



# Merchant Shipping Act 1995

## 1995 CHAPTER 21

### PART XIII

#### SUPPLEMENTAL

##### *Administration*

#### **292 General functions of Secretary of State**

- (1) The Secretary of State shall continue to have the general superintendence of all matters relating to merchant shipping and seamen and is authorised to carry into execution the provisions of this Act and of all Acts relating to merchant shipping and seaman for the time being in force, except where otherwise provided or so far as relating to revenue.
- (2) The Secretary of State may take any legal proceedings under this Act in the name of any of his officers.

#### **293 Functions of Secretary of State in relation to marine pollution**

- (1) The Secretary of State shall continue to have the functions of taking, or co-ordinating, measures to prevent, reduce and minimise the effects of, marine pollution.
- (2) Without prejudice to the generality of subsection (1) above, the functions of the Secretary of State under that subsection include—
  - (a) the acquisition, maintenance, use and disposal of ships, aircraft, equipment and other property;
  - (b) the provision of services, including research, training and advice;
  - (c) the giving of assistance to any other State or international institution under any international agreement relating to the prevention, reduction or control of marine pollution; and
  - (d) any other functions exercisable on his behalf on 1st October 1994 by the Marine Pollution Control Unit.

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- (3) Assistance under subsection (2)(c) above shall be given on such terms as will secure reimbursement of the cost of giving the assistance if and to the extent that reimbursement will be practicable in the circumstances.
- (4) The Secretary of State may make reasonable charges for the supply of goods or services.
- (5) In this section—
- “marine pollution” means pollution caused by ships, offshore installations or submarine pipelines affecting or likely to affect the United Kingdom or United Kingdom waters or controlled waters;
- “offshore installation” means any installation which is maintained for underwater exploitation or exploration to which the Mineral Working (Offshore Installations) Act 1971 applies;
- “pipeline” has the same meaning as in Part III of the Petroleum and Submarine Pipelines Act 1975 and “submarine” means in, under or over United Kingdom waters or controlled waters;
- “United Kingdom controlled waters” means any part of the sea within the limits of an area designated under section 1(7) of the Continental Shelf Act 1964;
- but no restriction as to the seas to which functions under this section extend is implied as regards the functions mentioned in subsection (2)(c) above.

#### **294 General power to dispense**

- (1) The Secretary of State may, if he thinks fit, and upon such conditions (if any) as he thinks fit to impose, exempt any ship from any specified requirement of, or prescribed under, this Act other than Chapter II of Part VI, or dispense with the observance of any such requirement in the case of any ship, if he is satisfied, as respects that requirement, of the matters specified in subsection (2) below.
- (2) Those matters are—
- (a) that the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances; and
  - (b) that the action taken or provision made as respects the subject-matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement.
- (3) The Secretary of State shall annually lay before both Houses of Parliament a special report stating—
- (a) the cases in which he has exercised his powers under this section during the preceding year; and
  - (b) the grounds upon which he has acted in each case.

#### **295 Registrar General of Shipping and Seamen**

- (1) There shall continue to be an officer known as the Registrar General of Shipping and Seamen.
- (2) The Registrar General of Shipping and Seamen shall be appointed, and may be removed, by the Secretary of State.

- (3) The Registrar General of Shipping and Seamen shall exercise such functions as are conferred on him by this Act and keep such records and perform such other duties as the Secretary of State may direct.
- (4) The Secretary of State may appoint and remove persons to perform on behalf of the Registrar General of Shipping and Seamen such of his functions as the Secretary of State or the Registrar General of Shipping and Seamen may direct.
- (5) Subsection (4) above does not apply in relation to the functions of the Registrar General of Shipping and Seaman as registrar under Part II.

## **296 Mercantile marine superintendents**

- (1) There shall continue to be officers known as mercantile marine superintendents.
- (2) Mercantile marine superintendents shall be appointed, and may be removed, by the Secretary of State.
- (3) Mercantile marine superintendents shall exercise the functions conferred on superintendents by this Act.

