Draft Regulations laid before Parliament under paragraph 13(1) of Schedule 8 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No. 0000

MARINE POLLUTION

The Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021

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

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by articles 2 and 3 of the Merchant Shipping (Prevention of Air Pollution from Ships) Order 2006(**a**), article 2 of the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996(**b**) and sections 128(5) and (6) and 306A of the Merchant Shipping Act 1995(**c**).

In accordance with paragraph 13(1) of Schedule 8 to the European Union (Withdrawal) Act 2018(**d**), a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and extent

1. These Regulations—

(a) may be cited as the Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021;

(b) come into force on the 22nd day after the day on which they are made; and

(c) extend to England and Wales, Scotland and Northern Ireland.

Amendment of the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

2.—(1) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008(**e**) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1)—

(**a**) S.I. 2006/1248.
(**b**) S.I. 1996/282, to which amendments have been made that are not relevant to this instrument.
(**c**) 1995 c. 21. Section 128(5) has been amended by the Merchant Shipping (Pollution) Act 2006 (c. 8), section 2(1) and (3). Section 306A was inserted by the Deregulation Act 2015 (c. 20), section 106.
(**d**) 2018 c. 16. Paragraph 13(1) has been amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1), Schedule 5, paragraph 54.
(**e**) S.I. 2008/2924, amended by S.I. 2010/895, S.I. 2010/3035, S.I. 2014/3076, S.I. 2016/1025 and S.I. 2019/940 and prospectively amended by S.I. 2019/311.

(a) for the definition of "Annex VI", substitute—

""Annex VI" means Annex VI to the Convention(**a**);";

(b) after the definition of "appropriate certificate" insert—

""Baltic Sea emission control area" means the area designated as such in regulation 1.11.2 of Annex I to the Convention;";

(c) in the definition of "the Convention", omit ", and includes—" to the end;

(d) after the definition of "date of expiry", insert—

""electronic record book" means any device or system approved by the Secretary of State which is used in lieu of a hard copy record book to record electronically any entry required by these Regulations in respect of any discharge, transfer or other operation;";

(e) after the definition of "emission" insert—

""emission control area" means—

(a) the Baltic Sea emission control area;

(b) the North Sea emission control area;

(c) the North American emission control area;

(d) the United States Caribbean emission control area; and

(e) any other sea area, including a port area, designated by the Marine Environment Protection Committee of the IMO as an emission control area for the purposes of Annex VI;";

(f) for the definition of "fuel oil", substitute—

""fuel oil" means any fuel delivered to and intended for combustion purposes for propulsion or operation on board a ship, including gas, distillate and residual fuels;";

(g) after the definition of "new installation" insert—

""North American emission control area" means the area designated as such in Appendix VII to Annex VI;";

(h) for the definition of "North Sea sulphur oxide emission control area", substitute—

""North Sea emission control area" means the area designated as such in regulation 1.14.6 of Annex V to the Convention;";

(i) after the definition of "Protocol of 1997", insert—

""relevant offence" means an offence comprising a contravention of regulation 20(1), 21(4), (4B) or (4D), 23(3) or (4), 24(1), (4) or (7), 25(3A) or (3B) or paragraph 2(2), (3), (3A) or (5) of Schedule 2A;";

(j) omit the definition of "sulphur oxide emission control area";

(k) after the definition of "UKAPP Certificate" insert—

""United States Caribbean emission control area" means the area designated as such in Appendix VII to Annex VI;".

(3) After regulation 2 (interpretation) insert—

"Ambulatory reference

2A.—(1) Any reference in these Regulations to the Convention or an Annex to the Convention is to be construed—

(a) as a reference to the Convention or an Annex to the Convention as modified from time to time; and

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(**a**) "Convention" is defined in regulation 2(1) of S.I. 2008/2924.

(b) as, if the Convention or an Annex to the Convention is replaced, a reference to the replacement.

(2) For the purposes of paragraph (1), the Convention or an Annex to the Convention is modified or replaced if a modification or replacement takes effect in accordance with Article 16 (amendments) of the Convention.

