping Notice as revised or reissued from time to time;”.
- (4) In regulation 3—
  - (a) for paragraph (1) substitute—
    - “(1) Subject to paragraph (3) and regulation 6, a cargo transfer must not be carried out in United Kingdom waters unless—
      - (a) the ships carrying out the transfer are within harbour authority waters; or
      - (b) the ships carrying out the cargo transfer are 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 .”;
  - (b) after paragraph (2) insert—
    - “(2A) Subject to paragraphs (3) and (5) and regulation 6, a bunkering operation must not be carried out in United Kingdom waters unless the ships carrying out the operation are within harbour authority waters.”;
  - (c) in paragraph (3), for “Paragraphs (1) and (2)” substitute “Paragraphs (1), (2) and (2A)”;
  - (d) after paragraph (4) insert—
    - “(5) Paragraph (2A) does not apply to a bunkering operation between a ship and its rescue boat or tender.
  - (6) In this regulation—
    - “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;

“rescue boat” means a ship designed or used to rescue persons in distress and to marshal life rafts.”.

(5) After regulation 5, insert—

**“Ship-to-ship transfer operations plans and notification of cargo transfers in the Pollution Control Zone**

**5A.**—(1) A cargo transfer to or from a ship with a gross tonnage of 150 tons or more must not be carried out in United Kingdom waters or in the Pollution Control Zone unless a ship-to-ship transfer operations plan has been approved by the ship’s flag State.

(2) A cargo transfer to or from such a ship must not be carried out in the Pollution Control Zone unless the Secretary of State has been notified in accordance with the procedure specified in Merchant Shipping Notice 1829.

(3) A cargo transfer to or from such a ship in United Kingdom waters or in the Pollution Control Zone must be carried out in compliance with its ship-to-ship transfer operations plan.

(4) In this regulation—

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

“Pollution Control Zone” means the areas of sea defined in the Schedule to the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996(3); 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.

(5) For the purposes of this regulation, gross tonnage is to be determined in accordance with Schedule 3.”.

(6) In regulation 8, for “1st October 2010” (twice occurring) substitute “1st April 2012”.

(7) After Schedule 2, insert the Schedule set out in the Schedule to these Regulations.

Signed by authority of the Secretary of State for Transport

5th March 2012

*Mike Penning*  
Parliamentary Under Secretary of State  
Department for Transport

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

SCHEDULE

Regulation 3(7)

New Schedule to be inserted in the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010

“SCHEDULE 3

Regulation 5A(5)

Gross Tonnage

1. The “gross tonnage” of a United Kingdom ship is to be determined in accordance with paragraphs 3 to 5. 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(4);

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

“the Tonnage Convention” means the International Convention on Tonnage Measurement of Ships, 1969(5).

**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) 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 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 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) 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 State whose flag the ship flies or is entitled to fly 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.

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 State whose flag the ship flies or is entitled to fly (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).”

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(4) S.I. 1997/1510, amended by S.I.1998/1916 and 1999/3206.

(5) Cmnd 4332.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 (“the 2010 Regulations”).

*Regulation 2* inserts into the 2010 Regulations a new regulation 1(5) which provides that those Regulations are to cease to have effect seven years after they come into force, and a new regulation 1A requiring the Secretary of State to review the operation and effect of the 2010 Regulations and publish a report within five years after they come into force. Following the review it will fall to the Secretary of State to consider whether the 2010 Regulations should be allowed to expire as the new regulation 1(5) provides, be revoked early, or continue in force with or without amendment. A further instrument would be needed to continue the 2010 Regulations in force with or without amendments or to revoke them early.

*Paragraphs (a) and (b) of regulation 3(3)* alter the definition of “lightening operations” in the 2010 Regulations to include operations in which a ship is lightened in one harbour authority’s waters in order to enable it to move to shallower waters in another harbour authority’s waters.

*Regulation 3(4)* amends regulation 3 of the 2010 Regulations so as to designate a permit area in United Kingdom waters within which the Secretary of State may permit ship-to-ship cargo transfers of oil, and to permit bunkering transfers outside harbour authority waters between ships and their rescue boats and tenders.

*Regulation 3(5)* implements the new Chapter 8 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention, by inserting a new regulation 5A into the 2010 Regulations. This provides that ships of 150 gross tons or more must not carry out ship-to-ship cargo transfers of oil in the Pollution Control Zone after 1st April 2012 (*regulation 3(2)*) unless prior notice has been given to the Secretary of State. It also requires every such ship to carry and comply with a ship-to-ship transfer operations plan approved by its flag State, if it is to participate in a ship-to-ship cargo transfer of oil within United Kingdom waters or the Pollution Control Zone. For this purpose, “gross tonnage” is defined by a new Schedule 3 inserted into the 2010 Regulations by the *Schedule* to these Regulations.

*Regulation 3(6)* adjusts the transitional period provided for in regulation 8 of the 2010 Regulations so that it lasts for two years after those Regulations come into force, as originally intended.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone number 02380 329100). A copy of that assessment is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). A copy has also been placed in the library of each House of Parliament.