
STATUTORY INSTRUMENTS

2008 No. 3257

The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008

PART 7

Inspections, Detentions and Offences

Inspection of ships

36.—(1) In so far as sections 258 and 259 of the 1995 Act⁽¹⁾ (powers to inspect ships and their equipment, and powers of inspectors in relation to premises and ships) apply in relation to a ship to which any of these Regulations apply, for the purposes of checking compliance with these Regulations those sections have effect subject to the following modifications.

(2) The power in those sections to inspect a ship and its equipment, any part of the ship, any articles on board and any document carried in the ship, is limited to—

- (a) verifying whether a Sewage Certificate has been issued in respect of the ship and is still valid,
- (b) verifying whether documentation referred to in regulation 19(2) (“appropriate documentation”) has been issued in respect of the ship and is still valid,
- (c) investigating any operation regulated by these Regulations, if there are clear grounds for believing that the master or the crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage or garbage, as the case may be,
- (d) verifying whether the ship has discharged any sewage or disposed of any garbage in violation of these Regulations, or
- (e) inspecting the garbage record book kept aboard the ship,

except where there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the Sewage Certificate or other appropriate documentation referred to in sub-paragraph (a) or (b).

(3) The power in those sections to go on board a ship may only be exercised if the ship in question is in—

- (a) a port in the United Kingdom, in so far as the power is exercised to investigate an operation relating to garbage, or
- (b) a port or offshore terminal in the United Kingdom in any other case.

(4) Where the ship is inspected for the purposes of paragraph (2)(d) and is not a United Kingdom ship, the person exercising the powers of inspection must ensure that the report of the inspection is sent to—

- (a) the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State, and

(1) Section 258 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1, paragraph 4.

- (b) any other Party to the Convention who requested the inspection.
- (5) Where the garbage record book is inspected under paragraph (2)(e), the person exercising the power of inspection may—
 - (a) make a copy of an entry in that book, and
 - (b) require the master of the ship to certify that the copy is a true copy of such an entry.
- (6) That certified copy is to be admissible in any judicial proceedings as evidence of the facts stated in it.

Investigation of alleged violations by United Kingdom ships

37. Upon receiving evidence that a United Kingdom ship has discharged any sewage or disposed of any garbage in violation of these Regulations the Secretary of State must—

- (a) cause the matter to be investigated,
- (b) inform the IMO of the action taken, and
- (c) where another State has reported the violation, inform that State of the action taken.

General provisions on detention

38.—(1) Subject to paragraph (2), where regulation 16(1) has effect in relation to a ship, or a surveyor of ships has clear grounds for believing that—

- (a) a Sewage Certificate is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid,
- (b) documentation referred to in regulation 19(2) (“appropriate documentation”) is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid,
- (c) the condition of a ship or its equipment does not correspond substantially with the particulars of that Certificate or other appropriate documentation,
- (d) the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage,
- (e) the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by garbage, or
- (f) an offence under regulation 42(1) is being committed in respect of a ship,

the ship is liable to be detained until a surveyor of ships is satisfied that it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) A person having powers to detain a ship may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) Where a surveyor of ships has clear grounds for believing that an offence under regulation 42(1)(e) or (f) has been committed in respect of a ship, the ship is liable to be detained.

(4) The power under this regulation to detain a ship may only be exercised if the ship in question is in—

- (a) a port in the United Kingdom, in the case of paragraph (1)(e), or
- (b) a port or offshore terminal in the United Kingdom, in any other case.

(5) Section 284 of the 1995 Act(2) (enforcing detention of a ship) applies where a ship is liable to be detained under the preceding provisions of this regulation as if—

(2) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1.

- (a) references to detention of a ship under the Act were references to detention of the ship in question under the preceding provisions of this regulation, and
 - (b) subsection (7) were omitted.
- (6) Where a ship is liable to be detained under the preceding provisions of this regulation, the person detaining the ship must serve on the master of the ship a detention notice which—
- (a) states the grounds for the detention, and
 - (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the 1995 Act.
- (7) Where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.
- (8) Where a ship is detained under paragraph (3), a person having power to detain the ship must, at the request of the owner, master, demise charterer or manager, immediately release the ship—
- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the ship is detained;
 - (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
 - (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security, or
 - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,by or on behalf of the owner, manager, demise charterer or master;
 - (d) where the owner, manager, demise charterer or master is convicted of an offence under that regulation, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
 - (e) the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982(3), and any bond or other financial security ordered by such court or tribunal is posted.
- (9) The Secretary of State must repay any sum paid in pursuance of paragraph (8)(c) or release any security so given—
- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if proceedings for that offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (10) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (8)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 42(1)(e) or (f), the sum so paid or the amount made available under the security must be applied as follows—
- (a) first in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
 - (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.