## **297 Wreck commissioners, etc**

- (1) The Lord Chancellor may appoint such number of persons as he thinks fit to be wreck commissioners and may remove any wreck commissioners appointed by him.
- (2) A wreck commissioner shall vacate his office on the day on which he attains the age of seventy years; but this subsection is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of seventy-five years).
- (3) Before appointing a person to act as wreck commissioner in Northern Ireland the Lord Chancellor shall consult the Chief Justice of Northern Ireland.
- (4) There shall be paid to any wreck commissioner such remuneration, out of money provided by Parliament, as the Lord Chancellor may with the consent of the Treasury determine.
- (5) There shall be paid to any assessor appointed under this Act such remuneration, out of money provided by Parliament, as the Lord Chancellor may with the consent of the Treasury determine.

## **298 Transmission of documents to Registrar General**

- (1) The following duties are imposed on all superintendents and all officers of customs and excise as respects all documents which are delivered or transmitted to or retained by them in pursuance of this Act.
- (2) They shall take charge of the documents and keep them for such time (if any) as may be necessary for the purpose of settling any business arising at the place where the documents come into their hands, or for any other proper purpose.
- (3) They shall, if required, produce them for any of those purposes, and shall then transmit them to the Registrar General of Shipping and Seamen.

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- (4) The Registrar General of Shipping and Seamen shall record and preserve all documents transmitted to him in pursuance of the foregoing provisions of this section.

### **299 Returns, etc to Secretary of State**

- (1) All superintendents shall make and send to the Secretary of State such returns or reports on any matter relating to British merchant shipping or seamen as he may require.
- (2) All consular officers abroad and all officers of customs and excise abroad shall make and send to the Secretary of State such returns or reports on any matter relating to British merchant shipping or seamen as he may require.
- (3) All superintendents shall, when required by the Secretary of State, produce to him or to his officers all official log-books and other documents which are delivered to them under this Act.
- (4) All surveyors of ships shall make such returns to the Secretary of State as he may require with respect to—
- (a) the build, dimensions, draught, burden, speed and room for fuel of ships surveyed by them; and
  - (b) the nature and particulars of machinery and equipment of such ships.
- (5) The owner, master and engineer of any ship being surveyed shall, when required to do so, give to the surveyors all such information and assistance within his power as the surveyors require for the purpose of returns under subsection (4) above.
- (6) If the owner, master or engineer, on being required under subsection (5) above to give any information or assistance, fails, without reasonable excuse, to give the information or assistance he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **300 Forms**

- (1) The Secretary of State may prepare and approve forms for any book, instrument or paper required under this Act, and may alter such forms as he thinks fit.
- (2) The Secretary of State shall cause every such form to be marked with the distinguishing mark of his Department and, before finally issuing any form or making any alteration in a form, shall cause public notice thereof to be given in such manner as he thinks requisite in order to avoid inconvenience.
- (3) The Secretary of State shall cause such forms to be supplied at offices of customs and excise and Department of Transport Marine Offices, free of charge or at such reasonable prices as the Secretary of State may fix, or he may licence any persons to print and sell the forms.
- (4) Every such book, instrument or paper shall be made in the form (if any) approved by the Secretary of State, or as near as circumstances permit; and unless so made shall not be admissible in evidence in any civil proceedings on the part of the owner or master of any ship.

- (5) Every such book, instrument or paper if made in a form purporting to be the proper form and to be marked in accordance with subsection (2) above shall be deemed to be in the form required by this Act, unless the contrary is proved.
- (6) The foregoing provisions do not apply where special provision is made by this Act.
- (7) If any person prints, sells or uses any document purporting to be a form approved by the Secretary of State knowing that the document is not the form approved for the time being or that the document has not been prepared or issued by the Secretary of State that person shall be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.
- (8) In Scotland, if any person forges any distinguishing mark on any form issued under this Act or fraudulently alters any such form 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 to both; or
  - (b) on conviction on indictment, to a fine or to imprisonment or to both.

### **301 Advisory committees**

- (1) The Secretary of State may, if he thinks fit, appoint committees for the purpose of advising him when considering the making or alteration of any regulations, rules or scales for the purpose of this Act other than Chapter II of Part VI.
- (2) A committee appointed under this section shall consist of persons representing the interests principally affected or having special knowledge of the subject matter.
- (3) The Secretary of State shall pay to the members of any committee under this section such travelling and other allowances as the Secretary of State determines with the consent of the Treasury.
- (4) Committees may be appointed under this section to advise the Secretary of State specially as regards any special regulations, rules or scales or generally as regards any class or classes of regulations, rules or scales which the Secretary of State may assign to them.

