



MERCHANT SHIPPING (CONTROL OF HARMFUL ANTI-FOULING SYSTEMS) ORDER 2014

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Statutory Document 2014/0062



Oil Pollution Act 1986

MERCHANT SHIPPING (CONTROL OF HARMFUL ANTI-FOULING SYSTEMS) ORDER 2014

Approved by Tynwald: 19 March 2014
Coming into Operation: 1 April 2014

The Department of Economic Development, after consulting 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 (Control of Harmful Anti-Fouling Systems) Order 2014.

2 Commencement

If approved by Tynwald this Order comes into operation on 1 April 2014.

3 Application

- (1) Unless provided otherwise, this Order applies to —
 - (a) a Manx ship wherever it may be; and
 - (b) any fixed or floating platform engaged in the exploration and exploitation of the seabed and subsoil of the territorial waters of the Island.
- (2) Part 4 of this Order applies to a foreign ship whilst it is in a port, shipyard or offshore terminal of the Island.
- (3) This Order does not apply to a 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 Interpretation

- (1) In this Order —

- “**AFS Certificate**” means an International Anti-fouling System Certificate issued in accordance with regulation 2 of Annex 4 to the AFS Convention;
- “**AFS Convention**” means the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 which is annexed to the final act of IMO’s International Conference on the Control of Harmful Anti-Fouling Systems for Ships and was adopted by that Conference on 18 October 2001;
- “**AFS Declaration**” means a Declaration on Anti-Fouling Systems drawn up in accordance with regulation 5 of Annex 4 to the AFS Convention;
- “**anti-fouling system**” means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms;
- “**authorised officer**” means a person appointed as an inspector in accordance with section 3 of the Merchant Shipping Act 1985;
- “**Convention country**” means a country that has consented to be bound by the AFS Convention;
- “**Department**” means the Department for Economic Development;
- “**foreign ship**” means a ship which is not a Manx ship;
- “**gross tonnage**” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention;
- “**IMO**” means the International Maritime Organization;
- “**inspector**” means a person appointed as an inspector under section 3 of the Merchant Shipping Act 1985 or a surveyor of an RO authorised by the Department to conduct inspections for compliance with the requirements of this Order;
- “**international voyage**” means a voyage from a country to a port, shipyard or offshore terminal outside that country;
- “**length**” means the length as defined in the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating thereto, or any successor Convention;
- “**Manx ship**” has the meaning given by section 1 of the Merchant Shipping Registration Act 1991 including ships registered under Part IV of that Act (the Demise Charter Register) or under Part 3 of the Harbours Act 2010;
- “**Manx Shipping Notice**” or “**MSN**” means a notice described as such and issued by the Department and includes any document amending the same which the Department considers relevant from time to time;

“**operator**” means the person registered as the owner of a Manx ship in accordance with the Merchant Shipping Registration Act 1991 or Part 3 of the Harbours Act 2010 (as the case may be), 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 AFS Convention;

“**RO**” means any recognised organisation specified in MSN 020 which is authorised by the Department 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, fixed or floating platforms, floating storage units and floating production storage and off-loading units; and

“**statement of compliance**” means a document described as such and issued by an RO following a satisfactory survey in accordance with regulation 1 of Annex 4 to the AFS Convention.

5 Operator’s responsibility

- (1) An operator must ensure a ship complies with the requirements of this Order.
- (2) Paragraph (1) applies whether or not this Order imposes an obligation on another person.
- (3) An operator who fails to comply with paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or, on conviction on information, to imprisonment for a term not exceeding 2 years and a fine.

PART 2 – CONTROLS ON ANTI-FOULING SYSTEMS

6 Controls on anti-fouling systems

- (1) The application, re-application, installation or use of organotin compounds which act as biocides in anti-fouling systems is prohibited on ships.
- (2) A ship must either —
 - (a) not bear organotin compounds which act as biocides on its hull or external parts or surfaces; or
 - (b) bear a coating that forms a barrier to prevent those compounds leaching from the underlying non-compliant anti-fouling systems.

This paragraph does not apply to a fixed or floating platform, a floating storage unit or a floating production storage and off-loading unit, if it

was constructed prior to 1 January 2003 and has not been in dry-dock on or after 1 January 2003.

7 Surveys

A ship of 400 gross tonnage or more engaged in international voyages is subject to the following surveys by the Department or RO –

- (a) an initial survey before the ship is put into service or before the AFS Certificate is issued for the first time; and
- (b) a survey when the anti-fouling system is changed or replaced.

This article does not apply to a fixed or floating platform, floating storage unit or floating production storage and off-loading unit.

8 AFS Certificate

- (1) A ship of 400 gross tonnage or above engaged in international voyages must carry a current, valid AFS Certificate issued by the Department or RO.

This paragraph does not apply to a fixed or floating platform, floating storage unit or floating production storage and off-loading unit.

- (2) Subject to paragraph (3), an AFS Certificate may be issued only if the Department or RO has ascertained through a survey in accordance with article 7(a) that the ship's anti-fouling system fully complies with this Order.
- (3) The issue of a new AFS Certificate to a ship transferred from another Convention country may be based on either a new survey or on a valid AFS Certificate issued by the previous Convention country whose flag the ship was entitled to fly.
- (4) The Department or RO will endorse the AFS Certificate following the successful completion of a survey as required by article 7(b) carried out due to the changing or replacement of an anti-fouling system.
- (5) An AFS Certificate ceases to be valid in the following circumstances –
 - (a) if the anti-fouling system is changed or replaced and the certificate is not endorsed in accordance with paragraph (4); or
 - (b) when a ship changes flag.
- (6) The AFS Certificate must be readily available on board the ship for inspection at all times.

9 AFS Declaration

- (1) A ship of 24 metres or more in length but less than 400 gross tonnage and engaged in international voyages must carry a valid AFS Declaration which is signed by the owner or owner's authorised agent and –

- (a) contains appropriate endorsement as specified in MSN 047; or
 - (b) is accompanied by related documentation such as a paint receipt or contractor invoice.
- (2) The AFS Declaration must be drawn up in the form corresponding to the model given in Appendix 2 to Annex 4 of the AFS Convention and be written at least in English.
- (3) The AFS Declaration must be readily available on board the ship for inspection at all times.

This article does not apply to fixed or floating platforms, floating storage units or floating production storage and off-loading units.

PART 3 - ENFORCEMENT

10 AFS Certificate may be withdrawn

The Department or, with the permission of the Department, an RO, may withdraw an AFS Certificate if the ship's anti-fouling system does not conform either to –

- (a) the particulars of the AFS Certificate; or
- (b) the requirements of this Order,

and any required corrective action has not been taken.

11 Prohibition on engaging on an international voyage without a valid AFS Certificate or valid AFS Declaration

- (1) A ship to which article 8 or 9 applies is prohibited from engaging on an international voyage without a valid AFS Certificate or valid AFS Declaration.
- (2) If the ship engages on an international voyage or attempts to engage on an international voyage without a valid AFS Certificate or valid AFS Declaration, the master commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or, on conviction on information, to imprisonment for a term not exceeding 2 years and a fine.

12 Powers of an inspector

- (1) Without limiting any wider powers that may be granted to an inspector under any other statutory provision, an inspector has the following powers –
- (a) to board a ship;
 - (b) to carry out any examination, test or inquiry that he or she may consider necessary in order to be satisfied that the ship complies

with this Order, including a brief sampling of the ship's anti-fouling system that does not affect the integrity, structure, or operation of the anti-fouling system taking into account guidelines developed by IMO; and

- (c) to require that any non-compliance with this Order is remedied.
- (2) A person who wilfully obstructs an inspector in the exercise of a power conferred by paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or, on conviction on information, to imprisonment for a term not exceeding 2 years and a fine.

13 Provisions relating to delay of ships

- (1) If an operator considers a ship has been unreasonably delayed the operator may apply to the High Bailiff for a declaration to that effect.
- (2) An application under paragraph (1) –
 - (a) may not be made more than 7 days after the delay has ceased;
 - (b) must be made in writing; and
 - (c) must be served on the Department as well as the High Bailiff.
- (3) On an application under paragraph (1) it is for the applicant to show, on the balance of probabilities, that –
 - (a) the ship's delay was unreasonable in all the circumstances; and
 - (b) the operator has suffered loss in consequence of that delay.
- (4) If it appears to the High Bailiff that both sub-paragraphs of paragraph (3) are met the High Bailiff may order the Department to pay such compensation as appears appropriate.

14 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, the preceding paragraph 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 4 – FOREIGN SHIPS

15 Interpretation for this Part

In this Part “**foreign ship operator**” means the owner of a foreign 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 AFS Convention.

16 Foreign ship operator’s responsibility

- (1) If a ship is in a port, shipyard or offshore terminal of the Island, the foreign ship operator must ensure that the ship complies with the provisions of the AFS Convention.
- (2) A foreign ship operator who fails to comply with paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or, on conviction on indictment, to imprisonment for a term not exceeding 2 years and a fine.

17 Prohibition on using organotin compounds which act as anti-fouling compounds

A ship in a port, shipyard or offshore terminal of the Island is prohibited from applying, re-applying, installing or using organotin compounds which act as biocides in anti-fouling systems.

18 Inspection of foreign ships

- (1) A ship may be subject to inspection by an authorised officer for the purpose of determining whether the ship is in compliance with the AFS Convention.
- (2) Except in the circumstances in paragraph (3), the inspection is limited to —
 - (a) verifying that, where required, there is on board a valid AFS Certificate or a valid AFS Declaration; and

- (b) carrying out a brief sampling of the ship's anti-fouling system that does not affect the integrity, structure or operation of the anti-fouling system taking into account guidelines developed by IMO.
- (3) If there are clear grounds for believing that the ship is in violation of the AFS Convention, an authorised officer may carry out a thorough inspection taking into account guidelines developed by IMO.
- (4) An inspection under paragraph (1) may also be undertaken at the request of another Convention country if it is received with sufficient evidence that the ship is operating or has operated in violation of the AFS Convention.

19 Provisions relating to enforcement, detention and offences

- (1) If an authorised officer carries out an inspection in accordance with article 18 and finds that the ship is in violation of the AFS Convention, the authorised officer may warn, detain, dismiss or exclude the ship from a Manx port, shipyard or offshore terminal.
- (2) If an inspection is conducted or when measures are taken in accordance with paragraph (1), all reasonable efforts must be made to avoid a foreign ship being unreasonably detained or delayed.
- (3) If a foreign ship operator considers a ship has been unreasonably detained or delayed the foreign ship operator may apply to the High Bailiff for a declaration to that effect.
- (4) An application under paragraph (3) —
 - (a) may not be made more than 7 days after the detention or delay has ceased;
 - (b) must be made in writing; and
 - (c) must be served on the Department as well as the High Bailiff.
- (5) On an application under paragraph (3) it is for the applicant to show, on the balance of probabilities, that —
 - (a) the ship's detention or delay was unreasonable in all the circumstances; and
 - (b) the foreign ship operator has suffered loss in consequence of that detention or delay.
- (6) If it appears to the High Bailiff that both sub-paragraphs of paragraph (5) are met the High Bailiff may order the Department to pay such compensation as appears appropriate.
- (7) If a ship is detained in accordance with paragraph (1), section 74 of the Merchant Shipping Registration Act 1991 (which relates to the detention of a ship) has effect, subject to the modifications —

- (a) in sub-sections (1) and (2), after “any officer of the Department” insert **“any authorised officer,”**
 - (b) in sub-section (3), for “this Act” (wherever occurring) substitute **“the AFS Order”**; and
 - (c) after sub-section (3) add —
(4) In this section —
“AFS Order” means the Merchant Shipping (Control of Harmful Anti-Fouling Systems) Order 2014; and
“authorised officer” has the meaning given by article 4 of the AFS Order. **”**
- (8) 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.
- (9) 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.

PART 5 – TRANSITIONAL PROVISIONS

20 Transitional provision for certification of a Manx ship

Until the date that is 6 months after the date the AFS Convention is extended to the Island, this Order applies with the modifications that in Part 2 (Controls on Anti-Fouling Systems) for the words “AFS Certificate” and “certificate” (wherever occurring), substitute **“statement of compliance”**.

MADE 14th February 2014

JOHN SHIMMIN
Minister for Economic Development

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (AFS Convention) and comes into operation on 1 April 2014.

The Order applies to a Manx ship wherever it may be and a foreign fixed and floating platform if it is engaged in the exploration and exploitation of the seabed and subsoil of Manx territorial waters. Part 4 of the Order applies to a foreign ship in a port, shipyard or offshore terminal of the Island.

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>

Copies of the AFS Convention, IMO resolutions and circulars can be obtained from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR.