



# Merchant Shipping Act 1995

## 1995 CHAPTER 21

### PART V

#### FISHING VESSELS

#### CHAPTER I

#### SKIPPER AND SEAMEN

#### *Engagement and discharge of crews*

#### **109 Regulations relating to crew agreements**

- (1) The Secretary of State may make regulations prescribing the procedure to be followed in connection with the making of crew agreements between persons employed in United Kingdom fishing vessels and persons employing them and prescribing the places where such crew agreements are to be made or where an agreement with any person may be added to those contained in such a crew agreement.
- (2) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale or such less amount as may be specified in the regulations.

#### *Wages*

#### **110 Payments of seamen's wages**

Except as provided by or under Part III or any other enactment, the wages due to a seaman under a crew agreement relating to a United Kingdom fishing vessel shall be paid to him in full.

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### **111 Regulations relating to wages: deductions**

The power to make regulations conferred by section 32 shall include power to provide that the amount of a deduction of a description specified in the regulations from wages in respect of employment in a fishing vessel is to be determined by a body established or approved by the Secretary of State in pursuance of regulations made under section 60.

### **112 Accounts of wages and catch**

- (1) Subject to regulations made under section 32 or 73, the persons employing any seaman under a crew agreement relating to a United Kingdom fishing vessel shall deliver to him at a time prescribed by regulations under this section an account of the wages due to him under that crew agreement and of the deductions subject to which the wages are payable.
- (2) Where the wages of any person employed in a United Kingdom fishing vessel are in any manner related to the catch the persons employing him shall at a time prescribed by regulations under this section deliver to the master an account (or, if the master is the person employing him, make out an account) showing how those wages (or any part thereof related to the catch) are arrived at and shall make the account available to the crew in such manner as may be prescribed by the regulations.
- (3) Where there is a partnership between the master and any members of the crew of a United Kingdom fishing vessel the owner of the vessel shall at a time prescribed by regulations under this section make out an account showing the sums due to each partner in respect of his share and shall make the account available to the partners.
- (4) The Secretary of State may make regulations prescribing the time at which any account required by this section is to be delivered or made out and the manner in which the account required by subsections (2) and (3) above is to be made available.
- (5) If a person fails without reasonable excuse to comply with the preceding provisions of this section he shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **113 Restriction on assignment of and charge upon wages**

- (1) Nothing in section 34 shall affect the operation of—
  - (a) the Attachment of Earnings Act 1971, or
  - (b) without prejudice to Article 97(2) of the Judgments Enforcement (Northern Ireland) Order 1981, Articles 73 to 79 and 97 to 105 of that Order,in relation to wages due to a person employed in a fishing vessel.
- (2) The provisions of the Magistrates' Courts (Northern Ireland) Order 1981 and the Judgments Enforcement (Northern Ireland) Order 1981 relating to the attachment of wages shall apply in relation to wages due to a person employed in a fishing vessel as they apply in relation to other wages.

### **114 Right, or loss of right, to wages in certain circumstances**

Section 38 does not apply to so much of the wages of a seaman employed in a fishing vessel as is in any manner related to the catch.

*Safety, health and welfare*

**115 Hours of work**

- (1) The Secretary of State may make regulations prescribing maximum periods of duty and minimum periods of rest for seamen employed in United Kingdom fishing vessels, and such regulations may make different provision for different descriptions of fishing vessels or seamen employed in them or for fishing vessels and seamen of the same description in different circumstances.
- (2) If any provision of regulations made under this section is contravened in the case of any seaman employed in a fishing vessel the persons employing him and the master shall each be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*Manning and qualifications*

**116 Production of crew certificates and other documents of qualification**

- (1) Any person serving or engaged to serve in a United Kingdom fishing vessel and holding any certificate or other document which is evidence that he is qualified for the purposes of section 47 shall on demand produce it to any person who is a British sea-fishery officer for the purposes of the Sea Fisheries Acts.
- (2) If a person fails without reasonable excuse to produce on demand any such certificate or other document he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In this section the “Sea Fisheries Acts” means any enactment for the time being in force relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout.

*Offences by seamen*

**117 Drunkenness on duty**

- (1) If the skipper of or a seaman employed or engaged in a United Kingdom fishing vessel is, while on board the vessel, under the influence of drink or a drug to such an extent that his capacity to fulfil his responsibility for the vessel or, as the case may be, carry out the duties of his employment or engagement is impaired, he shall (subject to subsection (2) below) 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.
- (2) In proceedings for an offence under this section it shall be a defence to prove that at the time of the act or omission alleged against the accused he was under the influence of a drug taken by him for medical purposes and either that he took it on medical advice and complied with any directions given as part of that advice or that he had no reason to believe that the drug might have the influence it had.

