

Circular - Series R

Circular Series R (Regulations) supersedes previous Series F. In the new Series R, relevant legal amendments and amendments to conventions are also published.

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Reference to: Excerpts from

The Circular should be entered into a special diagram or as appropriate in the latest editions of relevant NMA publications and kept until the next editions.

New Regulations on port State control

Introduction

The Norwegian Maritime Authority (NMA) hereby lays down new Regulations on port State control. The Regulations implement Directive 2013/38/EU. In addition, the Regulations continue and replace the provisions of Regulations of 30 December 2010 No. 1849 on the control of foreign ships and mobile offshore units in Norwegian ports, etc. with a new structure and simplified language.

Directive 2013/38/EU requires that port State control should also include verification of compliance with the MLC. The provisions are for the most part implemented in Regulations of 30 December 2010 No. 1849 on the control of foreign ships and mobile offshore units in Norwegian ports, etc. as a result of Norway's ratification of the MLC in 2009 and the entry into force of the Convention on 20 August 2013. However, the Convention sets out some requirements for selection and inspection. These requirements are in the new Regulations on port State control included in the first paragraph of section 4.

Furthermore, the amending Directive includes substantive amendments to the Port State Control Directive, i.a. references to the MLC and the certificate requirements of Article 2, and a separate provision on treatment of complaints from employees in the new Article 18a. In the new Port State Control Regulations, these requirements are included in section 4 first paragraph and section 23.

The proposed new Regulations on port State control were circulated for review from 25 July to 31 October 2014. A total of 11 consultative statements came in, whereof 3 did not have any comments to the proposal.

To fulfil our obligations in accordance with the EEA Agreement and thus Directive 2013/38/EU, the date of entry into force of the Regulations is set to 24 November 2014.

Please find the text of the Regulations and a matrix of consultative statements attached (see Annex 1 and 2).

Special remarks

Provisions directed at the NMA

The Port State Control Directive contains rules that are directed at the NMA and not at the companies. The Regulations therefore contain a provision referring to the Directive.

Definitions

The NMA's selection of ships and conduct of port State control shall be in compliance with the Directive, and the definitions therefore follow from the Directive. The exception is the abbreviation of the Maritime Labour Convention. In Directive 2013/38/EU, the Maritime Labour Convention is abbreviated to "MLC 2006". In Norwegian legislation, it is common to use the abbreviation "MLC", see e.g. the Ship Labour Act. To achieve a consistent terminology, the abbreviation "MLC" is therefore used in the new Regulations on port State control.

In addition to the terms that are defined in the Directive, the Directive sets out that each State shall decide the content of the term "night time". Since the definition of "night time" only states a period during which the NMA is not obligated to inspect Priority I ships, this definition has been removed from the Regulations and included in the NMA's procedures. For the companies, this period has limited or no significance.

Please note that the word "ship" has a more narrow definition in Directive 2009/16/EC than in the Ship Safety and Security Act. In the Directive, a ship is defined as a ship to which one or more of the Conventions implemented in the Directive apply, cf. Article 2 point 5.

Comments to the individual provisions

Some comments to the provisions of the Regulations are specified below. The Regulations have been divided into seven chapters. The reason for this division is given below for each chapter.

Chapter 1 - General and introductory provisions

Chapter 1 includes the scope of application and other introductory and general provisions, i.a. special certificate requirements for foreign ships engaged on domestic voyages in Norway or voyages between ports on Svalbard.

This chapter provides the companies with information on whether or not they are covered by the Regulations, and the sets of regulations that they need to comply with in connection with a port State control.

Section 1 Scope of application

The substantive scope of the Regulations is laid down in the first paragraph of section 1. The vessels which are covered are foreign cargo ships, passenger ships and mobile offshore units used

for commercial purposes within the territorial extent of the Ship Safety and Security Act, cf. section 3 second paragraph of the Ship Safety and Security Act.