(3) A modification or replacement of the Convention or an Annex to the Convention has effect at the time such modification or replacement comes into force in accordance with Article 16 (amendments) of the Convention.".

(4) In regulation 3 (application and exemptions)—

(a) for paragraph (9), substitute—

"(9) Regulations 21(4) and (4B) apply to the engines installed on the ships referred to in regulations 21(4A) and (4C), respectively, wherever those ships may be.";

(b) for paragraph (9A), substitute—

"(9A) Regulation 21(4D) applies to the engines installed on the ships referred to in sub-paragraphs (a) to (c) of regulation 21(4E) when they are operating in the areas specified in those sub-paragraphs.

(9B) Schedule 4 applies to ships of 5,000 GT or above.".

(5) In regulation 11A (issue of IEE certificates by a certifying authority), in paragraph (5), for "Appendix 1" substitute "Appendix VIII".

(6) In regulation 13A (issue of IEE certificates in respect of ships which are not United Kingdom ships), in paragraph (2)(a), for "Appendix 1" substitute "Appendix VIII".

(7) In regulation 21 (nitrogen oxides)—

(a) for paragraph (1) substitute—

"(1) Subject to paragraph (2), this regulation applies to every diesel engine with a power output of more than 130 kW which is installed on a ship (a "regulated engine").";

(b) for paragraph (2) substitute—

"(2) This regulation does not apply to any engine referred to in paragraph 1 of Schedule 2 and paragraph (4D) does not apply to any engine referred to in paragraph 1A of that Schedule.";

(c) in paragraph (3), for "diesel" substitute "regulated";

(d) in paragraph (4)—

(i) after "paragraph (7),", insert "for the purpose of the emission standard set out in paragraph 3 (Tier I) of regulation 13 (nitrogen oxides) of Annex VI,";

(ii) for "diesel engine" substitute "regulated engine to which this paragraph applies";

(e) after paragraph (4), insert—

"(4A) Subject to paragraph (9), paragraph (4) applies to every regulated engine which is installed on a ship which—

(a) was constructed on or after 1st January 1990 and before 1st January 2000 and has both—

(i) a power output of more than 5,000 kW; and

(ii) a per cylinder displacement at or above 90 L;

(b) was constructed on or after 1st January 2000 and before 1st January 2011; or

(c) underwent a major conversion on or after 1st January 2000 and before 1st January 2011.

(4B) Subject to paragraph (7), for the purpose of the emission standard set out in paragraph 4 (Tier II) of regulation 13 (nitrogen oxides) of Annex VI, the operation of a regulated engine to which this paragraph applies is prohibited, except where the emission of

nitrogen oxide (calculated as the total weighted emission of NO_2) from the engine is no more than—

(a) 14.4 g/kWh when *n* is less than 130 rpm;

(b) 44.0 x $n^{-0.23}$ g/kWh when *n* is 130 or more but less than 2000 rpm;

(c) 7.7 g/kWh when *n* is 2000 rpm or more,

where *n* = rated engine speed (crankshaft revolutions per minute).

(4C) Unless paragraph (4D) applies, paragraph (4B) applies to every regulated engine which is installed on a ship which—

(a) is or was constructed on or after 1st January 2011; or

(b) undergoes or has undergone a major conversion on or after that date.

(4D) Subject to paragraph (7) and Schedule 2ZA, for the purpose of the emission standard set out in paragraph 5 (Tier III) of regulation 13 (nitrogen oxides) of Annex VI ("the Tier III Standard"), the operation of a regulated engine to which this paragraph applies is prohibited, except where the emission of nitrogen oxide (calculated as the total weighted emission of NO_2) from the engine is no more than—

(a) 3.4 g/kWh when *n* is less than 130 rpm;

(b) 9.0 x $n^{-0.2}$ g/kWh when *n* is 130 or more but less than 2000 rpm;

(c) 2.0 g/kWh when *n* is 2000 rpm or more,

where *n* = rated engine speed (crankshaft revolutions per minute).