### *Financial Provisions*

### **302 Fees**

- (1) The Secretary of State may, with the consent of the Treasury, make regulations prescribing fees to be charged in respect of—
  - (a) the issue or recording in pursuance of this Act of any certificate, licence or other document; or
  - (b) the doing of any thing in pursuance of this Act.
- (2) In the case of fees for the measurement of a ship's tonnage the fees may be prescribed as maximum fees.
- (3) All fees received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

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### **303 Expenses of Commissioners of Customs and Excise**

- (1) All expenses incurred by the Commissioners of Customs and Excise in the conduct of proceedings or otherwise in carrying into effect the provisions of this Act shall be treated as expenses relating to the revenue of customs and excise and shall be paid accordingly.
- (2) The Secretary of State may, however, with the consent of the Treasury, repay all or any part of such of the expenses paid in accordance with subsection (1) above as are chargeable under this Act on money provided by Parliament.

### **304 Expenses charged on money provided by Parliament**

- (1) The following expenses and other amounts shall be payable out of money provided by Parliament—
  - (a) the expenses incurred by the Secretary of State under this Act;
  - (b) the salaries, pensions, gratuities and allowances of surveyors of ships, Departmental inspectors and superintendents;
  - (c) the sums required for the contribution from the United Kingdom towards maintaining, in accordance with the Safety Convention, a service in the North Atlantic for the study and observation of ice and for the ice patrol;
  - (d) the expenses of obtaining depositions, reports and returns respecting wrecks and casualties;
  - (e) such sums as the Secretary of State may, in his discretion, think fit to pay in respect of claims on account of the proceeds of wreck;
  - (f) the expenses incurred in respect of receivers of wrecks and the performance of their duties;
  - (g) such expenses as the Secretary of State directs for—
    - (i) establishing and maintaining on the coasts of the United Kingdom proper lifeboats with the necessary crews and equipment;
    - (ii) affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea; or
    - (iii) rewarding the preservation of life in such cases;
  - (h) any other amounts which are by virtue of any provision of this Act payable out of money provided by Parliament.
- (2) In subsection (1)(c) above “the Safety Convention” means the International Convention for the Safety of Life at Sea signed in London on 1st November 1974.

### **305 Payments to be made into Consolidated Fund**

- (1) The following sums shall be paid into the Consolidated Fund—
  - (a) all fees, charges and expenses payable in respect of the survey and measurement of ships;
  - (b) any fees received by receivers of wrecks;
  - (c) any sums received by the Secretary of State under this Act or which are, by any provision of it, required to be paid into the Consolidated Fund.
- (2) All fees mentioned in this section shall be paid at such time and in such manner as the Secretary of State directs.

### *Subordinate Legislation*

#### **306 Regulations, rules and orders, etc**

- (1) Any power of the Secretary of State to make regulations, orders or rules under this Act shall be exercisable by statutory instrument but this does not apply to rules under section 91.
- (2) Any statutory instrument containing regulations, orders or rules under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament but this subsection does not apply to commencement orders, transitory provision orders or orders under section 216(2), 223(3), or paragraph 8 of Part II of Schedule 7 or paragraph 5 of Schedule 9 or regulations under section 85, 259(8), or 260(4).

In this subsection “transitory provision order” means an order under any provision of Schedule 14.

- (3) Any statutory instrument containing an Order in Council under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament but this subsection does not apply to Orders under section 2(4), 128, 129, 152(2), 172(2), 183, 184, 224, 308 or 315(2) or under paragraph 29 of Schedule 3, paragraph 10 of Part II of Schedule 6 or paragraph 13 of Part II of Schedule 7.
- (4) Before making the following regulations, rules or orders, namely—
  - (a) regulations under Part III or under section 108;
  - (b) rules under Chapter II of Part V;
  - (c) an order under section 311,the Secretary of State shall consult with organisations in the United Kingdom appearing to him representative of persons who will be affected by the regulations, rules or orders.
- (5) Any direction, notice, order or authorisation under this Act given or made by the Secretary of State shall be in writing.
- (6) Any power to give a direction includes power to vary or revoke the direction by a subsequent direction.