(11) Section 145 of the 1995 Act⁽⁴⁾ (interpretation of section 144) applies for the purposes of paragraphs (8) to (10), but as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
- (b) references to an offence under section 131 were references to an offence under regulation 42(1)(e) or (f).

Power for harbour master to detain

39.—(1) Where the harbour master of a harbour in the United Kingdom has clear grounds for believing that an offence has been committed—

- (a) under regulation 42(1)(e) or (f) by the discharge from a ship of sewage into the waters of the harbour, or
- (b) under regulation 42(1)(e) or (f) by the disposal from a ship of garbage into the waters of the harbour,

the harbour master may detain the ship.

(2) Section 144(2) and (3) of the 1995 Act (harbour master's power of detention of ships for certain offences) applies to a detention under paragraph (1) as it applies to a detention under section 144(1) of the 1995 Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention, and
- (b) requires the terms of the notice to be complied with until the ship is released by the harbour authority.

(4) Where a ship is detained under paragraph (2), the harbour master must immediately release the ship—

- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
- (c) if either—
 - (i) the sum of £30,000 is paid to the harbour authority by way of security, or
 - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than £30,000 is given to the harbour authority,
 by or on behalf of the owner, manager, demise charterer or master;
- (d) where the owner, manager, demise charterer or master is convicted of an offence under that regulation, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982⁽⁵⁾, and any bond or other financial security ordered by such court or tribunal is posted.

(5) The harbour authority must repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—

⁽⁴⁾ Section 145 was amended by the Criminal Justice Act 2003 (c.44), Schedule 36.

⁽⁵⁾ Cmnd. 8941.

- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if proceedings for that offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 42(1)(e) or (f), the sum so paid or the amount made available under the security must be applied as follows—
- (a) first in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
 - (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.
- (7) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if—
- (a) references to the master or owner or the ship were references to the owner, manager, demise charterer or master; and
 - (b) references to an offence under section 131 were references to an offence under regulation 42(1)(e) or (f).

Duty of harbour master to report deficient ships

40. If the harbour master of a harbour in the United Kingdom has reason to believe that a ship is about to enter or leave the harbour and does not comply with the requirements of these Regulations, the harbour master must immediately report the matter to the Secretary of State.

Right of appeal and compensation

41.—(1) Regulations 11 and 12 of the 1995 Regulations (right of appeal and compensation) apply in relation to the exercise of the power of detention under these Regulations as they apply in relation to the exercise of those powers under Part 1 of those Regulations, subject to the modifications referred to in paragraph (2).

- (2) The modifications are—
- (a) references to “inspector” are to be taken as references to the authority detaining the ship, or the harbour master, as the case may be,
 - (b) references to “access refusal notice”, “service of an access refusal notice” and “refusal of access” are omitted, and
 - (c) in regulation 12(2) after “State” there is added “, except where the ship is detained by a harbour master, in which case any compensation awarded under this section shall be payable by the harbour authority.”.

Offences

- 42.—**(1) Any contravention of—
- (a) regulation 7(1), 8(1), 9(1), (2) or (3), 10(2), 18(4) or 19(1) or (2) is an offence by the owner and the master of the ship,
 - (b) regulation 16(5) is an offence by the owner of the ship,
 - (c) regulation 18(3) is an offence by the person in question,
 - (d) regulation 21(1) or (2) or 22 is an offence by the owner of the ship,

- (e) regulation 23(1), 26, 27, 28, or 29, in the case of a relevant platform, is an offence by the owner and manager of the platform,
 - (f) regulation 23(1), 26, 27, 28, or 29 in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship,
 - (g) regulation 30, 31, 32(1), 33(1) or (3), or 34(1), (2), (3), (4) or (5), in the case of a relevant platform, is an offence by the owner and manager of the platform,
 - (h) regulation 30, 31, 32(1), 33(1) or (3), or 34(1), (2), (3), (4) or (5), in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship,
 - (i) regulation 32(3) or 34(7) in the case of a relevant platform, is an offence by the manager of the platform,
 - (j) regulation 32(3) or 34(7) in the case of a ship other than a relevant platform, by the master of the ship,
 - (k) regulation 33(4) is an offence by the owner of the ship,
 - (l) regulation 34(1) or (2) in the case of a relevant platform, is an offence by the owner and manager of the platform, and the officer in charge of the discharge operation or incineration,
 - (m) regulation 34(1) or (2) in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship, and the officer in charge of the discharge operation or incineration.
- (2) Subject to paragraph (3), an offence under paragraph (1) is punishable—
- (a) on summary conviction by a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment by a fine.