(4E) Paragraph (4D) applies to every regulated engine which is installed on a ship which—

(a) is operating in the North American emission control area or the United States Caribbean emission control area and—

(i) is or was constructed on or after 1st January 2016; or

(ii) undergoes or has undergone a major conversion on or after that date;

(b) is operating in the Baltic Sea emission control area or the North Sea emission control area and which—

(i) is constructed on or after 1st January 2021; or

(ii) undergoes a major conversion on or after that date;

(c) is operating in any other emission control area designated by the Marine Environment Protection Committee of the IMO for the purpose of the Tier III Standard and which is constructed or which undergoes a major conversion on or after—

(i) the date of designation of that area; or

(ii) such later date as may be specified in a Merchant Shipping Notice.";

(f) in paragraph (5)—

(i) after "paragraph (4)", insert ", (4B) or (4D)";

(ii) for "diesel", substitute "regulated";

(g) in paragraph (6), for "diesel", substitute "regulated";

(h) in paragraph (7)—

(i) for "paragraph (4)", substitute "paragraphs (4), (4B) and (4D)";

(ii) for "diesel", substitute "regulated";

(iii) for "the engine to meet the emission standards in paragraph (4)", substitute "the engine in question to meet the applicable emission standard in paragraph (4), (4B) or (4D), respectively";

(i) in paragraph (8), in sub-paragraph (a), after "2000" insert "which has not been certified to one of the emission standards in paragraphs (4), (4B) or (4D)";

(j) after paragraph (8) insert—

"(9) Paragraph (4) only applies to an engine referred to in paragraph (4A)(a) if—

(a) an approved method of meeting the emission standard in paragraph (4) has been certified by a Certifying Authority in accordance with Chapter 7 of the NOx Technical Code; and

(b) notice of that certification has been deposited with the IMO by the Certifying Authority.

(10) After certification and notification of an approved method in accordance with paragraph (9)—

(a) compliance with paragraph (4) must be achieved by the relevant owner no later than—

(i) if an approved method is commercially available, the date of the first renewal survey that occurs at least 12 months after deposit of the notice of certification of the approved method; or

(ii) if an approved method is not commercially available and the owner is able to demonstrate to the satisfaction of the Certifying Authority that the owner has exercised every effort to obtain such a method, the date of the next annual survey falling after the date on which such a method becomes commercially available;

(b) compliance with paragraph (4) must be demonstrated by either—

(i) confirmation of the application of the certified approved method by a surveyor who must—

(aa) employ the verification procedure specified as part of the approved method; and

(bb) note the application on the appropriate certificate; or

(ii) certification of the engine to confirm that it meets one or more of the emission standards in paragraphs (4), (4A) and (4D) and notation of that certification on the appropriate certificate;

(c) the appropriate certificate for each relevant engine must indicate that—

(i) the approved method has been applied;

(ii) the engine has been certified in accordance with sub-paragraph (b)(ii);

(iii) the approved method is not yet commercially available; or

(iv) the approved method is not applicable.

(11) In respect of each engine referred to in paragraph (12) which is installed on a ship referred to in paragraph (4E), the log book or electronic record book of that ship must record—

(a) whether paragraph (12)(a) or (12)(b) applies to that engine;

(b) whether or not that engine is in operation at the time at which that ship enters or leaves an area referred to in paragraph (4E);

(c) the periods of time during which that engine is in operation whilst that ship is operating within such an area; and

(d) the times and periods of time referred to in sub-paragraphs (b) and (c), together with the relevant calendar dates and nautical positions of the ship—

(i) at those times;

(ii) during those periods; and

(iii) on those dates.

(12) Paragraph (11) applies to each engine on the ship in question which is certified to the standard set out in—

(a) both paragraphs (4B) and (4D); or

(b) paragraph (4B) only.".