#### *Application of Act to certain descriptions of ships, etc.*

#### **307 Application of Act to non-United Kingdom ships**

- (1) The Secretary of State may make regulations specifying any description of non-United Kingdom ships and directing that such of the provisions of this Act and of instruments under this Act as may be specified in the regulations—
  - (a) shall extend to non-United Kingdom ships of that description and to masters and seamen employed in them, or
  - (b) shall so extend in such circumstances as may be so specified, with such modifications (if any) as may be so specified.
- (2) Regulations under this section may contain such transitional, supplementary and consequential provisions as appear to the Secretary of State to be expedient.
- (3) In this section “non-United Kingdom ships” means ships which are not registered in the United Kingdom.

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### **308 Application of Act to government ships**

- (1) Subject to any other provision of it, this Act shall not apply to ships belonging to Her Majesty.
- (2) Her Majesty may by Order in Council make regulations with respect to the manner in which Government ships may be registered as British ships under Part II; and this Act, subject to any exceptions and modifications which may be made by Order in Council, either generally or as respects any special class of Government ships, shall apply to government ships registered in accordance with the Order as if they were registered in accordance with Part II.
- (3) Any Order in Council under subsection (2) above shall be laid before Parliament after being made.
- (4) In this section “Government ships” means ships not forming part of Her Majesty’s Navy which belong to Her Majesty, or are held by any person on behalf of or for the benefit of the Crown (and for that reason cannot be registered under Part II).

### **309 Application of Act 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 (including a Northern Ireland department) (“the relevant department”) by reason of a charter by demise to the Crown; and
  - (b) there is in force under section 308(2) 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) above (excluding those relating to registration under the Order), and
  - (b) the provisions of this Act (as they apply by virtue of section 308(2) and that Order in Council),shall (subject to subsections (3) and (4) below) 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) below, Part II 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 this Act, 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) above 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 this Act (other than a provision of Part II) 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 may make such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient.

### **310 Application of Act to hovercraft**

The enactments and instruments with respect to which provision may be made by Order in Council under section 1(1)(h) of the Hovercraft Act 1968 shall include this Act (except Parts I and II) and any instrument made thereunder.

### **311 Application of Act to certain structures, etc**

- (1) The Secretary of State may by order provide that a thing designed or adapted for use at sea and described in the order is or is not to be treated as a ship for the purposes of any specified provision of this Act or of an instrument made thereunder.
- (2) An order under this section may—
- (a) make different provision in relation to different occasions;
  - (b) if it provides that a thing is to be treated as a ship for the purposes of a specified provision, provide that the provision shall have effect in relation to the thing with such modifications as are specified.
- (3) In this section “specified” means specified in the order.

#### *Special provisions for Scots law*

### **312 Special provisions for Scots law**

- (1) Nothing in this Act shall be held in any way to annul or restrict the common law of Scotland with regard to the prosecution or punishment of offences at the instance or on the authority or with the concurrence of the Lord Advocate, or on the authority of the High Court or to any punishment consequent on such prosecution or the rights of owners or creditors in regard to enforcing a judicial sale of any ship and equipment, or to give to the High Court in England and Wales any jurisdiction in respect of salvage in Scotland which it did not have or exercise before 25 August 1894.
- (2) Any enactment which confers on any court in Scotland Admiralty jurisdiction in respect of damage shall have effect as if references to damage included reference to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought in rem or in personam.

#### *Final provisions*

### **313 Definitions**

- (1) In this Act, unless the context otherwise requires—
- “British connection” has the meaning given in section 9(9);
  - “British citizen”, “British Dependent Territories citizen”, “British Overseas citizen” and “Commonwealth citizen” have the same meaning as in the British Nationality Act 1981;
  - “British ship” has the meaning given in section 1(1);

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“commissioned military officer” means a commissioned officer in Her Majesty’s land forces on full pay;

“commissioned naval officer” means a commissioned officer of Her Majesty’s Navy on full pay;

“conservancy authority” includes all persons entrusted with the function of conserving, maintaining or improving the navigation of a tidal water (as defined in section 255);