**118 Unauthorised liquor**

- (1) A person who, in the United Kingdom or elsewhere—
- (a) takes any unauthorised liquor on board a United Kingdom fishing vessel;
  - (b) has any unauthorised liquor in his possession on board such a vessel;
  - (c) permits another person to take on board such a vessel, or to have in his possession on board such a vessel, any unauthorised liquor; or
  - (d) intentionally obstructs another person in the exercise of powers conferred on the other person by subsection (5) below,
- shall, subject to subsections (3) and (4) below, be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) above 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.
- (3) It shall be a defence in proceedings for an offence under subsection (1)(a) or (b) above to prove—
- (a) that the accused believed that the liquor in question was not unauthorised liquor in relation to the vessel in question and that he had reasonable grounds for the belief; or
  - (b) that the accused did not know that the liquor in question was in his possession.
- (4) It shall be a defence in proceedings for an offence under subsection (1)(c) above to prove that the accused believed that the liquor in question was not unauthorised liquor in relation to the vessel in question and that he had reasonable grounds for the belief.
- (5) If an authorised person has reason to believe that an offence under subsection (1)(a) or (b) above has been committed by another person in connection with a fishing vessel, the authorised person—
- (a) may go on board the vessel and search it and any property on it and may, if the other person is on board the vessel, search him there in an authorised manner; and
  - (b) may take possession of any liquor which he finds on the vessel and has reason to believe is unauthorised liquor and may detain the liquor for the period needed to ensure that the liquor is available as evidence in proceedings for the offence.
- (6) In this section—
- “an authorised manner” means a manner authorised by regulations made by the Secretary of State;
- “authorised person”, in relation to a vessel, means—
- (a) a superintendent;
  - (b) a proper officer;
  - (c) a person appointed in pursuance of section 258(1)(c);
  - (d) the master of the vessel in question;
  - (e) the owner of the vessel in question;
  - (f) any person instructed by the master or owner to prevent the commission of offences under subsection (1) above in relation to the vessel;
- “liquor” means spirits, wine, beer, cider, perry and any other fermented, distilled or spirituous liquor; and

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“unauthorised liquor” means, in relation to a vessel, liquor as to which permission to take it on board the vessel has been given neither by the master nor the owner of the vessel nor by a person authorised by the owner of the vessel to give such permission.

- (7) Any reference in subsection (6) above to the owner of a vessel shall be construed—
- (a) as excluding any member of the crew of the vessel; and
  - (b) subject to that, as a reference to the person or all the persons who, in the certificate of registration of the vessel, is or are stated to be the registered owner or owners of the vessel.

## **119 Disciplinary offences**

- (1) Section 59(1)(a) and (b) shall not apply to fishing vessels and persons serving in them.
- (2) In relation to United Kingdom fishing vessels, section 60 shall have effect with the substitution for subsection (2) of the following—
- (2) Regulations may provide for the hearing on shore in the United Kingdom, by a disciplinary body, of a complaint by the master or owner of such a fishing vessel against a seaman alleging that during his employment in the vessel, the seaman contravened a local industrial agreement relating to his employment on the vessel and for requiring the disciplinary body to have regard to the agreement in determining whether the allegation is proved.
- The alleged contravention may be one on or off the ship and in the United Kingdom or elsewhere.
- (3) Regulations under section 60 may include provision authorising persons to determine, for the purposes of that section in its application to United Kingdom fishing vessels what agreements are or were local industrial agreements and which local industrial agreement relates or related to a person’s employment in a particular vessel.

### *Exemptions*

## **120 Power to grant exemptions from this Chapter**

The Secretary of State may grant exemptions from any requirements of Part III or this Chapter or of any regulations made thereunder—

- (a) with respect to any fishing vessel or to a fishing vessel of any description; or
- (b) with respect to any person or a person of any description serving in a fishing vessel or in a fishing vessel of any description;

and nothing in any other provision of Part III or this Chapter conferring a power to provide for or grant exemptions shall be taken to restrict the power conferred by this section.

## CHAPTER II

### SAFETY

#### 121 Fishing vessel construction rules

- (1) The Secretary of State may make rules (in this Chapter referred to as “fishing vessel construction rules”) prescribing requirements for the hull, equipment and machinery of United Kingdom fishing vessels of any description (including any description framed by reference to the areas in which the vessels operate or the dates on which they were first registered in the United Kingdom or on which their construction was begun).
- (2) The Secretary of State may exempt any fishing vessel or description of fishing vessel from any requirement of the fishing vessel construction rules.
- (3) He may do so generally or for a specified time or with respect to a specified voyage or to voyages in a specified area, and may do so subject to any specified conditions.
- (4) A surveyor of ships may inspect any fishing vessel for the purpose of seeing that it complies with the fishing vessel construction rules.
- (5) If—
  - (a) the fishing vessel construction rules are contravened with respect to any vessel; or
  - (b) a vessel is, under subsection (2) above, exempted from any requirement subject to a condition and the condition is not complied with;the owner or master of the vessel shall be liable —
  - (i) on summary conviction, to a fine not exceeding the statutory maximum;
  - (ii) on conviction on indictment, to a fine.

#### 122 Fishing vessel survey rules

- (1) The Secretary of State may make rules (in this Chapter referred to as “fishing vessel survey rules”) for the surveying and periodical inspection of United Kingdom fishing vessels or any description of such fishing vessels, for the purpose of ensuring their compliance with the requirements of the fishing vessel construction and equipment provisions.
- (2) In this Chapter “the fishing vessel construction and equipment provisions” means fishing vessel construction rules and rules or safety regulations relating to life-saving, radio and navigational equipment for fishing vessels.

