



# Merchant Shipping Act 1988 (repealed)

## 1988 CHAPTER 12

### PART III

#### MISCELLANEOUS PROVISIONS RELATING TO MERCHANT SHIPPING ETC.

##### *Financial assistance*

#### **26 Financial assistance in respect of costs of training merchant navy officers and ratings.**

- (1) The Secretary of State may, with the consent of the Treasury, give any person or body of persons of any description determined by him for the purposes of this section financial assistance in respect of expenses incurred or to be incurred by any such person or body in connection with the training (whether in the United Kingdom or elsewhere) of officers and ratings for service in merchant ships, including expenses incurred or to be incurred by any such person in connection with his undergoing any such training.
- (2) Assistance under this section may be given by way of a grant or a loan or otherwise; and in giving any such assistance the Secretary of State may impose such conditions as he thinks fit, including conditions requiring a grant to be repaid in specified circumstances.
- (3) This section is without prejudice to any other power of the Secretary of State to give financial assistance in connection with any such training as is mentioned in subsection (1).

#### **27 Financial assistance in respect of crew relief costs.**

- (1) The Secretary of State may, with the consent of the Treasury, give financial assistance to—
  - (a) the owner of a ship registered in the British Islands, or

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- (b) any manager of a ship so registered, being either an individual ordinarily resident in the British Islands or a body corporate which is incorporated in the British Islands and has its principal place of business there,  
in respect of travel and other costs incurred by the owner or manager in connection with members of the ship's crew joining or leaving the ship outside the Limited European trading area.
- (2) If the Secretary of State so determines, eligibility for assistance under this section shall be conditional on the fulfilment of such conditions with respect to all or any of the following matters as are specified in his determination, namely —
- (a) the nationality of any person in relation to whom any such costs as are mentioned in subsection (1) are incurred;
  - (b) the ordinary residence of any such person;
  - (c) the place (outside the Limited European trading area) where any such person joins or leaves his ship.
- (3) Assistance under this section may be given by way of a grant or a loan or otherwise; and in giving any such assistance the Secretary of State may impose such conditions as he thinks fit.
- (4) For the purposes of this section—
- (a) the crew of a ship shall be taken to include the master and other officers of the ship; and
  - (b) “the Limited European trading area” has the same meaning as it has for the purposes of any regulations made under section 43 of the <sup>M1</sup>Merchant Shipping Act 1970 (regulations about manning).

**Marginal Citations**

**M1** 1970 c. 36.

*The Merchant Navy Reserve*

**28 Establishment of the Merchant Navy Reserve.**

- (1) The Secretary of State may establish and maintain a body of persons to be known as the Merchant Navy Reserve whose members may, in such circumstances and for such periods as the Secretary of State may determine, be required by him to serve in ships belonging to or employed in the service of Her Majesty.
- (2) The Merchant Navy Reserve shall consist of such number of persons as the Secretary of State may determine who voluntarily undertake to become members of the Reserve and are accepted as members of it.
- (3) The Secretary of State may determine the procedure by which, and the conditions under which, persons may become, or (subject to any regulations made by him under this section) may cease to be, members of the Merchant Navy Reserve.
- (4) The Secretary of State may make regulations with respect to the calling into, and discharge from, service of members of the Merchant Navy Reserve and with respect to other matters relating to the service of members of the Reserve.

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- (5) Any such regulations may, in particular, make provision—
- (a) for call-out notices to be served on members of the Reserve;
  - (b) for the requirements to be complied with by persons on whom such notices have been served;
  - (c) as to the uniform and equipment with which members of the Reserve are to be provided;
  - (d) for regulating the conduct and discipline of members of the Reserve who have entered into service, and for securing their attendance at their places of duty;
  - (e) for the imposition of fines, or the forfeiture of pay or other amounts, for misconduct or breaches of discipline or for contraventions of provisions of the regulations.
- (6) Without prejudice to the operation of subsection (5)(e), regulations under this section may provide that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding the third level on the standard scale or such lower amount as is prescribed by the regulations.

## **29 Supplementary provisions relating to Merchant Navy Reserve.**

- (1) Subject to such conditions as the Secretary of State may determine, there shall be payable to members of the Merchant Navy Reserve such pay, bounties and allowances as he may determine.
- (2) The Secretary of State may make such payments as he thinks fit in connection with the training and certification of members of the Merchant Navy Reserve (including payments to persons undergoing such training and payments in connection with the re-validation of certificates).
- (3) The Secretary of State shall not make any determination under subsection (1), or any payment under subsection (2), except with the consent of the Treasury.
- (4) Where any person is called into service by virtue of regulations under section 28—
  - (a) the provisions of the <sup>M2</sup>Reserve Forces (Safeguard of Employment) Act 1985 shall apply to that person as if any service rendered by him in pursuance of the call-out were whole-time service within the meaning of that Act; and
  - (b) any service so rendered shall be relevant service within the meaning of the <sup>M3</sup>Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951.

### **Marginal Citations**

**M2** 1985 c. 17.

**M3** 1951 c. 65.

*Safety of navigation, oil pollution etc.*

## **30 Owner and master liable in respect of dangerously unsafe ship.**

- (1) If, having regard to the nature of the service for which it is intended—
  - (a) a ship in a port in the United Kingdom, or
  - (b) a ship registered in the United Kingdom which is in any other port,

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is, by reason of any of the matters mentioned in subsection (3), not fit to go to sea without serious danger to human life, then, subject to subsections (5) and (6), the master and the owner of the ship shall each be guilty of an offence.

(2) Where, at the time when a ship is not fit to go to sea as mentioned in subsection (1), any responsibilities of the owner with respect to the particular matters by reason of which the ship is not fit to go to sea have been assumed (whether wholly or in part) by any person or persons other than the owner, and have been so assumed by that person or (as the case may be) by each of those persons either—

- (a) directly, under the terms of a charter-party or management agreement made with the owner, or
- (b) indirectly, under the terms of a series of charter-parties or management agreements,

the reference to the owner in subsection (1) shall be construed as including a reference to that other person or (as the case may be) to each of those other persons.

(3) The matters referred to in subsection (1) are—

- (a) the condition, or the unsuitability for its purpose, of—
  - (i) the ship or its machinery or equipment, or
  - (ii) any part of the ship or its machinery or equipment;
- (b) undermanning;
- (c) overloading or unsafe or improper loading;
- (d) any other matter relevant to the safety of the ship.

(4) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(5) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence—

- (a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters falling within subsection (3) which are specified in the charge (or, in Scotland, which are libelled in the complaint, petition or indictment); or
- (b) it was reasonable for such arrangements not to have been made.

(6) It shall also be a defence in proceedings for an offence under this section to prove—

- (a) that, under the terms of one or more charter-parties or management agreements entered into by the defendant, the relevant responsibilities, namely—
  - (i) where the defendant is the owner, his responsibilities with respect to the matters referred to in subsection (3) (a), or
  - (ii) where the defendant is liable to proceedings under this section by virtue of subsection (2), so much of those responsibilities as had been assumed by him as mentioned in that subsection,

had at the time of the alleged offence been wholly assumed by some other person or persons party thereto; and

- (b) that in all the circumstances of the case the defendant had taken such steps as it was reasonable for him to take, and exercised such diligence as it was

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reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in paragraph (a);

and, in determining whether the defendant had done so, regard shall be had in particular to the matters mentioned in subsection (7).

(7) Those matters are—

(a) whether prior to the time of the alleged offence the defendant was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and

(b) the extent to which the defendant was or was not able, under the terms of any such charter-party or management agreement as is mentioned in subsection (6) (a)—

(i) to terminate it, or

(ii) to intervene in the management of the ship,

in the event of any such deficiency, and whether it was reasonable for the defendant to place himself in that position.

(8) No proceedings for an offence under this section shall be instituted—

(a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;

(b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(9) In this section—

“management agreement”, in relation to a ship, means any agreement (other than a charter-party or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person);

“relevant responsibilities” shall be construed in accordance with subsection (6);

and any reference in this section to going to sea shall, in a case where the service for which a ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.

(10) References in this section to responsibilities being assumed by a person under the terms of a charter-party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

VALID FROM 01/05/1994

### **[<sup>F1</sup>30A Power to detain unsafe ship**

(1) Where a ship in a port in the United Kingdom appears to a relevant inspector to be an unsafe ship the ship may be detained.

(2) The power of detention conferred by subsection (1) above is exercisable in relation to foreign ships as well as United Kingdom ships.

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- (3) The officer detaining the ship shall serve on the master of the ship a detention notice which shall—
- (a) state that the relevant inspector is of the opinion that the ship is an unsafe ship;
  - (b) specify the matters which, in the relevant inspector’s opinion, make the ship an unsafe ship; and
  - (c) prohibit the ship from going to sea until it is released by competent authority.
- (4) In the case of a ship which is not a British ship the officer detaining the ship shall cause a copy of the detention notice to be sent as soon as practicable to the nearest consular officer for the country to which the ship belongs.
- (5) In this section—
- “competent authority” means any officer mentioned in section 692(1) of the 1894 Act;
- “relevant inspector” means any person mentioned in paragraph (a), (b) or (c) of section 76(1) of the Merchant Shipping Act 1970; and
- “unsafe ship” means a ship which is not fit to go to sea as mentioned in section 30(1) of this Act;
- and the reference to going to sea shall be construed in accordance with subsection (9) of section 30.]

#### Textual Amendments

**F1** S. 30A inserted (1.5.1994) by 1993 c. 22, s. 8(3), Sch. 4 para. 12(2); S.I. 1993/3137, art. 3(2), Sch.2.

### 31 Owner liable for unsafe operation of ship.

- (1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.
- (2) This section applies to—
- (a) any ship registered in the United Kingdom; and
  - (b) any ship which—
    - (i) is registered under the law of any country outside the United Kingdom, and
    - (ii) is within the seaward limits of the territorial sea of the United Kingdom while proceeding to or from a port in the United Kingdom, unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.
- (3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1), he shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding £50,000;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (4) Where any such ship—
- (a) is chartered by demise, or

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- (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of section 30, any reference to the owner of the ship in subsection (1) or (3) above shall be construed as including a reference—
- (i) to the charterer under the charter by demise, or
  - (ii) to any such manager as is referred to in paragraph (b), or
  - (iii) (if the ship is both chartered and managed as mentioned above) to both the charterer and any such manager,
- and accordingly the reference in subsection (1) to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.
- (5) No proceedings for an offence under this section shall be instituted—
- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

## **32 Conduct endangering ships, structures or individuals.**

The following section shall be substituted for section 27 of the <sup>M4</sup>Merchant Shipping Act 1970—

### **“27 Conduct endangering ships, structures or individuals.**

- (1) This section applies—
- (a) to the master of, or any seaman employed in, a ship registered in the United Kingdom; and
  - (b) to the master of, or any seaman employed in, a ship which—
    - (i) is registered under the law of any country outside the United Kingdom, and
    - (ii) is in a port in the United Kingdom or within the seaward limits of the territorial sea of the United Kingdom while proceeding to or from any such port.
- (2) If a person to whom this section applies, while on board his ship or in its immediate vicinity—
- (a) does any act which causes or is likely to cause—
    - (i) the loss or destruction of or serious damage to his ship or its machinery, navigational equipment or safety equipment, or
    - (ii) the loss or destruction of or serious damage to any other ship or any structure, or
    - (iii) the death of or serious injury to any person, or
  - (b) omits to do anything required—
    - (i) to preserve his ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged, or
    - (ii) to preserve any person on board his ship from death or serious injury, or

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- (iii) to prevent his ship from causing the loss or destruction of or serious damage to any other ship or any structure, or the death of or serious injury to any person not on board his ship,  
and either of the conditions specified in subsection (3) of this section is satisfied with respect to that act or omission, he shall (subject to subsections (6) and (7) of this section) be guilty of an offence.
- (3) Those conditions are—
- (a) that the act or omission was deliberate or amounted to a breach or neglect of duty;
  - (b) that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission.
- (4) If a person to whom this section applies—
- (a) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a) of this section, or
  - (b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things,
- he shall (subject to subsections (6) and (7) of this section) be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (6) In proceedings for an offence under this section it shall be a defence to prove—
- (a) in the case of an offence under subsection (2) of this section where the act or omission alleged against the defendant constituted a breach or neglect of duty, that the defendant took all reasonable steps to discharge that duty;
  - (b) in the case of an offence under subsection (4) of this section, that the defendant took all reasonable precautions and exercised all due diligence to avoid committing the offence; or
  - (c) in the case of an offence under either of those subsections—
    - (i) that he could have avoided committing the offence only by disobeying a lawful command, or
    - (ii) that in all the circumstances the loss, destruction, damage, death or injury in question, or (as the case may be) the likelihood of its being caused, either could not reasonably have been foreseen by the defendant or could not reasonably have been avoided by him.
- (7) In the application of this section to any person falling within subsection (1)(b) of this section, subsections (2) and (4) shall have effect as if paragraphs (a)(i) and (b)(i) of subsection (2) were omitted; and no proceedings for an offence under this section shall be instituted against any such person—



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- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(8) In this section—

“breach or neglect of duty”, except in relation to a master, includes any disobedience to a lawful command;

“duty”—

- (a) in relation to a master or seaman, means any duty falling to be discharged by him in his capacity as such; and
- (b) in relation to a master, includes his duty with respect to the good management of his ship and his duty with respect to the safety of operation of his ship, its machinery and equipment; and

“structure” means any fixed or movable structure (of whatever description) other than a ship.”

