



MERCHANT SHIPPING (MARPOL ANNEX III - PREVENTION OF POLLUTION BY HARMFUL SUBSTANCES) ORDER 2015

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Statutory Document No. 2015/0231



Oil Pollution Act 1986

MERCHANT SHIPPING (MARPOL ANNEX III - PREVENTION OF POLLUTION BY HARMFUL SUBSTANCES) ORDER 2015

Approved by Tynwald: 23 July 2015
Coming into Operation: 1 August 2015

The Department of Economic Development, after consulting with the Secretary of State, makes the following Order under section 14 of the Oil Pollution Act 1986.

PART 1 - INTRODUCTORY

1 Title

This Order is the Merchant Shipping (MARPOL Annex III - Prevention of Pollution by Harmful Substances) Order 2015.

2 Commencement

If approved by Tynwald, this Order comes into operation on 1 August 2015¹.

3 Application

- (1) Subject to paragraphs (3) to (5), Part 2 (Prevention of Pollution by Harmful Substances) applies to –
- (a) a Manx ship carrying a harmful substance in packaged form wherever it may be; and
 - (b) a foreign ship which is a fixed or floating platform carrying a harmful substance in packaged form and which is engaged in exploration and exploitation of the sea-bed and subsoil within the territorial waters of the Island.

¹ Tynwald approval is required by section 17 of the Oil Pollution Act 1986

- (2) Subject to paragraphs (3) to (5), Part 3 (Foreign Ships) applies to a foreign ship carrying a harmful substance in packaged form whilst it is in the territorial waters of the Island.
- (3) This Order does not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government, non-commercial service.
- (4) For the purposes of this Order, empty packaging which has been used previously for the carriage of a harmful substance is to be treated as a harmful substance unless adequate precautions have been taken to ensure they contain no residue that is harmful to the marine environment.
- (5) The requirements of this Order do not apply to a ship's stores and equipment.

4 Interpretation

In this Order –

“**foreign ship**” means any ship that is not a Manx ship;

“**harmful substance**” means any substance which is identified as a marine pollutant in the IMDG Code or which meets the criteria in the Schedule to this Order;

“**IMDG Code**” means –

- (a) up to and including 31 December 2015, the International Maritime Dangerous Goods Code (2012 edition) and includes all amendments made to that Code up to and including Amendment 36-12 adopted by IMO Resolution MSC.328(90) and which entered into force on 1 January 2014; and
- (b) from 1 January 2016, the International Maritime Dangerous Goods Code and includes all amendments made to that Code up to and including those adopted by IMO Resolution MSC.372(93) on 22 May 2014;

“**IMO**” means the International Maritime Organization;

“**inspector**” means a person appointed as an inspector under section 3 of the Merchant Shipping Act 1985;

“**Manx ship**” has the meaning given by section 1 of the Merchant Shipping Registration Act 1991 and includes a ship registered under Part IV of that Act (the Demise Charter Register) or under Part 3 of the Harbours Act 2010 (pleasure craft and certain other vessels);

“**MARPOL Annex III**” means the revised Annex III to the MARPOL Convention including all amendments made to that Annex up to and including those adopted by IMO Resolution MEPC.193(61) on 1 October 2010 and which came into force on 1 January 2014;

“**MARPOL Convention**” means the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocols of 1978 and 1997;

“**MSN**” means a Manx Shipping Notice issued by the Department of Economic Development and includes any document amending the same;

“**operator**” means the owner of a ship or any other person who has assumed responsibility for the operation of the ship from the owner and who on assuming that responsibility has agreed to take over all the duties and responsibilities imposed by the MARPOL Convention;

“**packaged form**” means the forms of containment specified for a harmful substance in the IMDG Code;

“**RO**” means any recognised organisation specified in MSN 020 which is authorised by the Department of Economic Development to undertake the specified function;

“**ship**” means a vessel of any type operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms; and

“**territorial waters of the Island**” means—

- (a) the territorial sea adjacent to the Island; and
- (b) any waters within the area that extend landward from the baselines from which the breadth of the territorial sea is measured as far as the mean high water mark of ordinary spring tides.

5 Operator’s and master’s responsibility

- (1) An operator and master must ensure that a ship complies with such of the requirements of Parts 2 and 3 as apply to a ship of its description.
- (2) An operator or master who fails to comply with paragraph (1) commits an offence and is liable –
 - (a) on conviction on information, to custody for not more than 2 years, a fine, or both;
 - (b) on summary conviction, to a fine not exceeding £5,000.

6 Provisions relating to offences

- (1) It is a defence for a person charged under this Order to show that he or she took all reasonable steps to avoid the commission of the offence.
- (2) If the commission by any person of an offence under this Order is due to the act or default of some other person, that other person is guilty of the offence and a person may be charged with and convicted of the offence by virtue of this article whether or not proceedings are taken against the first-mentioned person.

- (3) If a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he or she, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.
- (4) If the affairs of a body corporate are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.
- (5) For the purposes of this article, “**body corporate**” includes a limited liability company constituted under the Limited Liability Companies Act 1996 and, in relation to that company, any reference to a director or other officer of a body corporate is a reference to a member and to the company’s manager and registered agent.