(8) In regulation 25 (fuel oil quality)—

(a) in paragraph (5)(b), after "21(4)", insert ", (4B) or (4D)";

(b) for paragraph (6) substitute—

"(6) For the purposes of paragraph (5), the appropriate sulphur content limit means—

(a) not more than 0.10 per cent by mass in the case of fuel oil used or intended to be used in an emission control area;

(b) subject to paragraph (c), not more than 0.50 per cent by mass in the case of fuel oil used or intended to be used outside an emission control area;

(c) not more than 0.10 per cent by mass in the case of fuel oil used or intended to be used by a ship while paragraph 4(3) of Schedule 2A applies to that ship.";

(c) in paragraph (7)(b), for "Schedule 3" substitute "Appendix V to Annex VI".

(9) In regulation 28 (general provisions on detention)—

(a) (i) in paragraph (3), for "an offence comprising a contravention of regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4), 24(1), (4) or (7) or paragraph 2(2), (3) or (5) of Schedule 2A" and

(ii) in paragraphs (8)(a), (9)(a), (10) and (11)(b), for "an offence comprising a contravention of regulation 20(1), 21(4), 23(3) or (4), 24(1), (4) or (7) or paragraph 2(2), (3) or (5) of Schedule 2A",

substitute "a relevant offence";

(b) in paragraphs (8)(b) and (d), for "any such offence", substitute "a relevant offence".

(10) In regulation 29 (power for harbour master to detain)—

(a) in paragraph (1), for "an offence comprising a contravention of regulation 20(1), 21(4), 23(3) or (4), 24(1), 24(4) or (7) or paragraph 2(2), (3) or (5) of Schedule 2A or paragraph 10 of Schedule 4", substitute "a relevant offence or an offence comprising a contravention of paragraph 10 of Schedule 4";

(b) in paragraphs (4)(a), (5)(a) and (7)(b), for "an offence comprising a contravention of regulation 20(1), 21(4), 23(3) or (4), 24(1), (4) or (7) or paragraph 2(2), (3) or (5) of Schedule 2A", substitute "a relevant offence";

(c) in paragraph (6), for "an offence comprising a contravention of regulation 20(1), 21(4), 24(1), (4) or (7) or paragraph 2(2), (3) or (5) of Schedule 2A", substitute "a relevant offence";

(d) in paragraphs (4)(b) and (d) and (5)(b), for "any such offence", substitute "a relevant offence".

(11) In regulation 32(1) (offences)—

(a) in sub-paragraph (b), after "21(6)", insert "or (10)";

(b) for sub-paragraph (c) substitute—

"(c) regulation 20(1), 21(11), 23(6), 24(1), (4), (6), (7), (9), (10) or (11), 25(3), (3A) or (3B), (8), (10) or (11) or paragraph 2(3) to (5) or 5(1) to (5) of Schedule 2A is an offence by the master of the ship in question;";

(c) for sub-paragraph (d) substitute—

"(d) regulation 15(5), 19 or 19A, 21(4), (4B) or (4D), 24(8), 25(4) or (5) or paragraph 2(2) to 2(3A) or 4(3) of Schedule 2A is an offence by the owner, manager, demise charterer and master of the ship in question;".

(12) In regulation 34 (enforcement and application of fines)—

(a) in the words before paragraph (a) and in paragraph (a), for "an offence comprising a contravention of regulation 20(1), 21(4), 23(3) or (4) or 24(1), (4) or (7) or paragraph 2(2), (3) or (5) of Schedule 2A", substitute "a relevant offence";

(b) in paragraph (b), for "an offence comprising a contravention of regulation 20(1), 21(4), 24(3) or (4) or 24(1), (4) or (7) or paragraph 2(2), (3) or (5) of Schedule 2A", substitute "a relevant offence".

(13) In—

(a) regulation 35 (restriction on jurisdiction over offences outside United Kingdom limits), in paragraph (1),

(b) regulation 36 (suspension of proceedings at flag state request), in paragraphs (1) and (3)(a), and

(c) regulation 37 (defences), in paragraph (2),

for "21(4) or paragraph 2(2) or (3)", substitute "21(4), (4B) or (4D) or paragraph 2(2), (3) or (3A)".