#### **Marginal Citations**

**M4** 1970 c. 36.

### **33 Investigation of marine accidents.**

- (1) The Secretary of State shall, for the purpose of the investigation of any such accidents as are mentioned in subsection (2), appoint such number of persons as he may determine to be inspectors of marine accidents, and he shall appoint one of those persons to be Chief Inspector of Marine Accidents.
- (2) The accidents referred to in subsection (1) are—
  - (a) any accident involving a ship or ship’s boat where, at the time of the accident—
    - (i) the ship is registered in the United Kingdom, or
    - (ii) the ship, or (in the case of an accident involving a ship’s boat) that boat, is within the seaward limits of the territorial sea of the United Kingdom; and
  - (b) such other accidents involving ships or ships’ boats as the Secretary of State may determine.
- (3) The Secretary of State may by regulations make such provision as he considers appropriate with respect to the investigation of any such accidents as are mentioned in subsection (2).
- (4) Any such regulations may, in particular, make provision—
  - (a) with respect to the definition of “accident” for the purposes of this section and the regulations;
  - (b) imposing requirements as to the reporting of accidents;
  - (c) prohibiting, pending investigation, access to or interference with any ship or ship’s boat involved in an accident;
  - (d) authorising any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access

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- to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat;
- (e) specifying, with respect to the investigation of accidents, the functions of the Chief Inspector of Marine Accidents (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged;
  - (f) for the appointment by the Chief Inspector of Marine Accidents, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not inspectors of marine accidents;
  - (g) for the appointment by any Minister of the Crown of persons to review any findings or conclusions of a person carrying out an investigation under this section;
  - (h) for the procedure to be followed in connection with investigations or reviews under this section;
  - (i) for conferring on persons discharging functions under the regulations who are not inspectors of marine accidents all or any of the powers conferred on an inspector by section 27 of the <sup>M5</sup>Merchant Shipping Act 1979;
  - (j) for the submission to the Secretary of State, and the publication by him, of reports of investigations or reviews under this section;
  - (k) for the publication by the Chief Inspector of Marine Accidents of reports and other information relating to accidents.
- (5) Regulations under this section may provide for any provisions of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships' boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely—
- (a) the loss or destruction of or serious damage to any ship or structure,
  - (b) the death of or serious injury to any person, or
  - (c) environmental damage,
- whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.
- (6) Regulations under this section may provide that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by a fine.
- (7) The Chief Inspector of Marine Accidents, or (as the case may be) inspectors of marine accidents generally, shall discharge such functions in addition to those conferred by or under the preceding provisions of this section as the Secretary of State may determine.
- (8) Any inspector of marine accidents shall, for the purpose of discharging any functions conferred on him by or under this section, have the powers conferred on an inspector by section 27 of the <sup>M6</sup>Merchant Shipping Act 1979.
- (9) Nothing in this section shall limit the powers of any authority under sections 530 to 537 of the 1894 Act (removal of wrecks).
- (10) In this section—

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- (a) references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any reference to a ship or ship's boat involved in an accident shall be construed accordingly); and
- (b) "ship's boat" includes a liferaft.

**Marginal Citations**

- M5** 1979 c. 39.
- M6** 1979 c. 39.

**34 Liability and compensation for oil pollution damage.**

- (1) The <sup>M7</sup>Merchant Shipping (Oil Pollution) Act 1971 ("the 1971 Act") and the <sup>M8</sup>Merchant Shipping Act 1974 ("the 1974 Act") shall be amended in accordance with Parts I and II of Schedule 4 to this Act (which contain amendments designed to implement provisions of the following Conventions, namely—
  - (a) the International Convention on Civil Liability for Oil Pollution Damage 1984; and
  - (b) the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1984).
- (2) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate in connection with the implementation of any transitional provisions contained in those Conventions; and any such Order may in particular provide, in relation to occurrences of any description specified in the Order—
  - (a) for provisions of the 1971 Act or the 1974 Act to have effect —
    - (i) to such extent as is so specified, as if Schedule 4 to this Act were not in force, and
    - (ii) to such extent as is so specified, as if that Schedule were in force;
  - (b) for any such provisions to have effect (whether as amended by that Schedule or not) subject to such modifications as are so specified.

**Marginal Citations**

- M7** 1971 c. 59.
- M8** 1974 c. 43.

**35 Regulation of transfers between ships in territorial waters.**

- (1) The Secretary of State may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within the seaward limits of the territorial sea of the United Kingdom, such provision as he considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.
- (2) Regulations under this section may, in particular, do any of the following things, namely—
  - (a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;
  - (b) make provision about—

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- (i) the design of, and standards to be met by, ships and equipment,
  - (ii) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board, and
  - (iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary thereto;
  - (c) provide for proposed transfers to be notified to and approved by persons appointed by the Secretary of State or another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
  - (d) provide—
    - (i) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations, and
    - (ii) for references in the regulations to any document so specified to operate as references to that document as revised or re-issued from time to time;
  - (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
  - (f) require the payment of fees determined with the approval of the Treasury;
  - (g) provide for the granting by the Secretary of State or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the Secretary of State or that other person may specify, and for altering or cancelling exemptions;
  - (h) limit any provision of the regulations to specified cases or kinds of case.
- (3) Regulations under this section may provide—
- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding £25,000 and on conviction on indictment by imprisonment for a term not exceeding two years or a fine or both;
  - (b) that any such contravention shall be an offence punishable only on summary conviction by a fine not exceeding £25,000 or such lower amount as is prescribed by the regulations;
  - (c) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (a) or (b) above.

### **36 Amendments of Coast Protection Act 1949 relating to safety of navigation.**

- (1) The <sup>M9</sup>Coast Protection Act 1949 shall be amended as follows.
- (2) In section 34(1) (restriction of works detrimental to navigation and carried out below high water mark of ordinary spring tides)—
  - (a) in paragraph (a), for “high water mark of ordinary spring tides” there shall be substituted “ the level of mean high water springs ”;
  - (b) in paragraph (c), for “low water mark of ordinary spring tides” there shall be substituted “ the level of mean low water springs ”; and

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- (c) for the words from “so that” onwards there shall be substituted “ if the operation (whether while being carried out or subsequently) causes or is likely to result in obstruction or danger to navigation. ”

(3) The following subsection shall be inserted after section 34(3)—

“(3A) Any reference in subsection (1) or (3) above to an operation being likely to result in obstruction or danger to navigation shall, in the case of an operation falling within subsection (1)(a) above, be construed as including a reference to its being likely to result in obstruction or danger to navigation by reason of any use intended to be made of the works in question when constructed, altered or improved.”

(4) The following subsection shall be inserted after section 34(4)—

“(4A) Any condition subject to which the Secretary of State has given his consent for an operation falling within subsection (1)(a) of this section—

- (a) shall (subject to paragraph (d) below) either remain in force for a specified period or remain in force without limit of time;
- (b) shall (in addition to binding the person to whom the consent is given) bind, so far as is appropriate, any other person who for the time being owns, occupies, or enjoys any use of, the works in question;
- (c) may, if the condition relates—
  - (i) to the provision of any lights, signals or other aids to navigation, or
  - (ii) to the stationing of guard ships in the vicinity of the works in question or to the taking of any other measures for the purpose of, or in connection with, controlling the movements of ships in the vicinity of those works,

be varied by the Secretary of State in the interests of the safety of navigation (whether or not the operation has been completed) in such manner as he thinks fit for the purpose of enhancing the effectiveness of any such aids or measures as are mentioned in sub-paragraph (i) or (ii) above; and

- (d) may, if the Secretary of State thinks fit, be revoked by him.”