This is an exhaustive list, and fishing vessels are thus exempted. The delimitation that is set out by the term "for commercial purposes" exempts "government ships used for non-commercial purposes and pleasure yachts not engaged in trade" and warships and naval auxiliaries¹

In Directive 2009/16/EC, "wooden ships of a primitive build" are exempted from the requirements. Wooden ships of a primitive build shall be exempted regardless of whether or not they are commercial purposes. Such ships have thus been exempted from the second paragraph of the provision regarding scope of application.

In the existing Regulations on port State control (Regulations of 30 December 2010 No. 1849 on the control of foreign ships and mobile offshore units in Norwegian ports, etc.), the following limitation has been included in the wording of the provision regarding scope of application:

"calling at or berthed in
a Norwegian port,
at anchorage or
a place of loading or discharge".

The fact that this only applies to ships calling at a port, anchorage or a place of loading and discharge is provided by the individual provisions of the Regulations and the Directive. This limitation has thus been removed from section 1.

Because there are no limitations or expansions with regard to the scopes of application of the Ship Safety and Security Act and the Ship Labour Act, the crew has not explicitly been included in the provision regarding scope of application. The crew is covered to the extent that they are covered by the Ship Safety and Security Act and the Ship Labour Act. In this connection it can be noted that military personnel are not covered by the scope of application of the Ship Labour Act, cf. section 1-2 second paragraph (b) of the Act. Such personnel are thus not covered by requirements provided by the MLC, cf. section 2 of the Regulations on port State control.

The NMA has considered whether ro-ro ships and high-speed passenger craft should be mentioned specifically in accordance with article 15 point 3. Article 15 point 3 is a rule directed at Norwegian authorities. Considering the fact that we in section 4 set out that we will comply with the Directive in the selection and conduct of controls, we have come to the conclusion that ro-ro ships and high-speed craft are covered by the term passenger ship, and that it is not necessary to include a separate reference to such ships in the scope of application.

This provision implements Article 3 point 1 first and third paragraphs and Article 3 point 4.

Section 2 Convention requirements

Section 2 incorporates 10 international Conventions as regulation for foreign ships operating in Norwegian waters. Following consultative statements from the seafarers' organisations in Norway, we have included the specification "apply as regulation for ships operating in Norwegian waters" in order to make the geographical scope of application more clear.

¹ Cf. Article 3 point 4 of Directive 2009/16/EF as amended by Directive 2013/38/EU.

Compared to current law and in accordance with Directive 2013/38/EU, the list of Conventions has been extended to also include the MLC, the AFS 2001 and the Bunkers Convention 2001. ILO No. 147 has been omitted for the same reason.

To the extent foreign ships or mobile offshore units are covered by the scope of application of the Conventions and the requirements of the Conventions, inspections shall be carried out on selected ships and mobile offshore units to ensure that the requirements of the Conventions are complied with.

This provision implements Article 2 point 1 of Directive 2009/16/EC, as amended by Directive 2013/38/EU.

Section 3 Passenger ships engaged on domestic voyages in Norway or voyages between ports on Svalbard

Section 3 is a special rule, which continues section 28 of the previous Regulations on port State control in a different wording. This provision does not contain any new requirements.

In this connection, the term "between ports" also means ships engaged on voyages to or from the same port, e.g. to and from Longyearbyen.

This provision implements parts of Directive 2009/45/EC as amended by Directive 2010/36/EC, cf. Article 3 point 1 second paragraph and Article 6 point 3 of Directive 2009/45/EC. Ships flying the flag of one of the EEA states are already covered by these requirements, and have therefore been exempted from the scope of application of this provision.

In order to ensure that the ships are equipped to operate in waters which do not have an adequate chart coverage, are poorly marked and where there is a danger of ice, icebergs and similar navigational dangers, four equipment requirements are set out in the second paragraph. These requirements are, together with the remaining part of the provision, a continuation of current law. Navigational equipment means i.a. equipment which makes it possible to obtain information on the depth in the area in which the ship is operating, such as sonar, multibeam echo sounder or ASDIC.

As a result of statements from the district governor of Svalbard and the Ministry of Justice and Public Security, we have also included "including voyages between ports on Svalbard" instead of "or voyages between ports on Svalbard" to show that Svalbard is a part of Norway. Pursuant to section 5 of Regulations of 4 November 1981 No. 3793 on trade areas, voyages between ports on Svalbard are not covered by the term domestic voyages. It is therefore necessary to mention ports on Svalbard specifically. There is a long practice for issuing certificates for domestic voyages to Norwegian vessels which are only engaged on voyages between ports on Svalbard. In these Regulations, voyages between ports on Svalbard are therefore covered by the term domestic voyages. Ships engaged on voyages from the Norwegian mainland to Svalbard must cross larger unsheltered stretches of sea, and are therefore not covered by the term domestic voyages. Such ships must hold a certificate for European trade for these voyages.

Chapter 2 Port State control

Chapter 2 sets out the rules that apply to the conduct of port State control in Norway. When it comes to administrative decisions made by the NMA in connection with port State controls, companies are generally referring to the Paris Memorandum of Understanding on Port State Control (Paris MOU) and Directive 2009/16/EC, and not to the NMA's regulations on port State control. Based on these observations, we do not consider it necessary to describe the procedural rules concerning the conduct of port State controls. We have instead chosen to refer to Directive 2009/16/EC, as amended by Directive 2013/38/EU.

Section 4 Conduct of port State control

All provisions directed at the NMA's selection and conduct of port State control have been included in a separate provision referring to the Directive.

Section 4 continues sections 2, 3, 4, 5, 6, 7, 8, 9 and 10, section 11 third paragraph, sections 15 and 16, section 17 fourth, fifth and sixth paragraphs, section 18, section 19 second, third, fourth, fifth and sixth paragraphs, section 24 fifth paragraph, section 27, section 29 first and second paragraphs, section 29, 30 and 31 of Regulations of 30 December 2010 No. 1849.

We have chosen this method to improve readability and to not make the Regulations longer than necessary.

This provision implements Directive 2009/16/EC, as amended by Directive 2013/38/EU, Articles: 1, 2, 3 point 1 first and third paragraphs and Article 3 point 2 and 3, Articles 4, 5, 6, 7 and 8, Article 9 point 4, Article 10, 11, 12 and 13, Article 14 point 1, 3 and 4, Article 15, Article 16 point 5, Article 17, 18 and 18a, Article 19 points 1 and 3, point 4 second paragraph, and points 6, 7, 8, 9 and 10, Article 20 points 4 a) and b), Article 21 points 1, 2, 3, 5 and 6, Article 22, Article 24 point 3 and Article 29 and Annexes I, II, IV, V, VI, VII, VIII, IX, X, XI, XIII and XIV.

Chapter 3 Obligations of the company and master

Chapter 3 gathers provisions relating to the obligations of the company and master pursuant to the Directive. In addition, the company may have obligations pursuant to other Norwegian legislation. For example, reference is made to section 45 of the Ship Safety and Security Act.

Section 5 Obligation to notify the ship's scheduled arrival time

This provision continues section 12 of the existing Regulations on port State control and transforms Article 9 and thus Annex III.

The first paragraph has been split up and the language has been improved. The last sentence of the first paragraph has now become the second paragraph.

The previous second paragraph has become the third paragraph. The duty for tankers to provide information has been omitted from the list and placed under a separate section at the end.

Furthermore, the previous third paragraph has now become the new fourth paragraph. The wording of the previous fourth paragraph has been continued in the first and second paragraphs.

Following comments from the Ministry of Transport and Communications, "SafeSeaNet" has been replaced with "SafeSeaNet Norway" in order to separate it from the system operated by EMSA. We have also clarified the wording with regard to when a ship "may" be eligible for an expanded inspection by including the words in italics: "If a ship may be subject to or is eligible for an expanded inspection, the company (...)".

The liable parties stated in sections 5 and 6 of the proposal to the new Regulations on port State control have after the consultation been changed to "the company or master". In the Directive, the liable parties are the operator, agent or master. Pursuant to Norwegian law, the agent must be authorised by the company in order to do anything on its behalf, and operator must be understood as the party responsible for the operation of the ship. This can be either the owner, the managing company or someone who, on the owner's behalf and at the owner's risk, is responsible for operating the ship. The company is the obligated party in the Ship Safety and Security Act, cf. section 4 of the Act. The company is either the managing company as stated in the ISM certificate or the owner. It is then only natural that the company is stated instead of the "operator". Based on

this, it is sufficient to consider the company and master as obligated parties. The addition "others acting on behalf of the company" is only used to indicate that someone may be authorised by the company. Since the consultation indicated that this creates uncertainty, the addition has been removed. This has also been done in section 7 of the Regulations.

This provision implements: Article 9 and Annex III to Directive 2009/16/EC, and an additional requirement (third paragraph (e)) to give information about the total number of persons on board.

Section 6 Notification of the actual time of arrival and the actual time of departure

This provision continues section 13 of the previous Regulations on port State control and implements Directive 2009/16/EC Article 24 point 2. The previous third paragraph of section 13 has, with a somewhat changed wording, been continued in the first and second paragraphs of section 6.

The ship's name and port/anchorage is already registered in SafeSeaNet when this "extra" notification is submitted. It is therefore sufficient to include an obligation to enter the time of arrival and departure.

Section 7 Obligation to ensure that sufficient time is available for an expanded inspection

This provision continues the first and second paragraphs of section 11 of the existing Regulations on port State control and transforms Directive 2009/16/EC Article 14 point 2.

Section 11 third paragraph of the existing Regulations on port State control is a rule directed at the Norwegian authorities. As mentioned above, rules concerning the obligations of the NMA are set out in the first paragraph of section 4 of the new Regulations on port State control.

Section 8 Obligation to initiate action

This provision continues the company's and master's obligations when the inspection of a ship is suspended due to the overall condition of the ship. The provision transforms the company's and master's obligations as set out in Directive 2009/16/EC Article 19 point 5.

The parts of the provisions which are directed at the NMA have been moved to the first paragraph of section 4.

Section 9 Costs related to the lifting of administrative measures

This provision continues the company's and master's obligation to bear all costs relating to controls carried out in order to lift a detention or a refusal of access order, cf. the previous Regulations on port State control section 17 first and second paragraphs. These requirements implement Article 28 points 1, 2 and 3 of Directive 2009/16/EC. Following the consultation, "in addition" has been included to show that both the first and second paragraphs must be complied with before a detention can be lifted.

Furthermore, linguistic and structural changes have been made to improve readability.

Chapter 4 Administrative measures

Chapter 4 states some of the administrative measures the NMA may carry out in connection with port State controls. The provisions of this chapter are directed at the NMA, but are included in the Regulations because they may contain intervening measures towards the ships and companies. This has been done for information purposes and to take due account of predictability for legal

entities by specifying possible administrative measures that may affect a foreign ship or mobile offshore unit which is inspected in port.

Chapters 8 and 9 of the Ship Safety and Security Act states the administrative measures and administrative sanctions which may be imposed on foreign ships. The administrative measures included in chapter 4 are measures for which special rules are stipulated in Directive 2009/16/EC in addition to the rules provided by the Ship Safety and Security Act section 52 first and second paragraphs, cf. section 52 third paragraph and section 54 second paragraph.

Section 10 Detention order and stoppage of an operation

This provision continues section 14 of the previous Regulations on port State control and also implements Directive 2013/38/EC Article 19 point 2a first paragraph.

Linguistic and structural changes have been made to improve readability. The second sentence of the first paragraph of section 14 of the previous Regulations on port State control has been moved to chapter 5, cf. section 15. The previous fourth paragraph of section 14 is now continued in section 8 on "obligation to initiate action".

A ship's obligation to remain in port follows from a detention order issued pursuant to section 10 of the Regulations. The last sentence of section 14 fourth paragraph of the previous Regulations has not been continued.