PART 2 – PREVENTION OF POLLUTION BY HARMFUL SUBSTANCES

7 Carriage of harmful substances

The carriage of a harmful substance is prohibited, except in accordance with the requirements of this Part.

8 Packing, marking and labelling

- (1) A package containing a harmful substance must be –
 - (a) adequate to minimise the hazard to the marine environment, having regard to its specific contents in accordance with the IMDG Code; and
 - (b) durably marked or labelled to indicate that the substance is a harmful substance in accordance with the relevant provisions of the IMDG Code.
- (2) The method of affixing marks or labels on a package containing a harmful substance must be in accordance with the relevant provisions of the IMDG Code.

9 Documentation

- (1) Transport information relating to the carriage of a harmful substance must be in accordance with the relevant provisions of the IMDG Code and must be made available to the person or organisation designated by the port State authority.

- (2) A ship carrying a harmful substance must have a special list, manifest or stowage plan detailing, in accordance with the relevant provisions of the IMDG Code, each harmful substance on board and the location of that substance.
- (3) A copy of one of the documents listed in paragraph (2) must be made available before the ship's departure to the person or organisation designated by the port State authority.
- (4) In this article, reference to "documents" does not preclude the use of electronic data processing (EDP) and electronic data interchange (EDI) transmission techniques as an aid to paper documentation.

10 Stowage

A harmful substance must be properly stowed and secured in accordance with the IMDG Code so as to minimise any hazard to the marine environment without impairing the safety of the ship or people on board.

11 Quantity limitations

Under the IMDG Code certain harmful substances are prohibited for carriage or limited as to the quantity which may be carried aboard any one ship and such provisions must be complied with.

12 Exceptions

- (1) The jettisoning of a harmful substance carried in packaged form is prohibited, except if necessary for the purpose of securing the safety of the ship or saving life at sea.
- (2) Appropriate measures based on the physical, chemical and biological properties of a harmful substance must be taken to regulate any washing of leakages overboard, in accordance with MSN 056, provided that compliance with those measures would not impair the safety of the ship or people on board.

13 Approvals

- (1) Where this Order requires compliance with any provision of the IMDG Code and that IMDG Code provision requires something to be approved by the Administration, the approval must be by the Department of Economic Development or an RO.
- (2) The approval specified in paragraph (1) is only valid if –
 - (a) it is in writing; and
 - (b) any conditions stated in it are complied with.

14 Exemptions

- (1) In accordance with the IMDG Code, Chapter 7.9.1.1, the Department of Economic Development may issue an exemption from specific provisions of the IMDG Code concerning the transport of a harmful substance if it is satisfied that the alternative transport provisions are at least as effective and safe as those required by that Code.
- (2) A copy of an exemption issued in accordance with paragraph (1) must accompany each consignment when offered to the carrier for transport under the terms of the exemption.
- (3) A paper or electronic copy of the exemption must also be maintained on board each ship transporting a harmful substance in accordance with the exemption.
- (4) The recipient of the exemption must notify other competent authorities concerned, prior to any shipment covered by that exemption.

PART 3 – FOREIGN SHIPS

15 Requirement to comply with MARPOL Annex III

A foreign ship in the territorial waters of the Island is prohibited from carrying a harmful substance, except in accordance with the provisions of MARPOL Annex III.

16 Inspection of a foreign ship

An inspector may inspect a foreign ship in a port of the Island to verify one or more of the following –

- (a) compliance with operational requirements under MARPOL Annex III; and
- (b) whether the ship has discharged a harmful substance in violation of the provisions of MARPOL Annex III.

17 Provisions relating to enforcement and detention of a foreign ship

- (1) If an inspector carries out an inspection in accordance with article 16 and finds that –
 - (a) the ship is not in compliance with operational requirements under MARPOL Annex III;
 - (b) the ship has discharged a harmful substance in violation of the provisions of MARPOL Annex III; or
 - (c) there are clear grounds for an inspector to believe that the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by harmful substances,

the ship may be detained until the situation has been brought to order in accordance with the requirements of MARPOL Annex III.

This is subject to the qualification in paragraph (2).

- (2) An inspector may grant a detained ship permission to leave the port for the purpose of proceeding to the nearest appropriate repair yard available.

Note:

If an inspector carries out an inspection in accordance with article 16(b) and the inspection indicates the ship has discharged a harmful substance in violation of MARPOL Annex III, a report must be forwarded to the ship's flag State for any appropriate action.

- (3) If an inspection is conducted or when measures are taken in accordance with paragraph (1) all reasonable efforts must be made to avoid a ship being unreasonably detained or delayed.
- (4) If a ship is detained in accordance with this article, section 74 of the Merchant Shipping Registration Act 1991 (which relates to the detention of a ship) has effect, subject to the following modifications —
- (a) in sub-sections (1) and (2), after “officer of the Department,” insert **or any inspector,**
 - (b) in sub-section (3), for “this Act” (wherever occurring) substitute **the MARPOL Annex III Order**; and
 - (c) after sub-section (3) add —
 - (4) In this section –**
 - “inspector”** has the meaning given by article 4 of the MARPOL Annex III Order; and
 - “MARPOL Annex III Order”** means the Merchant Shipping (MARPOL Annex III – Prevention of Pollution by Harmful Substances) Order 2015.

PART 4 - REVOCATIONS

18 Revocations

Articles 2 and 4 of the Merchant Shipping (Prevention and Control of Pollution) Order 1990² are revoked.

² GC 469/90

MADE 17 JUNE 2015

LAURENCE SKELLY
Minister for Economic Development

SCHEDULE

**CRITERIA FOR THE IDENTIFICATION OF HARMFUL SUBSTANCES IN
PACKAGED FORM**

For the purposes of this Annex, substances identified by any one of the following criteria are harmful substances*:

(a) Acute (short-term) aquatic hazard

Category: Acute 1

96 hr LC ₅₀ (for fish)	≤1 mg/litre and/or
48 hr EC ₅₀ (for crustacea)	≤1 mg/litre and/or
72 or 96 hr ErC ₅₀ (for algae or other aquatic plants)	≤1 mg/litre

(b) Long-term aquatic hazard

(i) Non rapidly degradable substances for which there are adequate chronic toxicity data available

Category: Chronic 1

Chronic NOEC or EC _x (for fish)	≤0.1 mg/litre and/or
Chronic NOEC or EC _x (for crustacea)	≤0.1 mg/litre and/or
Chronic NOEC or EC _x (for algae or other aquatic plants)	≤0.1 mg/litre

Category: Chronic 2

Chronic NOEC or EC _x (for fish)	≤1 mg/litre and/or
Chronic NOEC or EC _x (for crustacea)	≤1 mg/litre and/or
Chronic NOEC or EC _x (for algae or other aquatic plants)	≤1 mg/litre

(ii) Rapidly degradable substances for which there are adequate chronic toxicity data available

Category: Chronic 1

Chronic NOEC or EC _x (for fish)	≤0.01 mg/litre and/or
Chronic NOEC or EC _x (for crustacea)	≤0.01 mg/litre and/or
Chronic NOEC or EC _x (for algae or other aquatic plants)	≤0.01 mg/litre

Category: Chronic 2

Chronic NOEC or EC _x (for fish)	≤0.1 mg/litre and/or
Chronic NOEC or EC _x (for crustacea)	≤0.1 mg/litre and/or

Chronic NOEC or EC_x (for algae or other aquatic plants) ≤0.1 mg/litre

(iii) Substances for which adequate chronic toxicity data are not available

Category: Chronic 1

96 hr LC ₅₀ (for fish)	≤1 mg/litre and/or
48 hr EC ₅₀ (for crustacea)	≤1 mg/litre and/or
72 or 96 hr ErC ₅₀ (for algae or other aquatic plants)	≤1 mg/litre

and the substance is not rapidly degradable and/or the experimentally determined BCF is ≥ 500 (or, if absent, the log K_{ow} ≥ 4).

Category: Chronic 2

96 hr LC ₅₀ (for fish)	>1 mg/l but ≤ 10mg/litre and/or
48 hr EC ₅₀ (for crustacea)	>1 mg/l but ≤ 10mg/litre and/or
72 or 96 hr ErC ₅₀ (for algae or other aquatic plants)	>1 mg/l but ≤ 10mg/litre

and the substance is not rapidly degradable and/or the experimentally determined BCF is ≥ 500 (or, if absent, the log K_{ow} ≥ 4).

Additional guidance on the classification process for substances and mixtures is included in the IMDG Code.

*The criteria are based on those developed by the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS), as amended.

For definitions of acronyms or terms used in this appendix, refer to the relevant paragraphs of the IMDG Code.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to Annex III of the MARPOL Convention (MARPOL Annex III) which contains Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form. The Order implements MARPOL Annex III including all amendments made to that Annex up to and including IMO resolution MEPC 193(61).

This Order only applies to a ship carrying a harmful substance in packaged form.

Part 2 applies to a Manx ship wherever it may be and requires a harmful substance in packaged form to be carried in accordance with the International Maritime Dangerous Goods Code (IMDG Code). Part 2 also applies to a foreign ship which is a fixed and floating platform engaged in the exploration and exploitation of the sea-bed and subsoil in the territorial waters of the Island.

Part 3 of the Order applies MARPOL Annex III to a foreign ship in the territorial waters of the Island.

It is the responsibility of the operator and master of a ship to ensure a harmful substance in packaged form is carried in accordance with the requirements of this Order.

Copies of this document and Manx Shipping Notices are obtainable from the Isle of Man Ship Registry, Department of Economic Development, St Georges Court, Upper Church Street, Douglas, Isle of Man, IM1 1EX and can be accessed via the website: <http://www.iomshipregistry.com>

The International Convention for the Prevention of Pollution from Ships 1973, its Protocols, IMO resolutions and circulars can be obtained from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR.