STATUTORY INSTRUMENTS

1985 No. 406

MERCHANT SHIPPING

The Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985

Laid before Parliament in draft

Made - - - - 13*th February* 1984

Coming into operation in accordance with regulation 1(1)

The Secretary of State for Transport, after consultation with the persons referred to in section 13(1) of the Merchant Shipping (Liner Conferences) Act 1982(**a**) (hereinafter called "the Act"), in exercise of the powers conferred on him by sections 2 and 3 of the Act, and of all other powers enabling him in that behalf, hereby makes the following Regulations, a draft of which has been laid before and approved by a resolution of each House of Parliament in pursuance of section 13(2)*(a)* of the Act:—

1.—(1) These Regulations may be cited as the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 and shall come into operation on the date on which the Code enters into force for the United Kingdom.

(2) In these Regulations—

"the Code" has the same meaning as in section 1(1) of the Act;

"conference" has the meaning given by Chapter I of the Code;

"conference agreement" means any agreement or arrangement referred to in the definition of "liner conference or conference" in Chapter I of the Code;

"national shipping line" means a shipping line recognised as a United Kingdom shipping line under the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985(**b**) or as a national shipping line of any other country by the appropriate authority of that country;

"person" includes an unincorporated conference;

"representative of shippers" means a representative of shippers as defined in the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985, who has been designated by the Secretary of State pursuant to those Regulations;

"shipper" has the meaning given by Chapter I of the Code, except that in relation to the mandatory provisions contained in articles 11, 14.2, 14.9, 16.3

(**a**) 1982 c. 37.
(**b**) S.I. 1985/405.

and 17.2 of the Code and identified in the Schedule to these Regulations "shipper" means such a shipper only if designated by the Secretary of State pursuant to the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985;

"shippers' organisations" means organisations recognised under the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985 or, as the case may be, designated by the Secretary of State pursuant to those Regulations;

"the Table" means the Table of mandatory provisions in the Schedule to these Regulations.

2. These Regulations (other than regulation 5) apply to any conference which—

(i) has its seat in the United Kingdom, so far as it serves the trade between states which are Contracting Parties to the Code, or

(ii) which does not have its seat in the United Kingdom so far as it serves the trade between the United Kingdom and another state which is a Contracting Party to the Code.

3.—(1) The provisions of Chapters I to V of the Code (whether articles, paragraphs or sentences as the case may be) listed in column 1 and column 8 of the Table are hereby identified as mandatory provisions, (the operation of certain of which has been modified by Council Regulation (EEC) No. 954/79 of 15th May 1979(a) concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences, as indicated in column 7 of the Table).

(2) A mandatory provision listed in column 1 of the Table in relation to which there is an entry—

(a) "SD" in column 2 of the Table shall be a statutory duty enforceable only at the suit of any person mentioned in column 4 of the Table against any person listed in column 5;

(b) "IT" in column 2 of the Table shall have effect as an implied term of the contract or contracts referred to in column 6 of the Table.

(3) The duties imposed by mandatory provisions referred to in paragraph (2) above are supplemented by mandatory provisions identified in relation thereto in column 8 of the Table. Where a provision of the Code is identified as such a supplementary statutory duty, then that statutory duty is owed by the same persons as the related statutory duty listed in column 1, to which the duty in column 8 is supplementary.

(4) The provisions of the Code mentioned in columns 1 or 8 of the Table shall have effect subject to any entry made in column 9 of the Table.

4. Any reference to a conference in column 4 or 5 of the Table includes a reference to incorporated conferences as well as unincorporated conferences; and in the case of incorporated conferences referred to in column 5 the

(a) O.J. No. L.121, 17.5. 1979, p.1.

members of the conference owe to the persons in column 4 a duty to take all reasonable steps to secure that the conference fulfils the duty imposed on the conference by that entry in the Table.

5. Chapter VI of the Code shall have effect as if—

(a) in article 23.2 for the words "shipping lines of the same flag" there were substituted "shipping lines which are incorporated or formed under the law of the same State and have their principal places of business in that State"; and

(b) at the end of article 23.3 there were added an extra sentence: "Where some or all of the parties to a dispute have settled it by mutual agreement, there shall no longer be a dispute between those parties for the purposes of articles 24 to 45".

Nicholas Ridley,
Secretary of State for Transport.

13th February 1985.