(14) In Schedule 2 (engines excluded from regulation 21), after paragraph 1, insert—

"**1A.** Regulation 21(4D) does not apply to a marine diesel engine which is installed on a ship which—

(a) is constructed before 1st January 2021 and—

(i) is specifically designed and used solely for recreational purposes;

(ii) has a hull length of 24 metres or over; and

(iii) is less than 500 GT; or

(b) has a combined nameplate propulsion power of less than 750 kW, if it is demonstrated to the satisfaction of the Secretary of State that the ship cannot comply with regulation 21(4D) because of design or construction limitations.".

(15) After Schedule 2, insert—

"Schedule 2ZA

Regulation 21(4D)

Emissions exempted from regulation 21(4D)

1. If the conditions set out in paragraph 2 are satisfied, no account may be taken when applying regulation 21(4D) of any emission from an engine which occurs during the relevant period specified in paragraph 3—

(a) following the building and sea trials of a newly constructed ship; or

(b) before and after conversion, repair or maintenance of a ship fitted with or maintenance or repair of—

(i) an engine certified to the emission standard in regulation 21(4B); or

(ii) a dual fuel engine during any period when gas fuel or gas cargo may not be carried on board in order to comply with applicable safety requirements.

2. Paragraph 1 only applies if—

(a) the engine in question is certified to the emission standard in regulation 21(4B); and

(b) the ship in question—

(i) proceeds to or from the relevant shipyard or other repair facility by the most direct route;

(ii) does not load or unload cargo during the occurrence of the emission in question;

(iii) complies with any routing directions of the port State in which that shipyard or other facility is located.

3. For the purpose of paragraph 1, the relevant period is—

(a) in the case of paragraph 1(a), the period beginning when the ship is delivered from the relevant shipyard, including sea trials and ending when the ship—

(i) leaves the emission control area in which that shipyard is located by the most direct route; or

(ii) if fitted with a dual fuel engine, proceeds to the nearest appropriate gas fuel bunkering facility by the most direct route;

(b) in the case of paragraph 1(b)(i), the period beginning when the ship enters the emission control area in which the relevant shipyard or other repair facility is located and ending when the ship—

(i) is released from that shipyard or facility; or

(ii) if sea trials are applicable, leaves that area by the most direct route after performing those trials;

(c) in the case of paragraph 1(b)(ii), the period beginning when the ship—

(i) enters the emission control area in which the relevant shipyard or other repair facility is located; or

(ii) is degassed in that area and proceeds to that shipyard or other facility by the most direct route,

and ending when the ship—

(iii) leaves that area by the most direct route after being released from that shipyard or other facility; or

(iv) proceeds to the nearest appropriate gas fuel bunkering facility by the most direct route.".

(16) In Schedule 2A (sulphur oxides)—

(a) in paragraph 1 (interpretation)—

(i) in the definition of "emission abatement method", for "marine fuel", substitute "fuel oil";

(ii) omit the definition of "marine fuel";

(b) in paragraph 2 (control of sulphur oxide emissions: general provisions)—

(i) in sub-paragraph (2)—

(aa) in the words before paragraph (a), for "a sulphur oxide", substitute "an";

(bb) in paragraph (a), omit "1.0 per cent by mass, reducing to" and "after 31st December 2014";

(cc) omit paragraph (b);

(dd) in paragraph (c), for "approved exhaust gas cleaning system", substitute "emission abatement method";

(ii) for sub-paragraph (3), substitute—

"(3) A ship to which this paragraph applies must not use or carry for use fuel oil which has a sulphur content exceeding 0.50 per cent by mass without applying an emission abatement method.";

(iii) after sub-paragraph (3) insert—

"(3A) Any emission abatement method applied to the use of fuel oil which has a sulphur content exceeding 3.5 per cent by mass must—

(a) comply with Article 8 of the 2016 Directive; and

(b) be operated in closed mode.";