(5) In section 36 (enforcement of section 34)—

- (a) after subsection (1) there shall be inserted—

“(1A) Where a person is bound by any condition subject to which any such consent has been given under that section but is not the person to whom the consent was given, then, for the purposes of subsection (1) of this section, he shall not be taken to have failed to comply with the condition unless—

- (a) he has been served by the Secretary of State with a notice requiring him to comply with the condition within such period (not being less than thirty days) as may be specified in the notice; and
- (b) he has failed to comply with the condition within that period”;
- (b) in subsection (2), for “the last foregoing subsection” there shall be substituted “ subsection (1) of this section ”; and

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- (c) in subsection (4), after “from the person” there shall be inserted “ on whom the notice was served under subsection (2) of this section or (if no such notice was served) from the person ”.

(6) After section 36 insert—

**“36A Imposition by Secretary of State of safety requirements in cases of emergency.**

- (1) Where at any time after the Secretary of State has given his consent for an operation falling within section 34(1)(a) of this Act (“the relevant consent”), it appears to him—

- (a) that any danger to navigation has arisen by reason of—
- (i) any substantial damage to any works to which that consent relates, or
  - (ii) any other substantial and unforeseen change in the state or position of any such works, and
- (b) that it is urgently necessary to do so in the interests of the safety of navigation,

he may, by notice served on the person to whom the consent was given, impose on that person such requirements as he thinks fit with respect to any of the matters referred to in subsection (2) below.

- (2) Those matters are—
- (a) the provision on, or in the vicinity of, the works in question of any lights, signals or other aids to navigation, and
  - (b) the stationing of guard ships in the vicinity of those works.

- (3) Where the person on whom a notice is served under subsection (1) above fails to comply with any requirements of the notice within the period of 24 hours beginning with the time when it is served on him or as soon after the end of that period as is reasonably practicable, the Secretary of State may make such arrangements as he thinks fit for the purpose of securing that those requirements are implemented.

- (4) Where under subsection (3) above the Secretary of State makes any such arrangements, he shall be entitled to recover the cost, as certified by him, of making those arrangements from such one or more of the following, namely—

- (a) the person to whom the relevant consent was given, and
- (b) any other person or persons who is or are, in accordance with section 34(4A)(b) of this Act, bound by any condition subject to which that consent was given,

as he thinks fit.

- (5) Once the requirements of a notice under subsection (1) above have been complied with by the person on whom it was served, or implemented in accordance with arrangements made by the Secretary of State under subsection (3) above, those requirements shall, subject to subsection (6) below, be treated for the purposes of this Part of this Act as conditions subject to which the relevant consent was given.

- (6) Section 34(4A)(a) and (d) of this Act shall not apply to any such requirements; but if it appears to the Secretary of State (whether on the application of any

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person or otherwise) that the circumstances giving rise to the urgent necessity for the imposition of the requirements no longer exist, he shall revoke them by notice served on the person to whom the relevant consent was given.

(7) Where the Secretary of State has served a notice under subsection (1) above in respect of any particular circumstances, subsection (5) above shall not preclude him from serving a further notice under subsection (1) in respect of those circumstances.

(8) A notice may be served by the Secretary of State under subsection (1) above whether or not—

- (a) the operation in question has been completed, or
- (b) any condition was imposed by him, on giving the relevant consent, with respect to any of the matters referred to in subsection (2) above.”

(7) In section 49 (interpretation)—

- (a) in subsection (1), in the definitions of “sea” and “seashore”, for “the next following subsection” there shall be substituted “ subsections (2) and (2A) of this section ”; and
- (b) the following subsection shall be inserted after subsection (2)—

“(2A) For the purposes of Part II of this Act the expression “sea” includes any part of the sea within the seaward limits of the territorial sea of the United Kingdom, and the expression “seashore” shall be construed accordingly.”

#### Marginal Citations

M9 1949 c. 74.

### 37 Licensing of tidal works by harbour authorities.

(1) Where—

- (a) it appears to the Secretary of State that any harbour authority have, by virtue of any statutory provision, power to license or otherwise regulate operations of any description falling within any of paragraphs (a) to (c) of section 34(1) of the <sup>M10</sup>Coast Protection Act 1949 (“the relevant power”), and
- (b) he considers it appropriate to do so, he may make regulations providing for section 34 of that Act not to apply to operations of that description in relation to which the relevant power is exercisable and which are carried out within such area or areas falling within the jurisdiction of that harbour authority as may be specified in the regulations (“the prescribed operations”); and, if he does so, the relevant power shall be exercisable by the harbour authority, in relation to the prescribed operations, subject to and in accordance with the following provisions of this section.

(2) Regulations made by the Secretary of State under this section with respect to any harbour authority may make provision—

- (a) in connection with the exercise by the authority of the relevant power in relation to the prescribed operations—
  - (i) for any matter for which provision is made by sections 34(2) to (4A) and 36 of the Coast Protection Act 1949, and

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- (ii) for any provision of the regulations made in pursuance of subparagraph (i) above or any of paragraphs (b) to (g) below to have effect in addition to or in substitution for any other statutory provision which (apart from the regulations) has effect in that connection;
  - (b) requiring the authority to advertise in such manner as may be specified in the regulations—
    - (i) any application made to them for the grant, in the exercise of the relevant power, of a licence to carry out a prescribed operation, and
    - (ii) the grant of any such licence and any conditions subject to which it has been granted,
 and to give to the Secretary of State such notice of any of those matters as may be so specified;
  - (c) enabling representations to be made with respect to any such application in such manner as may be specified in the regulations;
  - (d) requiring the authority, when determining any such application, to have regard to any representations made in accordance with the regulations so far as touching on any consideration material to the authority's decision on the application;
  - (e) enabling an appeal to the Secretary of State to be brought, by such persons, on such grounds and in such manner as may be specified in the regulations, against—
    - (i) the grant or refusal of any such licence, or
    - (ii) any conditions imposed on the grant of any such licence;
  - (f) for the operation of any such licence to be suspended during the period during which such an appeal may be brought and, if such an appeal is brought by a person other than the applicant, until such time (if any) as the authority's decision on the application is affirmed by the Secretary of State;
  - (g) authorising the Secretary of State on such an appeal to do any of the things mentioned in subsection (6)(a) to (c) below;
  - (h) for any statutory provision having effect in relation to the authority to have effect subject to such modifications as appear to the Secretary of State to be necessary or expedient—
    - (i) for the purpose of making provision for any matter for which provision may be made by virtue of any of paragraphs (a) to (g) above, or
    - (ii) in consequence of any provision of the regulations made in pursuance of any of those paragraphs.
- (3) Where—
- (a) any regulations under this section are in force in relation to a harbour authority, and
  - (b) the authority have determined an application made to them for the grant, in the exercise of the relevant power, of a licence to carry out a prescribed operation, and
  - (c) no appeal has been brought (whether under the regulations or otherwise) in respect of their determination of the application, but
  - (d) the Secretary of State considers that it would be appropriate in the interests of the safety of navigation for the application to be redetermined by him,
- the Secretary of State may, within the period of 60 days beginning with the date of the authority's determination, serve a notice on the authority requiring them to furnish