#### 123 Fishing vessel certificates

- (1) If the Secretary of State or any person authorised by him for the purpose is satisfied, on receipt of a declaration of survey in respect of a fishing vessel surveyed under the fishing vessel survey rules, that the vessel complies with such of the requirements of the fishing vessel construction and equipment provisions as are or will be applicable to the vessel, then, subject to subsection (2) below, the Secretary of State or person shall, on the application of the owner, issue a certificate (in this and the following sections referred to as a “fishing vessel certificate”) showing that the vessel complies with those requirements; and for this purpose any requirement from which the vessel

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has been exempted under section 121(2) or any other provision of this Act shall be deemed not to be applicable to it.

- (2) Fishing vessel survey rules may require, in the case of such fishing vessel certificate as may be specified in the rules, that the Secretary of State or person authorised to issue it shall not issue the certificate unless satisfied that the vessel in respect of which it is to be issued is provided with the lights, shapes and means of making fog signals required by safety regulations for the prevention of collisions.
- (3) A fishing vessel certificate shall be in such form as may be prescribed by the fishing vessel survey rules; and those rules may make provision for the duration, extension or cancellation of any such certificate and for the endorsement on it of information relating to the inspection, in accordance with the rules, of the vessel to which it relates and of any extension of the period for which the certificate was issued.

#### **124 Provisions supplementary to section 123**

- (1) The Secretary of State may require a fishing vessel certificate which has expired or been cancelled, to be delivered up as he directs.
- (2) If the owner or skipper of the fishing vessel fails without reasonable excuse to comply with a requirement made under subsection (1) above, he shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) The owner or skipper of a fishing vessel to whom a fishing vessel certificate is issued shall forthwith, on the receipt of the certificate by him (or his agent), cause a copy of it to be put up in some conspicuous place on board the vessel, so as to be legible to all persons on board, and to be kept so put up and legible while the certificate remains in force and the vessel is in use.
- (4) If the owner or skipper of a fishing vessel fails without reasonable excuse to comply with subsection (3) above, he shall be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.
- (5) If any person intentionally makes, or assists in making, or procures to be made, a false or fraudulent fishing vessel certificate he shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (6) In Scotland, if any person—
  - (a) forges, assists in forging or procures to be forged,
  - (b) fraudulently alters, assists in fraudulently altering or procures to be fraudulently altered,any fishing vessel certificate he shall be liable—
  - (i) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or to both; or
  - (ii) on conviction on indictment, to a fine or to imprisonment or to both.
- (7) A fishing vessel certificate shall be admissible in evidence.

**125 Prohibition on going to sea without appropriate certificate**

- (1) No fishing vessel required to be surveyed under the fishing vessel survey rules shall go to sea unless there are in force fishing vessel certificates showing that the vessel complies with such of the requirements of the fishing vessel construction and equipment provisions as are applicable to the vessel.
- (2) If a fishing vessel goes to sea in contravention of subsection (1) above the owner or skipper of the vessel shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (3) The skipper of any United Kingdom fishing vessel shall on demand produce to any officer of customs and excise or of the Secretary of State any certificate required by this Chapter; and the fishing vessel may be detained until the certificate is so produced.

**126 Notice of alterations**

- (1) Where a fishing vessel certificate is in force in respect of a fishing vessel and—
  - (a) the certificate shows compliance with requirements of the fishing vessel construction rules and an alteration is made in the vessel's hull, equipment or machinery which affects the efficiency thereof or the seaworthiness of the vessel; or
  - (b) the certificate shows compliance with requirements of the fishing vessel equipment provisions and an alteration is made affecting the efficiency or completeness of the appliances or equipment which the vessel is required to carry by the fishing vessel equipment provisions;the owner or skipper shall, as soon as possible after the alteration is made, give written notice containing full particulars of it to the Secretary of State or, if the certificate was issued by another person, to that person.
- (2) If the notice required by subsection (1) above is not given as required by that subsection the owner or skipper shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In this section—

“alteration” in relation to anything includes the renewal of any part of it and

“the fishing vessel equipment provisions” means the provisions of the fishing vessel construction and equipment provisions other than the fishing vessel construction rules.

*Training***127 Training in safety matters**

- (1) The Secretary of State may make regulations for securing that the skipper of and every seaman employed or engaged in a United Kingdom fishing vessel is trained in safety matters.
- (2) The regulations may provide that if a person goes to sea on a fishing vessel in contravention of a requirement of the regulations—



- (a) he commits an offence and is liable on summary conviction to a fine not exceeding level 2, or if he is the skipper or an owner of the vessel level 5, on the standard scale; and
  - (b) the skipper and each owner of the vessel is (except in respect of a contravention by himself) liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) Regulations under this section may make different provision for different cases, or descriptions of case, including different provisions for different descriptions of vessel or according to the circumstances of operation of a vessel.