
STATUTORY INSTRUMENTS

2009 No. 2796

The Merchant Shipping (Anti-Fouling Systems) Regulations 2009

PART 3

INSPECTIONS, DETENTIONS, OFFENCES AND FEES

General provisions on detention

12.—(1) Subject to paragraph (2), where a surveyor of ships has clear grounds for believing that, in relation to a ship to which these Regulations apply—

- (a) an AFS-Certificate, or other certificate referred to in paragraph 2.1 of Annex I, is required to have been issued in respect of the ship but has not been issued, or has been issued but is not valid;
- (b) an AFS-Declaration is required to be carried on board the ship, but is not carried;
- (c) where an AFS-Declaration is required to be carried, appropriate documentation referred to in regulation 6(2)(a) is not carried on board the ship, and the AFS-Declaration does not contain an appropriate endorsement; or
- (d) an offence under regulation 14 is being committed in respect of the 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 14(2) has been committed in respect of a ship (but paragraph (1) does not apply), 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—

- (a) a United Kingdom ship;
- (b) in a port or shipyard in the United Kingdom;
- (c) at an offshore terminal in United Kingdom waters or controlled waters;
- (d) a fixed platform in United Kingdom waters or controlled waters; or
- (e) a floating platform, a floating storage unit or a floating production storage and off-loading unit, in United Kingdom waters or controlled waters, other than a platform or unit which is in transit.

(5) Section 284 of the 1995 Act ^{M1} (enforcing detention of a ship) applies where a ship is liable to be detained under this regulation as if—

Changes to legislation: The Merchant Shipping (Anti-Fouling Systems) Regulations 2009, Section 12 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) references to detention of a ship under the Act were references to detention of the ship in question under this regulation; and
 - (b) subsection (7) were omitted.
- (6) Where a ship is liable to be detained under 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 or master, immediately release the ship—
- (a) if no proceedings for an offence under regulation 14(2) 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 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 or master;
 - (d) where the owner 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 ^{M2}, 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 14(2) 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 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 or master is convicted of an offence under regulation 14(2), 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 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 ^{M3} (interpretation of section 144) applies for the purposes of paragraphs (8) to (10) as if references to an offence under section 131 were references to an offence under regulation 14(2).

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Marginal Citations

- M1** [Section 284](#) was amended by the [Merchant Shipping and Maritime Security Act 1997 \(c.28\)](#), [Schedule 1](#).
- M2** Cmnd. 8941.
- M3** [Section 145](#) was amended by the [Criminal Justice Act 2003 \(c.44\)](#), [Schedule 36](#).

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulations revoked by [S.I. 2024/509 Sch. Pt. 2](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 3-68-10](#)