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- him with written particulars of their determination, and with any documents in their possession relating to the application, in order that he may redetermine the application.
- (4) Where the Secretary of State serves a notice under subsection (3) in respect of any application—
- (a) the Secretary of State shall serve a copy of that notice on the applicant and shall, in such manner as he thinks fit, advertise the fact that the application is to be redetermined by him; and
  - (b) the operation of any licence granted by the authority in pursuance of the application shall be suspended until such time (if any) as the authority's decision to grant the licence is affirmed by the Secretary of State under subsection (6).
- (5) The Secretary of State shall, when redetermining any application, have regard to any representations made to him by persons appearing to him to be likely to be affected by the operation to which the application relates where those representations have been made to him within the period of 30 days beginning with the date (or, as the case may be, the latest date) of the publication of any advertisement published in pursuance of subsection (4)(a).
- (6) Where the Secretary of State redetermines an application, he may (according to the circumstances of the case)—
- (a) direct the harbour authority to grant either—
    - (i) a licence free from conditions, or
    - (ii) a licence subject to such conditions as are specified in the direction, as he thinks fit;
  - (b) direct the harbour authority to cancel any licence granted by them in pursuance of the application; or
  - (c) affirm the harbour authority's determination of the application.
- (7) Any direction given by the Secretary of State under subsection (6)(a) shall be a direction requiring the authority in question to grant such a licence as is mentioned in sub-paragraph (i) or (ii) of that provision either—
- (a) in the form in which it was originally applied for by the applicant, or
  - (b) in that form but subject to such modifications as are specified in the direction, as the Secretary of State thinks fit; but where the Secretary of State proposes to specify any modifications under paragraph (b) above which appear to him to be capable of resulting in any substantial interference with navigation—
    - (i) he shall take such steps as appear to him to be reasonably practicable for informing persons likely to be concerned, and
    - (ii) shall not so specify those modifications unless there has elapsed such period for consideration of, and comment upon, them as he thinks reasonable.
- (8) The power of the Secretary of State to make any regulations under this section with respect to any harbour authority shall be exercisable by him either—
- (a) on the application of the harbour authority, or
  - (b) of his own motion after consulting the authority.
- (9) On each occasion when a harbour authority grant a licence in the exercise of any such power as is mentioned in subsection (1) (whether they do so in pursuance of the preceding provisions of this section or not) they shall furnish the Hydrographer of the Navy—

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- (a) before the operation to which the licence relates has been begun, with written particulars of the operation and with a plan showing where it is to be carried out, and
  - (b) once the operation has been carried out, with a notification of that fact, and with such plans and additional information relating to the completed operation as he may require for the purpose of determining whether, and if so what, changes should be made to any chart or other publication produced under his superintendence.
- (10) It shall be the duty of any harbour authority to whom the Secretary of State gives a direction under or by virtue of this section to give effect to the direction.
- (11) In this section “licence” includes a consent or permission and references to the grant of a licence accordingly include references to the giving of a consent or permission.

**Marginal Citations**

**M10** 1949 c. 74.

*Protection of shipping interests*

**38 Amendments of Part III of Merchant Shipping Act 1974.**

- (1) Part III of the <sup>M11</sup>Merchant Shipping Act 1974 (protection of shipping and trading interests) shall be amended as follows.
- (2) In section 14 (foreign action affecting shipping), the following subsection shall be substituted for subsection (1)—

“(1) The Secretary of State may exercise the powers conferred by this section if he is satisfied that—

- (a) a foreign government, or
- (b) persons purporting to exercise governing authority over any territory outside the United Kingdom, or
- (c) any agency or authority of a foreign government or of such persons, have adopted, or propose to adopt, measures or practices concerning or affecting any shipping services which—
  - (i) are damaging or threaten to damage the shipping or trading interests of the United Kingdom, or
  - (ii) are damaging or threaten to damage the shipping or trading interests of another State,

and, in the latter case, the Secretary of State is satisfied that action under this section would be in fulfilment of the obligations of the United Kingdom to that other State or would be appropriate in view of any arrangements made between Her Majesty’s Government and the government of that other State.”

- (3) The following subsection shall be substituted for section 14(3)—

“(3) The Secretary of State may by order provide for—

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- (a) regulating the provision of any shipping services and the rates, fares or other amounts which may or must be charged for providing those services;
- (b) regulating—
  - (i) the admission and departure of ships to and from United Kingdom ports,
  - (ii) the nature of the shipping services they may be used to provide (whether by reference to the cargoes or passengers they may carry or otherwise), and
  - (iii) the loading or unloading of cargoes, the embarkation or disembarkation of passengers, or the doing of other things in connection with the provision of any shipping services;
- (c) regulating the making and implementation of agreements (including charter-parties) whose subject matter relates directly or indirectly to the provision of any shipping services, and requiring such agreements to be subject to the Secretary of State’s approval in such cases as he may specify;
- (d) imposing charges in respect of ships which enter United Kingdom ports in connection with the provision of any shipping services;
- (e) imposing, in pursuance of any Community obligation, such tax or duty payable by such persons and in such circumstances as the Secretary of State may specify;

and in this subsection “regulating”, except in relation to the rates, fares or other amounts which may or must be charged as mentioned in paragraph (a) above, includes imposing a prohibition.”

(4) In section 14(4) (orders under subsection (3)), for “subsection (1)(a)” substitute “subsection (1)(i)”.

(5) In section 14(5) (directions by Secretary of State), for “charges imposed under subsection (3)(d) above” there shall be substituted “any charge, tax or duty imposed under subsection (3)(d) or (e) above”.

(6) The following subsections shall be substituted for section 14(11) and (11A)—

“(11) In this section—

- (a) “foreign government” means the government of any State other than the United Kingdom;
- (b) references to an agency or authority of a foreign government or of such persons as are mentioned in subsection (1)(b) above include references to any undertaking appearing to the Secretary of State to be, or to be acting on behalf of, an undertaking which is in effect owned or controlled (directly or indirectly) by a State other than, or by a territory outside, the United Kingdom;
- (c) “shipping services” means services provided by means of ships, and includes the carriage of goods or passengers by sea, cable laying, dredging, and services provided by offshore support vessels; and
- (d) references to ships are to ships of any registration.

(11A) A recital in an order under this section that the persons who have adopted, or propose to adopt, the measures or practices in question are—

- (a) a foreign government, or

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- (b) such persons as are mentioned in subsection (1)(b) above, or
  - (c) an agency or authority of a foreign government or of such persons, shall be conclusive.”
- (7) In section 15 (parliamentary control of orders under section 14)—
- (a) at the beginning of each of subsections (1) and (2) there shall be inserted “Subject to subsection (2A) below,”;
  - (b) after subsection (2) there shall be inserted—
    - “(2A) Subsections (1) and (2) above do not apply to an order under the said subsection (3) which is made for the purpose only of implementing any Community obligation.”; and
  - (c) in subsection (4), after “recites” there shall be inserted “that it is made as mentioned in subsection (2A) above, or”.
- (8) In Schedule 4 (provisions supplementing section 14), for paragraph 2 there shall be substituted—

#### **Orders imposing charges, taxes or duties**

- “2 (1) An order under subsection (3)(d) or (e) of the principal section —
- (a) may apply to ships of any description specified in the order, and may apply in particular to ships registered in a specified country, or to ships carrying goods or cargoes of a specified description, or providing any other specified shipping services (within the meaning of the principal section), and
  - (b) may contain such provisions as appear to the Secretary of State expedient to enable the Commissioners of Customs and Excise to collect any charge, tax or duty imposed by the order, and
  - (c) may apply, subject to any modifications or exceptions specified in the order, any of the enactments for the time being in force relating to duties (whether of customs or excise) chargeable on goods imported into the United Kingdom.
- (2) Any charge, tax or duty so imposed may be a fixed amount, or an amount depending on the tonnage of the ship.
- (3) Any such charge, tax or duty shall be payable to the Secretary of State.
- (4) An order shall not be made by the Secretary of State under subsection (3) (d) or (e) of the principal section except with the consent of the Treasury.
- (5) Nothing in this paragraph prejudices subsection (6) of that section.”