(3) A contravention referred to in paragraph (1)(e) or (f) is specified for the purposes of article 6 of the (Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006⁽⁶⁾ (which applies section 131(3) of the 1995 Act⁽⁷⁾ (penalties for certain pollution offences) subject to a modification).

(4) Where an offence under this regulation is committed, or would be committed save for the operation of regulation 47(1), by any person due to the act or default of some other person, that other person is also guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first mentioned person.

Service of documents on foreign companies

43. Section 143(6) of the 1995 Act (service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 131 of the 1995 Act) applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under section 131, as if—

- (a) the reference to section 131 were to these Regulations,
- (b) in the case of an offence in respect of a ship other than a relevant platform, the reference to the owner were to the owner, manager or demise charterer, and
- (c) in the case of an offence in respect of a relevant platform, the reference to—
 - (i) the owner of the ship were to the owner of the platform,
 - (ii) the master of the ship were to the manager of the platform.

⁽⁶⁾ S.I. 2006/2950.

⁽⁷⁾ 1995 c.21; section 131 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 7(1).

Enforcement and application of fines

44. Section 146 of the 1995 Act (enforcement and application of fines) applies to any fine for an offence under regulation 42(1)(e) to (m), as if—

- (a) in subsection (1) of that section the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 were a reference to proceedings against the owner, master, demise charterer or manager for an offence under regulation 42(1)(e) to (m); and
- (b) in subsection (2) of that section, the reference to an offence under section 131 were a reference to an offence under regulation 42(1)(e) or (f).

Restriction on jurisdiction over offences outside United Kingdom limits

45.—(1) Where there has been an offence under regulation 42(1)(e) or (f) in respect of a ship which is not a United Kingdom ship in the internal waters, territorial sea or exclusive economic zone of a foreign State, proceedings in respect of that offence must not be instituted in the United Kingdom unless—

- (a) that foreign State, the flag State of the ship in question or a State polluted or threatened with pollution as a result of the offence requests that such proceeding be taken; or
- (b) the offence has caused or is likely to cause pollution in controlled waters or United Kingdom waters.

(2) Where such proceedings have been instituted but not concluded, they must be suspended upon the request of the foreign State in question and the Secretary of State must send all the evidence, court records and documents relating to the case, together with any sum paid or security given, to the foreign State.

(3) In this regulation, “foreign State” means a State other than the United Kingdom.

Suspension of proceedings at flag state request

46.—(1) This regulation applies to proceedings instituted but not concluded in the United Kingdom in respect of a contravention of a provision in Part 4, 5 or 6 committed outside United Kingdom waters by a ship other than a United Kingdom ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the court is satisfied that the flag State of the ship in question has instituted proceedings corresponding to the proceedings in the United Kingdom in respect of the contravention of that provision within six months of the institution of the proceedings by the United Kingdom.

(3) Paragraph (2) does not apply—

- (a) where the contravention of these Regulations resulted in serious pollution of the United Kingdom; or
- (b) the Secretary of State certifies that the flag State in question has repeatedly disregarded its obligations to enforce effectively the requirements of the Convention in respect of its ships.

(4) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings must be terminated.

Defences

47.—(1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that that person took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings in respect of a ship for an offence under regulation 42(1)(e) or (f), it is a defence for the person charged to prove that—

- (a) the ship was not a United Kingdom ship;
 - (b) the discharge or disposal took place in waters which were neither controlled waters nor United Kingdom waters; and
 - (c) the ship was in a port in the United Kingdom at the time of the institution of the proceedings by reason only of stress of weather or any other reason beyond the control of the master or owner or any charterer or manager of the ship.
- (3) Without prejudice to paragraph (1), in any proceedings for an offence under regulation 42(1) (e) or (f) in relation to a discharge of sewage, it is a defence for the person charged to prove that—
- (a) that the discharge took place in waters under the jurisdiction of a State other than the United Kingdom; and
 - (b) the discharge was in accordance with such less stringent requirements as were imposed by that State.