SCHEDULE

Regulation 3(1)

Table of mandatory provisions of the Code

1	2	3	4	5	6	7	8	9
Article, paragraph or sentence of the Code*	Whether statutory duty or implied term	Description	Right given to	Right enforceable against	Contract	Relevant provision of EC Regulation No. 954/79	Supplementary duty in Code	Clarification or supplement of article, paragraph or sentence of the Code*
Article 1 1.1(1)	SD	Admission to a conference	National shipping lines	Conferences		Article 2	1.4 and 1.5	In considering applications for admission or re-admission the conference shall have regard to article 1.2, and 1.6 as appropriate
1.1(2)	SD	Admission to a conference	Shipping lines other than national shipping lines	Conferences			1.4 and 1.5	In considering applications for admission or re-admission the conference shall have regard to article 1.2, 1.3 and 1.6 as appropriate

* A numeral in brackets indicates that the reference is to that sentence in the paragraph.

Article 2 2.1–2.4	IT	Participation in conference trade			Conference agreement	Articles 3 and 4	2.5–2.17	Without prejudice to the rights of national shipping lines, the reference in article 2.1 to trades covered by a conference relates only to the particular trades between contracting parties to the Code defined in that shipping line's agreements with other conference members. In article 2.4*(b)* for "right to acquire" substitute "right to acquire by commercial means". In article 2.13(1) for "require" substitute "request" in both places. In article 2.13(3) add "acting unanimously" after "both ends of the trade". In article 2.14(1) for "require" substitute "request".

SCHEDULE Regulation 3(1) *continued*

Table of mandatory provisions of the Code

1	2	3	4	5	6	7	8	9
Article, paragraph or sentence of the Code*	Whether statutory duty or implied term	Description	Right given to	Right enforceable against	Contract	Relevant provision of EC Regulation No. 954/79	Supplementary duty in Code	Clarification or supplement of article, paragraph or sentence of the Code*
Article 3 3	IT	Decision-making procedures			Conference agreement	Article 4.4		
Article 4 4.1, 4.2, 4.3 and 4.4	IT	Sanctions			Conference agreement			
Article 5 5.1	IT	Self policing			Conference agreement			
5.1(c)	SD	Reporting on self-policing	Appropriate authority	Conferences				
Article 6 6	SD	Conference agreements etc.	Appropriate authority	Conferences and member lines				

* A numeral in brackets indicates that the reference is to that sentence in the paragraph.

7.1(2) 7.1(3)	IT	Loyalty arrangements			Loyalty arrangements between the conference and shippers		7.2 and 7.3
Article 8							
8	IT	Dispensation from loyalty arrangements			Loyalty arrangements between the conference and shippers		
Article 9							
9(1)	SD	Availability of tariffs etc.	Shippers, shippers' organisations and representative of shippers and other parties concerned with the shipment of goods in which they have a beneficial interest on the routes covered by conferences	Conferences and member lines			9(2)
Article 10							
10(1)	SD	Annual reports	Shippers' organisations, and representative of shippers	Conferences			
10(2)	SD	Annual reports	Appropriate authority	Conferences			

SCHEDULE Regulation 3(1) *continued*

Table of mandatory provisions of the Code

1	2	3	4	5	6	7	8	9
Article, paragraph or sentence of the Code*	Whether statutory duty or implied term	Description	Right given to	Right enforceable against	Contract	Relevant provision of EC Regulation No. 954/79	Supplementary duty in Code	Clarification or supplement of article, paragraph or sentence of the Code*
Article 11 11.1(1)	SD	Consultation machinery	Conferences, designated shippers' organisations, shippers, and representative of shippers	Conferences, designated shippers' organisations, shippers and representative of shippers			11.1(2) 11.2, 11.3 11.4, 11.5 and 11.6	In Article 11.1(2) insert "reasonably" after "whenever". For Article 11.5 substitute "At the request of any party, to be made within 30 days of receipt of notice of a decision or proposal, or such other time as the parties agree, or the Code provides, consultation shall begin without undue delay, and in any event, unless different periods of time are provided in the Code,

* A numeral in brackets indicates that the reference is to that sentence in the paragraph.