#### **Marginal Citations**

M11 1974 c. 43.

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### **39 Power to prohibit provision of coastal shipping services which are not British-based.**

- (1) The Secretary of State may by order provide for the provision of shipping services to which this section applies to be prohibited except where such services are provided from one or more permanent places of business maintained in the British Islands.
- (2) This section applies to the following shipping services—
  - (a) the carriage of goods or passengers by sea—
    - (i) between ports in the United Kingdom, or
    - (ii) between a port in the United Kingdom and an offshore installation in United Kingdom waters, or
    - (iii) between offshore installations in United Kingdom waters;
  - (b) the carriage of passengers by sea on voyages or excursions beginning and ending at the same port in the United Kingdom, other than voyages or excursions which involve calling at any port or ports outside the British Islands (whether passengers disembark there or not); and
  - (c) shipping services (other than the carriage of goods or passengers by sea) which are—
    - (i) provided by means of ships operating out of ports in the United Kingdom (whether so provided within United Kingdom waters or not), or
    - (ii) provided within United Kingdom waters by means of ships operating out of ports outside the United Kingdom.
- (3) An order under this section may make provision—
  - (a) with respect to the circumstances in which shipping services are to be regarded for the purposes of the order as being provided from one or more permanent places of business maintained in the British Islands;
  - (b) authorising the Secretary of State to issue licences sanctioning the provision of shipping services to which this section applies, notwithstanding that they are not provided as mentioned in paragraph (a) above, in cases where he is satisfied that there is no-one willing and able to provide the services in question as mentioned in that paragraph;
  - (c) requiring the payment, in connection with applications for such licences, of fees determined with the approval of the Treasury;
  - (d) exempting any prescribed class or description of shipping services from any prohibition imposed by virtue of subsection (1);
  - (e) authorising the Secretary of State, or a person appointed by him for the purpose, to serve notices requiring the production or furnishing of documents or information appearing to the Secretary of State or any such person to be necessary to enable him to determine such matters as may be prescribed;
  - (f) with respect to the manner of service of notices in pursuance of paragraph (e).
- (4) An order under this section may—
  - (a) make different provision for different circumstances;
  - (b) make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient.
- (5) The provisions of an order under this section shall not discriminate between shipping services provided by different persons on the basis of the place of registration of the ships by means of which the services are provided.

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(6) Section 728 of the 1894 Act (appointment of inspectors) shall have effect in relation to—

- (a) any order under this section, or
- (b) any licence issued by virtue of subsection (3)(b) above,

as it has effect in relation to any such regulations or licence as is mentioned in paragraph (b) of that section; but section 27 of the <sup>M12</sup>Merchant Shipping Act 1979 (powers of inspectors) shall have effect in relation to any inspector appointed by virtue of this subsection with the omission of paragraphs (f) to (h) of subsection (1) of that section.

(7) The power to make an order under this section shall be exercisable by statutory instrument, but no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(8) In this section—

“offshore installation” has the same meaning as in the <sup>M13</sup>Mineral Workings (Offshore Installations) Act 1971;

“prescribed” means prescribed by an order under this section;

“shipping services” means—

- (a) the carriage of goods or passengers by sea,
- (b) services provided by offshore support vessels, and
- (c) such other services provided by means of ships as the Secretary of State may specify in an order under this section;

“United Kingdom waters” means waters within the seaward limits of the territorial sea of the United Kingdom and waters in any area designated under section 1(7) of the <sup>M14</sup>Continental Shelf Act 1964.

#### **Marginal Citations**

**M12** 1979 c. 39.

**M13** 1971 c. 61.

**M14** 1964 c. 29.

#### **40 Enforcement of s. 39.**

(1) Where—

- (a) any ship is used in the course of the provision of any shipping services to which section 39 applies, or
- (b) anything is done on board a ship with a view to its being used to provide any such services,

and the provision of those services is prohibited by virtue of subsection (1) of that section and is not sanctioned by any licence issued by virtue of subsection (3)(b) of that section, then (subject to subsections (6) and (7)), the master and the owner of the ship shall each be guilty of an offence.

(2) Where the ship—

- (a) is chartered by demise, or
- (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement,

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- the reference in subsection (1) to the owner of the ship shall be construed as including a reference—
- (i) to the charterer under the charter by demise, or
  - (ii) to any such manager as is referred to in paragraph (b) above, or
  - (iii) (if the ship is both chartered and managed as mentioned above) to both the charterer and any such manager.
- (3) Any person who—
- (a) in connection with an application for such a licence as is mentioned in subsection (3)(b) of section 39, or
  - (b) in purported compliance with the requirements of any notice served on him by virtue of subsection (3)(e) of that section,
- knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence.
- (4) Any person who—
- (a) without reasonable excuse (the proof of which lies on him) fails to comply with the requirements of any such notice, or
  - (b) intentionally alters, suppresses, conceals or destroys a document which he has been required to produce in pursuance of subsection (3)(e) of that section,
- shall be guilty of an offence.
- (5) Any person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £50,000;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (6) It shall be a defence in proceedings brought under subsection (1) against the master of a ship to prove—
- (a) that the master did not know and had no reason to suspect that, in the circumstances of the case, the provision of the shipping services referred to in paragraph (a) or (as the case may be) paragraph (b) of that subsection was prohibited by virtue of subsection (1) of section 39, or
  - (b) that the master had reasonable grounds for believing that the provision of those services was sanctioned by a licence issued by virtue of subsection (3)(b) of that section.
- (7) It shall be a defence in proceedings brought under subsection (1) against a person other than the master of a ship to prove that, under the terms of one or more charter-parties or management agreements entered into by the defendant, the right to determine the purpose for which the ship in question was being used at the time of the alleged offence was wholly vested in some other person or persons party thereto (whether or not any such other person or persons had entered into a further charter-party or management agreement providing for that right to be vested in some other person).
- (8) Subsections (1), (3) and (4) apply to offences falling within those subsections wherever committed.
- (9) Proceedings for an offence under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (10) Proceedings for an offence under this section shall not be instituted—

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- (a) in England and Wales, except by or with the consent of the Attorney General or the Secretary of State; or
  - (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland or the Secretary of State.
- (11) Any document required or authorised, by virtue of any statutory provision, to be served for the purpose of the institution of, or otherwise in connection with, proceedings for an offence under subsection (1) shall, where it is to be served on a person who was, at the time of the alleged offence—
- (a) the owner of the ship in question, or
  - (b) such a charterer by demise or manager of that ship as is mentioned in subsection (2),
- be treated as duly served on that person if—
- (i) sent to him by post at his last-known address (whether of his residence or of a place where he carries on business), or
  - (ii) left for him at that address,
- or if the document is served on the master of the ship in question.
- (12) In this section “management agreement” has the same meaning as in section 30.

#### *Financing and administration of lighthouse service*

#### **41 Joint discharge of functions by general lighthouse authorities.**

The following section shall be inserted after section 634 of the 1894 Act—

##### **“634A Joint discharge of functions by general lighthouse authorities.**

- (1) Two or more of the general lighthouse authorities may discharge any of their functions jointly; and for that purpose—
  - (a) those authorities may share any part of their respective establishments, and
  - (b) any of them may, in the area of another and on that other’s behalf, execute any works or do any other thing which the authority have power to execute or do in their own area;
 and any enactment relating to the functions in question or to the authorities by whom or the areas in which those functions are to be discharged shall be construed accordingly.
- (2) Any expenses incurred by any of the general lighthouse authorities in pursuance of this section shall be apportioned between that authority and the other authority or authorities concerned in such manner as may be agreed between them or (in default of agreement) determined by the Secretary of State.”

#### **42 Borrowing powers in connection with lighthouse expenditure.**

- (1) The following sections shall be substituted for section 662 of the 1894 Act—



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*Status:* Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Merchant Shipping Act 1988 (repealed), Part III. (See end of Document for details)

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### **“662 Borrowing powers of general lighthouse authorities.**

- (1) A general lighthouse authority may, with the consent of the Secretary of State and the Treasury, borrow money for the purpose of defraying any expenses incurred or to be incurred by the authority in connection with the discharge of their functions under this Act.
- (2) A general lighthouse authority may, in connection with any advance to them under this section, mortgage any land or other property belonging to them.
- (3) Any sums payable by a general lighthouse authority under the terms of an advance under this section by way of principal, interest or otherwise shall be paid out of the General Lighthouse Fund.

### **662A Limit on borrowings under s. 662.**

- (1) The aggregate amount outstanding in respect of the principal of any sums borrowed under section 662 of this Act shall not at any time exceed £100 million.
- (2) The Secretary of State may, by order made by statutory instrument with the approval of the Treasury, increase or further increase that limit, but not by more than £33 million at a time.
- (3) An order shall not be made under subsection (2) of this section unless a draft of the order has been laid before and approved by a resolution of the House of Commons.

### **662B Guarantees by Secretary of State.**

- (1) The Secretary of State with the consent of the Treasury may guarantee, in such manner and on such conditions as he thinks fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums borrowed by a general lighthouse authority under section 662 of this Act.
- (2) Immediately after a guarantee is given under this section, the Secretary of State shall lay a statement of the guarantee before each House of Parliament, and where any sum is issued for fulfilling a guarantee so given the Secretary of State shall, as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereon is finally discharged, lay before each House of Parliament a statement relating to that sum.
- (3) Any sums required by the Secretary of State for fulfilling any guarantee under this section shall be paid out of money provided by Parliament.
- (4) If any sums are issued in fulfilment of any guarantee given under this section there shall be made to the Secretary of State out of the General Lighthouse Fund, at such times and in such manner as the Secretary of State may determine with the consent of the Treasury, payments of such amounts as the Secretary of State may so determine in or towards repayment of the sums so issued, and payments of interest on what is outstanding for the time being

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in respect of sums so issued at such rate as the Secretary of State may so determine.

(5) The Secretary of State, with the consent of the Treasury, may vary or revoke any determination made by him under subsection (4) of this section.

(6) Any sums received by the Secretary of State under that subsection shall be paid into the Consolidated Fund.”

(2) In consequence of subsection (1) above, section 663 of the 1894 Act (power of Public Works Loan Commissioners to advance money on security of mortgage effected under section 662 of that Act as originally enacted) shall cease to have effect.

#### **43 Payment out of General Lighthouse Fund of certain expenses of Secretary of State.**

The following sections shall be inserted after section 2 of the <sup>M15</sup>Merchant Shipping (Mercantile Marine Fund) Act 1898—

##### **“2A Payment out of Fund of Secretary of State’s expenses relating to certain navigational aids.**

- (1) There shall be paid out of the General Lighthouse Fund—
- (a) any expenses (whether of a capital nature or not) incurred by the Secretary of State in pursuance of any international agreement relating to the provision of an electronic position-fixing system which is intended as an aid to the navigation of ships ; and
  - (b) any expenses incurred by the Secretary of State preliminary to his entering into any such agreement.
- (2) Any sums received by the Secretary of State in pursuance of any such agreement in respect of—
- (a) expenses incurred by him as mentioned in subsection (1)(a) of this section, or
  - (b) expenses incurred by any of the general lighthouse authorities which, by virtue of any enactment, are payable out of the General Lighthouse Fund,
- shall be paid into the Fund.

##### **2B Payment out of Fund of administrative expenses of Secretary of State.**

There shall be paid out of the General Lighthouse Fund such sums as the Secretary of State may determine for the purposes of this section, being sums which appear to him to represent the amount or estimated amount of any expenses incurred or likely to be incurred by him in connection with the administration of the Fund.”

#### **Marginal Citations**

M15 1898 c. 44.

*Status:* Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Merchant Shipping Act 1988 (repealed), Part III. (See end of Document for details)

## *Inquiries*

### **44 Power to summon witness to inquiry into fitness or conduct of officer or other seaman.**

- (1) The persons holding an inquiry under section 52 or 54 of the <sup>M16</sup>Merchant Shipping Act 1970 (inquiries into fitness or conduct of officers or other seamen) may—
  - (a) by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry; and
  - (b) take evidence on oath (and for that purpose administer oaths) or, instead of administering an oath, require the person examined to make a solemn affirmation.
- (2) If on the failure of a person to attend such an inquiry in answer to a summons under this section—
  - (a) the persons holding the inquiry are satisfied by evidence on oath—
    - (i) that the person in question is likely to be able to give material evidence or produce any document which relates to any matter in question at the inquiry, and
    - (ii) that he has been duly served with the summons, and
    - (iii) that a reasonable sum has been paid or tendered to him for costs and expenses, and
  - (b) it appears to them that there is no just excuse for the failure, they may issue a warrant to arrest him and bring him before the inquiry at a time and place specified in the warrant.
- (3) If any person attending or brought before such an inquiry refuses without just excuse to be sworn or give evidence, or to produce any document, the persons holding the inquiry may—
  - (a) commit him to custody until the end of such period not exceeding one month as may be specified in the warrant or until he gives evidence or produces the document (whichever occurs first), or
  - (b) impose on him a fine not exceeding £1,000,or both.
- (4) A fine imposed under subsection (3)(b) shall be treated for the purposes of its collection, enforcement and remission as having been imposed by the magistrates' court for the area in which the inquiry in question was held, and the persons holding the inquiry shall, as soon as practicable after imposing the fine, give particulars of it to the clerk of that court.
- (5) This section does not apply to Scotland.

#### **Marginal Citations**

**M16** 1970 c. 36.

*Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1988 (repealed), Part III. (See end of Document for details)*

**45 Procedure where inquiry into fitness or conduct of officer or other seaman is held by sheriff.**

Where an inquiry under section 52 or 54 of the <sup>M17</sup>Merchant Shipping Act 1970 (inquiries into fitness or conduct of officers or other seamen) is held in Scotland by a sheriff—

- (a) he shall (subject to rules made under section 58(1) of that Act (rules of procedure)) dispose of the inquiry as a summary application; and
- (b) (subject to section 57 of that Act (re-hearings and appeals)) his decision on the inquiry shall be final.

**Marginal Citations**

M17 1970 c. 36.

*Crew agreements*

**46 Payment of wages on termination of crew agreement.**

(1) Section 7 of the Merchant Shipping Act 1970 (payment of seamen’s wages) shall be amended as provided in subsections (2) to (8) below.

(2) The following subsection shall be substituted for subsection (1)—

“(1) Where a seaman employed under a crew agreement relating to a ship leaves the ship on being discharged from it, then, except as provided by or under this Act or any other enactment, the wages due to the seaman under the agreement shall either—

- (a) be paid to him in full at the time when he so leaves the ship (in this section and section 8 of this Act referred to as the time of discharge), or
- (b) be paid to him in accordance with subsections (3A) and (3B) of this section.”

(3) In subsection (2), after “payable to him under” there shall be inserted “paragraph (a) of”.

(4) In subsection (3), for “the preceding provisions” there shall be substituted “subsection (1)(a) or (2)”.

(5) The following subsections shall be inserted after subsection (3)—

“(3A) Where the crew agreement referred to in subsection (1) of this section provides for the seaman’s basic wages to be payable up-to-date at specified intervals not exceeding one month, and for any additional amounts of wages to be payable within the pay cycle following that to which they relate, any amount of wages due to the seaman under the agreement shall (subject to subsection (3B) of this section) be paid to him not later than the date on which the next payment of his basic wages following the time of discharge would have fallen due if his employment under the agreement had continued.

(3B) If it is not practicable, in the case of any amount due to the seaman by way of wages additional to his basic wages, to pay that amount by the date mentioned

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in subsection (3A) of this section, that amount shall be paid to him not later than what would have been the last day of the pay cycle immediately following that date if his employment under the crew agreement had continued.

(3C) If any amount which, under subsection (3A) or (3B) of this section, is payable to a seaman is not paid at the time at which it is so payable, it shall carry interest at the rate of 20 per cent. per annum.”

(6) In subsection (4)—

- (a) for “Subsection (3) of this section does” there shall be substituted “The provisions of subsection (3) or (3C) of this section shall”; and
- (b) for “that subsection” there shall be substituted “those provisions”.

(7) In subsection (6), for “(1) to (3)” there shall be substituted “(1) to (3A)”.

(8) The following subsection shall be added after that subsection—

“(7) For the purposes of this section any amount of wages shall, if not paid to him in cash, be taken to have been paid to a seaman—

- (a) on the date when a cheque, or a money or postal order issued by the Post Office, for that amount was despatched by the recorded delivery service to the seaman’s last-known address, or
- (b) on the date when any account kept by the seaman with a bank or other institution was credited with that amount.”

(9) In section 8 of the <sup>M18</sup>Merchant Shipping Act 1970 (account of seaman’s wages)—

- (a) in subsection (1), for “subsection (4)” there shall be substituted “subsections (3A) and (4)”;
- (b) the following subsection shall be inserted after subsection (3)—

“(3A) Where subsection (3A) or (3B) of section 7 of this Act applies to the payment of any amount of wages due to a seaman under a crew agreement—

- (a) the persons who employed the seaman shall deliver to him an account of the wages payable to him under that subsection and of the deductions subject to which the wages are payable; and
- (b) any such account shall be so delivered at the time when the wages are paid to him; and
- (c) subsections (1) to (3) of this section shall not apply;

and subsection (7) of section 7 shall apply for the purposes of this subsection as it applies for the purposes of that section.”

**Marginal Citations**

M18 1970 c. 36.

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### *Miscellaneous*

#### **47 Application of Merchant Shipping Acts to ships chartered by demise to the Crown.**

- (1) This section applies to a ship if for the time being—
  - (a) the ship is—
    - (i) registered in the United Kingdom, and
    - (ii) in the service of a government department (“the relevant department”) by reason of a charter by demise to the Crown; and
  - (b) there is in force under section 80 of the <sup>M19</sup>Merchant Shipping Act 1906 (Government ships) an Order in Council providing for the registration of Government ships in the service of the relevant department.
- (2) Where this section applies to any ship, the following statutory provisions, namely—
  - (a) the provisions of the Order in Council referred to in subsection (1)(b) (excluding those relating to registration under the Order), and
  - (b) the provisions of the Merchant Shipping Acts (as they apply by virtue of the Merchant Shipping Act 1906 and that Order in Council),
 shall (subject to subsections (3) and (4)) have the same effect in relation to that ship as they have in relation to a Government ship in the service of the relevant department (whether referred to as such or as such a ship registered in pursuance of that Order in Council).
- (3) Subject to subsection (4), the registration enactments shall have effect in relation to a ship to which this section applies in like manner as if it were not, for the purposes of the Merchant Shipping Acts, a ship belonging to Her Majesty.
- (4) Her Majesty may by Order in Council provide that any statutory provision falling within subsection (2) or (3) and specified in the Order—
  - (a) shall not have effect in accordance with that subsection in relation to a ship to which this section applies, or
  - (b) shall so have effect in relation to such a ship, but subject to such modifications as are specified in the Order.
- (5) In the application of any provision of the Merchant Shipping Acts (other than a provision of the registration enactments) in relation to a ship to which this section applies, any reference to the owner of the ship shall be construed as a reference to the relevant department.
- (6) An Order in Council under this section—
  - (a) may make such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient; and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
 

“government department” includes a Northern Ireland department;

“Government ship” means a Government ship within the meaning of section 80 of the <sup>M20</sup>Merchant Shipping Act 1906;

“the registration enactments” means—

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- (a) the provisions of Part I of the 1894 Act down to and including section 67 of that Act;
- (b) section 5 of the <sup>M21</sup>Merchant Shipping Act 1983; and
- (c) Parts I and II of this Act.

#### Marginal Citations

**M19** 1906 c. 48.

**M20** 1906 c. 48.

**M21** 1983 c. 13.

## 48 Miscellaneous amendments of Merchant Shipping Acts.

Schedule 5 to this Act (which contains miscellaneous amendments of the Merchant Shipping Acts 1894 to 1986) shall have effect.

#### Commencement Information

**II** S. 48 partly in force; s. 48 not in force at Royal Assent see s. 58 ; s. 48 in force for specified provisions at 4.7.1988 by S.I. 1988/1010, art. 2, Sch.; s. 48 in force for further specified purposes at 1.6.1994 by S.I. 1994/1201, art. 2, Sch.

**Status:**

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**Changes to legislation:**

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