Following consultative statements, minor changes in the wording of subparagraphs c and d have been made to be more consistent with the terminology in current law. The terms "crew" and "persons working on board ships" have been replaced with "employees" to be more consistent with the Ship Labour Act. The abbreviation MLC 2006 has been replaced with MLC to achieve a consistent terminology. "Deficiencies" has, in accordance with the Ship Labour Act and the Norwegian translation of MLC been replaced with "breach".

The provision transforms Directive 2009/16/EC Article 19 point 2 first sentence, point 2a first paragraph, and point 4 first paragraph, Article 18a point 4i and A5.2.1 point 6 of the MLC.

Section 11 Refusal of access order

This provision continues section 19 of the previous Port State Control Regulations, yet with the wording "...on the basis of information recorded in the inspection database" being removed. The reason for this is that the basis for detention is only the number of detentions and the flag State's ranking on the Paris MoU lists. The inspection database (THETIS) will only provide information about this number.

The provision implements Directive 2009/16/EC Article 16 point 1 first paragraph, with the exception of the last half of the last sentence, which is covered by section 4 first paragraph of the Regulations. (On access to port in the event of force majeure.)

Section 12 Commencement of the refusal of access order

This provision is not an administrative measure, but it is nevertheless placed in chapter 4 because it provides information on when the administrative measure "refusal of access order" enters into force. The rule continues section 23 of the previous Port State Control Regulations.

The company is, in accordance with section 6 of the Ship Safety and Security Act, stated as the obligated party. Following the consultation, the wording of the section has been clarified with regard to what needs to be rectified and that it is not "the ship", but the company that is responsible for rectifying the deficiencies.

The provision implements Article 16 point 1 second paragraph of Directive 2009/16/EC.

Section 13 Effect of detention of ships previously issued with refusal of access orders

This rule continues section 21 of the previous Regulations. The wording "also" has been removed, while the wording "correspondingly to ports and anchorages within the Paris MOU region" has been included.

This provision implements Article 16 point 3 first sentence of Directive 2009/16/EC.

Section 14 Permanent refusal of access

This provision continues section 22 of the previous Port State Control Regulations and implements Directive 2009/16/EC Article 16 point 2 second and fifth paragraphs, and points 3-9 of Annex VIII to the Directive.

Section 15 Refusal of access when conditions are not met

This provision continues the first paragraph of section 20 of the previous Port State Control Regulations and implements Directive 2009/16/EC Article 21 point 4 first paragraph (a) and (b). Linguistic and structural amendments have been made to improve readability. This has i.a. resulted in the existing first paragraph of section 20 becoming a separate section, cf. section 15 of the Regulations.

Chapter 5 Lifting of detention, stoppage of an operation and refusal of access order

The provisions relating to lifting of administrative measures are all included in chapter 5. This has been done in order to make it easier to understand the conditions for being subjected to a refusal of access order, stoppage of operations and refusal of access orders in chapter 4, and likewise in chapter 5 to get information about what is required in order to have a detention lifted, start operations that have been stopped or again being able to operate the ship within the European Economic area or the Paris MOU region.

Section 16 Lifting of detention and stoppage of an operation

The first paragraph continues section 14 first paragraph second sentence of the previous Port State Control Regulations and implements Directive 2009/16/EC Article 19 point 2 first paragraph second sentence . MLC-related matters are dealt with in the third paragraph.

The second paragraph continues section 17 third paragraph second sentence of the previous Port State Control Regulations and implements Directive 2009/16/EC Article 28 point 4.

The third paragraph includes the amendment of Directive 2009/16/EC Article 19 point 2a second paragraph.

Section 17 Lifting of first refusal of access order

This provision continues section 24 of the previous Port State Control Regulations in a simplified form. Section 24 seventh paragraph of the previous Port State Control Regulations has been moved to section 9 on coverage of costs, while the sixth paragraph has been omitted since a corresponding provision is laid down by section 45 of the Ship Safety and Security Act.

Section 24 fifth paragraph of the previous Port State Control Regulations is covered by the first paragraph of section 4.

Section 17 first paragraph of the Regulations implements Directive 2009/16/EC Article 16 point 2 first paragraph and fifth paragraph (which refers to points 3-9 of Annex VIII). The second paragraph implements points 3, 4, 5, 8 and 7 of Annex VIII.

Section 18 Lifting of second refusal of access order

This provision continues section 25 of the previous Regulations and implements Directive 2009/16/EC Article 16 point 2 second and fifth paragraphs and points 3-9 of Annex VIII.

Section 19 Lifting of third refusal of access order

This provision continues section 26 of the previous Regulations, and implements Directive 2009/16/EC Article 16 point 3 first and fifth paragraphs.

Section 20 Lifting of refusal of access to port in accordance with section 15

This provision sets out a special rule concerning lifting of a refusal of access order issued on the basis of a breach of section 15 of the Regulations, cf. Directive 2009/16/EC Article 21 point 4 second paragraph. The NMA has chosen to use the term refusal of access to port in order to separate these events from other refusal of access orders. Our interpretation is that refusal of access orders issued due to lack of compliance with the conditions for being allowed to proceed to a repair yard and failure to call directly into the indicated repair yard are not covered by the general rules for lifting of refusal of access orders in Article 16. Article 21 of Directive 2009/16/EC sets out separate conditions for lifting, and does not refer to Article 16.

Chapter 6 Notes of concern, tips and right of appeal

The provisions relating to the right of appeal are all included in a separate chapter. A distinction is made between the right of appeal against administrative decisions and the right to lodge complaints about a breach of MLC. The right for persons working on board to submit notes of concern is also dealt with in this chapter.

Section 21 Right of appeal against a decision

Section 21 of the Regulations continues section 33 first to third paragraphs of the previous Regulations. The provision implements Directive 2009/16/EC Article 20 point 1.

Section 33 fourth paragraph of the previous Regulations is covered by section 4 of the Regulations. In accordance with current practise, the lodging of an appeal will not cause the detention or refusal of access to be suspended. The detention or refusal of access order will only be lifted when the conditions for lifting have been met, or when the NMA or the Ministry after the treatment of the complaint has reached the conclusion that the decision, with all conditions taken into account, was not justified.

Section 22 Notes of concern

This provision implements Article 18 of Directive 2009/16/EC, and applies to passenger ships, cargo ships and mobile offshore units.

Section 23 The right to lodge complaints about a breach of MLC

This provision continues section 34 of the previous Regulations, and implements rule A5.2.2 point 1 of the MLC. The wording is similar to the wording of Directive 2009/16/EC, as amended by Directive 2013/38/EU. The provision only applies to cargo ships and passenger ships. Mobile offshore units are not covered by this provision.

The NMA's treatment of a complaint about a breach of MLC is covered by section 4 of the Regulations.

Economic and administrative consequences

With the exception of the amendments ensuing from Directive 2013/38/EU, the Regulations continue the previous Regulations on the control of foreign ships and mobile offshore units in Norwegian ports, etc. It is the NMA's assessment that these are only minor amendments to current law.

Directive 2013/38/EC amends Directive 2009/16/EC. This amendment makes verification of compliance with the MLC to a part of the port State control. In Norway, this obligation entered into force on 20 August 2013 as a result of the implementation of the MLC Convention. The Directive therefore only entails minor regulatory amendments, and these amendments do not result in any administrative and financial implications for the administration or the industry. The starting point for the new Regulations is that the NMA's legislation shall become more readily available to the users, and that it shall become easier for the industry to locate applicable requirements. The NMA therefore presupposes that using the new Regulations will be time-saving for both the industry and other actors. It is also the NMA's assessment that a new and changed structure will make the future maintenance of the legislation less resource-demanding for the authorities.

If companies and others have referred to proposed repealed regulations in their normative documents, the Regulations hereby laid down will mean that they will have to bear the costs of incorporating and updating new references.

The Norwegian Maritime Authority presupposes that the overall gain of the new Regulations is larger than the associated costs.

Olav Akselsen
Director General of Shipping and Navigation

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Head of Department

Attachment:

Consultative statements with comments
Regulations of 24 November 2014 on port State control

