



Merchant Shipping Act 1995

1995 CHAPTER 21

PART III

MASTERS AND SEAMEN

Disqualification of seamen and inquiries

61 Inquiry into fitness or conduct of officer.

- (1) If it appears to the Secretary of State that an officer—
- (a) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason; or
 - (b) has been seriously negligent in the discharge of his duties; or
 - (c) has failed to comply with the provisions of section 92;
- the Secretary of State may cause an inquiry to be held by one or more persons appointed by him and, if he does so, may, if he thinks fit, suspend, pending the outcome of the inquiry, any certificate issued to the officer in pursuance of section 47 and require the officer to deliver it to him.
- (2) Where a certificate issued to an officer has been suspended under subsection (1) above the suspension may, on the application of the officer, be terminated by the High Court or, if the inquiry is held in Scotland, by the Court of Session, and the decision of the court on such an application shall be final.
- (3) An inquiry under this section shall be conducted in accordance with rules made under section 65(1) and those rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.
- (4) The persons holding an inquiry under this section into the fitness or conduct of an officer—
- (a) may, if satisfied of any of the matters mentioned in paragraphs (a) to (c) of subsection (1) above, cancel or suspend any certificate issued to him under section 47 or censure him;

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(b) may make such order with regard to the costs (or in Scotland expenses) of the inquiry as they think just; and

(c) shall make a report on the case to the Secretary of State;

and if the certificate is cancelled or suspended the officer (unless he has delivered it to the Secretary of State in pursuance of subsection (1) above) shall deliver it forthwith to the persons holding the inquiry or to the Secretary of State.

(5) Any costs (or in Scotland expenses) which a person is ordered to pay under subsection (4)(b) above may be recovered from him by the Secretary of State.

62 Disqualification of holder of certificate other than officer's.

(1) Where it appears to the Secretary of State that a person who is the holder of a certificate to which this section applies is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, the Secretary of State may give him notice in writing that he is considering the suspension or cancellation of the certificate.

(2) The notice must state the reasons why it appears to the Secretary of State that that person is unfit to be the holder of such a certificate and must state that within a period specified in the notice, or such longer period as the Secretary of State may allow, he may make written representations to the Secretary of State or claim to make oral representations to the Secretary of State.

(3) After considering any representations made in pursuance of subsection (2) above the Secretary of State shall decide whether or not to suspend or cancel the certificate and shall give the holder of it written notice of his decision.

(4) Where the decision is to suspend or cancel the certificate the notice shall state the date from which the cancellation is to take effect, or the date from which and the period for which the suspension is to take effect, and shall require the holder to deliver the certificate to the Secretary of State not later than the date so specified unless before that date the holder has required the case to be dealt with by an inquiry under section 63.

(5) Where, before the date specified in the notice, he requires the case to be dealt with by such an inquiry, then, unless he withdraws the requirement, the suspension or cancellation shall not take effect except as ordered in pursuance of the inquiry.

(6) The Secretary of State may make regulations prescribing the procedure to be followed with respect to the making and consideration of representations in pursuance of this section, the form of any notice to be given under this section and the period to be specified in any such notice as the period within which any steps are to be taken.

(7) This section applies to every certificate issued under section 54 and to any certificate issued under section 47 other than one certifying that a person is qualified as an officer.

Modifications etc. (not altering text)

C1 Ss. 62-69 applied (7.8.2014) by [The Merchant Shipping \(Maritime Labour Convention\) \(Minimum Requirements for Seafarers etc.\) Regulations 2014 \(S.I. 2014/1613\)](#), regs. 1(2), **38(3)**

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63 Inquiry into fitness or conduct of seaman other than officer.

- (1) Where a person has, before the date mentioned in section 62(4), required his case to be dealt with by an inquiry under this section the Secretary of State shall cause an inquiry to be held by one or more persons appointed by him.
- (2) An inquiry under this section shall be conducted in accordance with rules made under section 65(1) and those rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.
- (3) The persons holding an inquiry under this section—
 - (a) may confirm the decision of the Secretary of State and cancel or suspend the certificate accordingly;
 - (b) may, where the decision was to cancel the certificate, suspend it instead;
 - (c) may, where the decision was to suspend the certificate, suspend it for a different period;
 - (d) may, instead of confirming the decision of the Secretary of State, censure the holder of the certificate or take no further action;
 - (e) may make such order with regard to the costs of the inquiry as they think just; and
 - (f) shall make a report on the case to the Secretary of State;and if the certificate is cancelled or suspended it shall be delivered forthwith to the persons holding the inquiry or to the Secretary of State.
- (4) Any costs (or in Scotland expenses) which a person is ordered to pay under subsection (3)(e) above may be recovered from him by the Secretary of State.