“consular officer”, in relation to a foreign country, means the officer recognised by Her Majesty as a consular officer of that foreign country;

“contravention” includes failure to comply (and “failure” includes refusal);

“Departmental inspector” and “Departmental officer” have the meanings given in section 256(9);

“fishing vessel” means a vessel for the time being used (or, in the context of an application for registration, intended to be used) for, or in connection with fishing for sea fish other than a vessel used (or intended to be used) for fishing otherwise than for profit; and for the purposes of this definition “sea fish” includes shellfish, salmon and migratory trout (as defined by section 44 of the Fisheries Act 1981);

“foreign”, in relation to a ship, means that it is neither a United Kingdom ship nor a small ship (as defined in section 1(2)) which is a British ship;

“Government ship” has the meaning given in section 308;

“harbour” includes estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter or ship and unship goods or passengers;

“harbour authority” includes all persons entrusted with the function of constructing, improving, managing, regulating, maintaining or lighting a harbour;

“master” includes every person (except a pilot) having command or charge of a ship and, in relation to a fishing vessel, means the skipper;

“port” includes place;

“proper officer” means a consular officer appointed by Her Majesty’s Government in the United Kingdom and, in relation to a port in a country outside the United Kingdom which is not a foreign country, also any officer exercising in that port functions similar to those of a superintendent;

“the register” and “registered” have the meaning given in section 23(1);

“the registrar”, in relation to the registration of ships, has the meaning given in section 8;

“registration regulations” means regulations under section 10;

“relevant British possession” means—

- (a) the Isle of Man;
- (b) any of the Channel Islands; and
- (c) any colony;

“safety regulations” means regulations under section 85;

“seaman” includes every person (except masters and pilots) employed or engaged in any capacity on board any ship;

“ship” includes every description of vessel used in navigation;

“superintendent” means a mercantile marine superintendent appointed under section 296;

“surveyor of ships” has the meaning given in section 256(9);

“the tonnage regulations” means regulations under section 19;  
“United Kingdom ship” (and in Part V “United Kingdom fishing vessel”)  
has the meaning given in section 1(3) except in the contexts there mentioned;  
and  
“wages” includes emoluments.

- (2) In this Act—
- (a) “United Kingdom waters” means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom; and
  - (b) “national waters”, in relation to the United Kingdom, means United Kingdom waters landward of the baselines for measuring the breadth of its territorial sea.
- (3) A vessel for the time being used (or intended to be used) wholly for the purpose of conveying persons wishing to fish for pleasure is not a fishing vessel.

### **314 Repeals, consequential amendments and transitional provisions**

- (1) The enactments specified in Schedule 12 (which include enactments which are spent) are, subject to subsection (3) below and to any Note at the end of the Schedule, repealed to the extent specified in the third column of that Schedule.
- (2) The enactments specified in Schedule 13 shall have effect subject to the amendments specified in that Schedule.
- (3) The saving and transitional provisions in Schedule 14 shall have effect.
- (4) The Secretary of State may, by order, make such amendments of any local Act or instrument so far as it provides for the registration of ships in local registers as appear to him to be appropriate in view of the provisions made for the register mentioned in section 8.

### **315 Extent and application**

- (1) Except for sections 18 and 193(5), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Her Majesty may by Order in Council direct that any provision of this Act and instruments made under this Act shall, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, extend to any relevant British possession.
- (3) Her Majesty may, in relation to any relevant British possession, by Order in Council direct that, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, any of the provisions of this Act shall have effect as if references in them to the United Kingdom included a reference to that possession.
- (4) An Order in Council under subsection (2) above may make such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient.
- (5) Without prejudice to the generality of subsection (4) above, an Order in Council under this section may, in its application to any relevant British possession, provide for such authority in that possession as is specified in the Order to furnish the Secretary of State or the registrar with such information with respect to the registration of ships in that

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possession under its law as is specified in the Order or as the Secretary of State may from time to time require, and for any such information to be so furnished at such time or times and in such manner as is or are so specified or (as the case may be) as the Secretary of State may so require.

**316 Short title and commencement**

- (1) This Act may be cited as the Merchant Shipping Act 1995.
- (2) This Act shall come into force on 1st January 1996.