(iv) in sub-paragraph (4)(a), for "1.0 per cent, or as the case may be 0.10 per cent, by mass prior to entry into a sulphur oxide emission control zone", substitute "0.10 per cent by mass prior to entry into an emission control zone";

(v) in sub-paragraph (5), omit "pursuant to sub-paragraph (2)(b)";

(c) omit paragraph 3 (maximum sulphur content of marine fuel used by passenger ships);

(d) in paragraph 4 (maximum content of marine fuel used by ships at berth), in the heading and in sub-paragraph (3), for "marine fuel", substitute "fuel oil";

(e) in paragraph 5 (records in ship's logbook)—

(i) in sub-paragraphs (1) and (2), omit "or 3(5)";

(ii) in sub-paragraphs (1), (2), (3) and (4), omit "1.0 per cent by mass, or as the case may be" in each place it occurs;

(iii) after sub-paragraph (5), insert—

"(6) For the purposes of sub-paragraphs (5)(a) and (b), a log book includes an electronic record book.";

(f) in paragraph 10 (analysis), in sub-paragraphs (1) and (3), for "marine fuel", substitute "fuel oil".

(17) Omit Schedule 3 (information to be included in a bunker delivery note).

Signed by authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State
Date Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I. 2008/2924) to give domestic effect to the following resolutions of the Marine Environment Protection Committee of the International Maritime Organization—

— MEPC.258(67), which came into force on 1st March 2016, so far as it relates to the definition of fuel oil;

— MEPC.286(71), which came into force on 1st January 2019, relating to the designation of the Baltic Sea and the North Sea Emission Control Areas for NO_X Tier III control and information to be included in bunker delivery notes;

— MEPC.301(72), which came into force on 1st September 2019, so far as it relates to Emission Control Areas;

— MEPC.305(73), which came into force on 1st March 2020, relating to the carriage of non-compliant fuel oil for combustion purposes for propulsion or operation on board a ship;

— MEPC.316(74), which came into force on 1st October 2020, so far as it relates to electronic record books.

These resolutions amend Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocols of 1978 and 1997. The Convention and its Protocols and Annexes may be obtained in copy from the International Maritime Organization (IMO) at 4 Albert Embankment, London SE1 7SR and are available on the Foreign and Commonwealth Office (FCO) treaties database. The text of IMO resolutions amending the Convention and its Protocols and Annexes may be obtained from the IMO or can be found on the FCO treaties database.

Future amendments to the Convention, its Protocols and Annexes may be obtained in copy from the IMO and, after coming into force in the United Kingdom, found on the FCO treaties database. Until such publication is made on the FCO treaties database, an amendment will be available from the Maritime and Coastguard Agency and on https://www.gov.uk. An amendment will be publicised in advance of its in-force date by means of a Parliamentary Statement to both Houses of Parliament and by way of a Marine Guidance Note, which will be available in copy from the Agency and on https://www.gov.uk.

The FCO treaties database can be found at https://treaties.fco.gov.uk/responsive/app/consolidatedSearch/.

Regulation 2 makes corresponding amendments to regulations 2(1) (interpretation), 3 (application and exemptions), 21 (nitrogen oxides) and 25 (fuel oil quality) of the 2008 Regulations; and to Schedules 2 (engines excluded from regulation 21) and 2A (sulphur oxides) to the 2008 Regulations.

Regulation 2 also amends regulation 32(1) (offences) of the 2008 Regulations to enable more effective enforcement action to be taken against owners, managers and demise charterers (as well as the masters of ships) in respect of certain existing offences and to create new offences in respect of the new requirements.

Finally, regulation 2 inserts a new regulation 2A into the 2008 Regulations to make ambulatory provision (within the meaning of section 306A of the Merchant Shipping Act 1995) in relation to references in the 2008 Regulations to the Convention, including its Annexes. This will facilitate the implementation of subsequent amendments to the Convention, by reducing the need for domestic legislation. In consequence, Schedule 3 (information to be included in a bunker delivery note) of the 2008 Regulations has been revoked.

An impact 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 this instrument on www.legislation.gov.uk.

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