								(i) within a maximum period specified in the conference agreement and agreed with shippers' organisations; or (ii) if sub-paragraph (i) does not apply not later than 30 days after receipt of the proposal for consultations."
11.1(3)	SD	Consultation machinery	Appropriate authority, representative of shippers	Conferences, designated shippers' organisations and shippers				
Article 13								
13.1(1)	SD	Tariffs	Shippers	Conferences				
13.1(2)	SD	Tariffs	Shippers	Conferences and member lines				This provision does not prevent lower than published rates being charged.
Article 14								
14.1	SD	General freight rate increases (Notice)	Shippers' organisations, shippers, representative of shippers, appropriate authority	Conferences			14.8	

SCHEDULE Regulation 3(1) *continued*

Table of mandatory provisions of the Code

1	2	3	4	5	6	7	8	9
Article, paragraph or sentence of the Code*	Whether statutory duty or implied term	Description	Right given to	Right enforceable against	Contract	Relevant provision of EC Regulation No. 954/79	Supplementary duty in Code	Clarification or supplement of article, paragraph or sentence of the Code*
14.2	SD	General freight rate increases (consultations)	Shippers, shippers' organisations, representative of shippers, conferences	Conferences			14.3 14.5	In article 14.2 after "receipt of the notice" insert "or in the absence of agreement within 30 days of the receipt of the notice". In article 14.5(1) for "and subject to the procedures prescribed in the Code" substitute "or, if consultation has been requested in accordance with article 14.2, within 60 days of receipt of the notice given under article 14.1".

* A numeral in brackets indicates that the reference is to that sentence in the paragraph.

								In article 14.3(1) after "matter" insert "at the request of one of the parties concerned".
14.6(3) & (4)	IT	General freight increases			Loyalty agreement			
14.7	SD	General freight increases; deferred rebates	Shippers	Conferences				
14.9(2)	SD	General freight rate increases	Shippers	Conferences		Art. 4.4		
Article 15								
15.3(1)	SD	Promotional freight rates	Shippers, shippers' organisations, and representative of shippers	Conferences			15.2 15.3(2) 15.4 15.5	
15.8	IT	Promotional freight rates			Conference agreement			
Article 16								
16.1	SD	Surcharges	Shippers	Conferences			16.2	
16.3	SD	Surcharges (consultation)	Shippers, shippers' organisations, and representative of shippers	Conferences			16.4(1) 16.5	
16.2(2)	IT				Shipment contract			

SCHEDULE Regulation 3(1) *continued*

Table of mandatory provisions of the Code

1	2	3	4	5	6	7	8	9
Article, paragraph or sentence of the Code*	Whether statutory duty or implied term	Description	Right given to	Right enforceable against	Contract	Relevant provision of EC Regulation No. 954/79	Supplementary duty in Code	Clarification or supplement of article, paragraph or sentence of the Code*
Article 17								
17.1(2)	SD	Currency changes	Shippers	Conferences			17.4	
17.2(1), (2) & (3)	SD	Currency changes (consultation)	Shippers shippers' organisations, and representative of shippers	Conferences			17.3 17.4	
Article 18								
18	SD	Fighting ships	Non-conference shipping lines	Conferences				
Article 19								
19.3(1)	SD	Adequacy of service	Shippers	Conferences				
Article 21								
21(1) & (2)	SD	Representation	Shippers' organisations, shippers, and representative of shippers	Conferences				

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations implement the Convention on a Code of Conduct for Liner Conferences, 1974 ("the Code"), (which is scheduled to the Merchant Shipping (Liner Conference) Act 1982 under which they are made). The Regulations come into force when the Code enters into force for the United Kingdom. This date, which will be six months after accession by the United Kingdom, will be published in the London and Edinburgh Gazettes. The Regulations (other than regulation 5) apply to liner conferences with their headquarters in the United Kingdom, so far as they serve the trade between Contracting Parties to the Code, and other Conferences serving the trade between the United Kingdom and another Contracting Party to the Code (regulation 2).

The Regulations identify the mandatory provisions contained in the Code and the persons to whom and by whom the duties are owed (regulation. 3 and Schedule). Such mandatory provisions are either statutory duties or implied terms of contract. The operation of the Code has been modified by Council Regulation (EEC) No. 954/79 concerning ratification by Member States of, or their accession to, the Code (O. J. No. L.121, 17.5.1979, p.1). Certain supplementary and clarificatory provisions for the Code are contained in columns 8 and 9 of the Table in the Schedule.

The Regulations cover incorporated conferences as well as unincorporated conferences: in the former case the members of the conference have a duty to take all reasonable steps to secure that the conference fulfils its duties (regulation 4).

Finally, two minor clarifications are made in respect of article 23 (disputes procedure) of the Code (regulation 5).

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