Modifications etc. (not altering text)

- C1** Ss. 62-69 applied (7.8.2014) by [The Merchant Shipping \(Maritime Labour Convention\) \(Minimum Requirements for Seafarers etc.\) Regulations 2014 \(S.I. 2014/1613\)](#), regs. 1(2), **38(3)**

64 Re-hearing of and appeal from inquiries.

- (1) Where an inquiry has been held under section 61 or 63 the Secretary of State may order the whole or part of the case to be reheard, and shall do so—
 - (a) if new and important evidence which could not be produced at the inquiry has been discovered; or
 - (b) if there appear to the Secretary of State to be other grounds for suspecting that a miscarriage of justice may have occurred.
- (2) An order under subsection (1) above may provide for the re-hearing to be as follows,—
 - (a) if the inquiry was held in England, Wales or Northern Ireland, by the persons who held it, by a wreck commissioner or by the High Court;
 - (b) if it was held in Scotland, by the persons who held it, by the sheriff or by the Court of Session.
- (3) Any re-hearing under this section which is not held by the High Court or the Court of Session shall be conducted in accordance with rules made under section 65(1).
- (4) Where the persons holding the inquiry have decided to cancel or suspend the certificate of any person or have found any person at fault, then, if no application for an order

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under subsection (1) above has been made or such an application has been refused, that person or any other person who, having an interest in the inquiry, has appeared at the hearing and is affected by the decision or finding, may appeal—

- (a) to the High Court if the inquiry was held in England, Wales or Northern Ireland;
- (b) to the Court of Session if it was held in Scotland.

Modifications etc. (not altering text)

- C1 Ss. 62-69 applied (7.8.2014) by [The Merchant Shipping \(Maritime Labour Convention\) \(Minimum Requirements for Seafarers etc.\) Regulations 2014 \(S.I. 2014/1613\)](#), regs. 1(2), **38(3)**

65 Rules as to inquiries and appeals.

- (1) The Secretary of State may make rules for the conduct of inquiries under sections 61 and 63 and for the conduct of any re-hearing under section 64 which is not held by the High Court or the Court of Session.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.
- (3) Rules of court made for the purpose of re-hearings under section 64 which are held by the High Court, or of appeals to the High Court, may require the court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a re-hearing or hear such an appeal with the assistance of one or more assessors.

Modifications etc. (not altering text)

- C1 Ss. 62-69 applied (7.8.2014) by [The Merchant Shipping \(Maritime Labour Convention\) \(Minimum Requirements for Seafarers etc.\) Regulations 2014 \(S.I. 2014/1613\)](#), regs. 1(2), **38(3)**

66 Failure to deliver cancelled or suspended certificate.

If a person fails to deliver a certificate as required under section 61, 62 or 63 he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Modifications etc. (not altering text)

- C1 Ss. 62-69 applied (7.8.2014) by [The Merchant Shipping \(Maritime Labour Convention\) \(Minimum Requirements for Seafarers etc.\) Regulations 2014 \(S.I. 2014/1613\)](#), regs. 1(2), **38(3)**

67 Power to restore certificate.

Where a certificate has been cancelled or suspended under section 61, 62, 63 or 64, the Secretary of State, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

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68 Power to summon witness to inquiry into fitness or conduct of officer or other seaman.

- (1) The persons holding an inquiry under section 61 or 63 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,
 - (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) above 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 [^{F1}proper officer] of that court.
- [^{F2}(4A) In subsection [^{F3}(4)] above “proper officer” means—
- (a) in relation to a magistrates' court in England and Wales, the [^{F4}designated officer] for the court, and
 - (b) in relation to a magistrates' court in Northern Ireland, the clerk of the court.]
- (5) This section does not apply to Scotland.

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Textual Amendments

- F1** Words in s. 68(4) substituted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 174(2)** (with s. 107, Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)**
- F2** S. 68(4A) inserted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 174(3)** (with s. 107, Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)**
- F3** Word in s. 68(4A) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 366(a)**; S.I. 2005/910, art. 3(y)
- F4** Words in s. 68(4A) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 366(b)**; S.I. 2005/910, art. 3(y)

Modifications etc. (not altering text)

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

Where an inquiry under section 61 or 63 is held in Scotland by a sheriff—

- (a) he shall (subject to rules made under section 65(1)) dispose of the inquiry as a summary application; and
- (b) (subject to section 64) his decision on the inquiry shall be final.

Modifications etc. (not altering text)

- C1** Ss. 62-69 applied (7.8.2014) by The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (S.I. 2014/1613), regs. 1(2), **38(3)**

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

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 145(2)(a)(ia) inserted by [2003 c. 44 Sch. 36 para. 13\(2\)](#)
- s. 145(2)(a)(ia) words substituted by [2015 c. 2 Sch. 11 para. 16\(2\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 145(2)(a)(ia) by 2003 c. 44, Sch. 36 para. 13 is still prospective.)
- s. 145(2A) inserted by [2003 c. 44 Sch. 36 para. 13\(3\)](#)
- s. 145(2A) words substituted by [2015 c. 2 Sch. 11 para. 16\(3\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 145(2A) by 2003 c. 44, Sch. 36 para. 13 is still prospective.)