Merchant Shipping Act 1995

1995 CHAPTER 21

PART X

ENFORCEMENT OFFICERS AND POWERS

Enforcement Officers

256 Appointment of inspectors and surveyors

(1) The Secretary of State may, if he thinks fit, appoint any person as an inspector to report to him—

(a) upon the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused;

(b) whether any requirements, restrictions or prohibitions imposed by or under this Act have been complied with or (as the case may be) contravened;

(c) whether the hull and machinery of a ship are sufficient and in good condition;

(d) what measures have been taken to prevent the escape of oil or mixtures containing oil.

(2) The Secretary of State may, at such ports as he thinks fit, appoint persons to be surveyors of ships for the purposes of this Act and may remove any person so appointed.

(3) A surveyor of ships may be appointed either as a ship surveyor or as an engineer surveyor or as both.

(4) Surveyor of ships may be appointed either generally or for any particular case or purpose.

(5) The Secretary of State may also appoint a surveyor general of ships for the United Kingdom and such other officers in connection with the survey of ships and other matters incidental thereto as he thinks fit.

(6) The Secretary of State may appoint persons to be inspectors for the purposes of sections 261 to 266.

(7) Every inspector appointed under section (1) above shall be treated as appointed under subsection (6) above.

(8) Every surveyor of ships shall be treated as a person appointed generally under subsection (1) above to report to the Secretary of State in every kind of case falling within paragraphs (b) and (d) of that subsection in relation to Chapter II of Part VI.

(9) In this Act—

(a) "Departmental inspector" means an inspector appointed under subsection (1) above;

(b) "surveyor of ships" means a surveyor appointed under subsection (2) above;

(c) "Departmental officer" means any officer of the Secretary of State discharging functions of his for the purposes of this Act;

and the reference to requirements, restrictions or prohibitions under this Act includes any such requirements, restrictions or prohibitions constituting the terms of any approval, licence, consent or exemption given in any document issued under this Act.

Inspection etc powers

257 Powers to require production of ships documents

(1) The powers conferred by this section are conferred in relation to United Kingdom ships and are available to any of the following officers, namely—

(a) any Departmental officer,

(b) any commissioned naval officer,

(c) any British consular officer,

(d) the Registrar General of Shipping and Seamen or any person discharging his functions,

(e) any chief officer of customs and excise,

(f) any superintendent,

whenever the officer has reason to suspect that this Act or any law for the time being in force relating to merchant seamen or navigation is not complied with.

(2) Those powers are—

(a) to require the owner, master, or any of the crew to produce any official log-books or other documents relating to the crew or any member of the crew in their possession or control;

(b) to require the master to produce a list of all persons on board his ship, and take copies of or extracts from the official log-books or other such documents;

(c) to muster the crew; and

(d) to require the master to appear and give any explanation concerning the ship or her crew or the official log-books or documents produced or required to be produced.

(3) If any person, on being duly required by an officer under this section to produce a log-book or any document, fails without reasonable excuse to produce the log-book or document, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If any person, on being duly required by any officer under this section—

(a) to produce a log-book or document, refuses to allow the log-book or document to be inspected or copied;
(b) to muster the crew, impedes the muster; or
(c) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer;

he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

258 Powers to inspect ships and their equipment, etc

(1) For the purpose of seeing that the provisions of this Act other than Chapter II of Part VI and of regulations and rules made under this Act (other than that Chapter) or that the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations are duly complied with, the following persons, namely—
(a) a surveyor of ships,
(b) a superintendent,
(c) any person appointed by the Secretary of State, either generally or in a particular case, to exercise powers under this section,

may at all reasonable times go on board a ship and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of this Act other than Chapter II of Part VI or in pursuance of regulations or rules under this Act (other than that Chapter).

(2) The powers conferred by subsection (1) above are, if the ship is a United Kingdom ship, also exercisable outside the United Kingdom and may be so exercised by a proper officer as well as the persons mentioned in that subsection.

(3) A person exercising powers under this section shall not unnecessarily detain or delay a ship but may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.

(4) Where any such person as is mentioned in subsection (1) above has reasonable grounds for believing that there are on any premises provisions or water intended for supply to a United Kingdom ship which, if provided on the ship, would not be in accordance with safety regulations containing requirements as to provisions and water to be provided on ships he may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with the regulations.

(5) If any person obstructs a person in the exercise of his powers under this section, or fails to comply with a requirement made under subsection (3) above, he shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

259 Powers of inspectors in relation to premises and ships

(1) The powers conferred by this section are conferred in relation to—
(a) any premises in the United Kingdom; or
(b) any United Kingdom ship wherever it may be and any other ship which is present in the United Kingdom or in United Kingdom waters;

and are available to any Departmental inspector, or any inspector appointed under section 256(6), for the purpose of performing his functions.

(2) Such an inspector—

(a) may at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time)—

(i) enter any premises , or

(ii) board any ship,

if he has reason to believe that it is necessary for him to do so;

(b) may, on entering any premises by virtue of paragraph (a) above or on boarding a ship by virtue of that paragraph, take with him any other person authorised for the purpose by the Secretary of State and any equipment or materials he requires;

(c) may make such examination and investigation as he considers necessary;

(d) may give a direction requiring that the premises or ship or any part of the premises or ship or any thing in the premises or ship or such a part shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c) above;

(e) may take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;

(f) may take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;

(g) may, in the case of any article or substance which he finds in the premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary);

(h) may, in the case of any such article or substance as is mentioned in paragraph (g) above, take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

(i) to examine it and do to it anything which he has power to do under that paragraph,

(ii) to ensure that it is not tampered with before his examination of it is completed,

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or any instrument made under it;

(i) may require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c) above—

(i) to attend at a place and time specified by the inspector, and

(ii) to answer (in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask, and

(iii) to sign a declaration of the truth of his answers;

(j) may require the production of, and inspect and take copies of or of any entry in,—

(i) any books or documents which by virtue of any provision of this Act are required to be kept; and

(ii) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under paragraph (c) above;

(k) may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this subsection.

(3) The powers conferred by subsection (2) above to require the production of any document and copy it include, in relation to oil record books required to be carried under section 142, power to require the master to certify the copy as a true copy.

(4) The powers conferred by subsection (2) above to inspect premises shall also be exercisable, for the purpose of Chapter II of Part VI, in relation to any apparatus used for transferring oil.

(5) The powers of entry and inspection of premises conferred by subsections (2) and (4) above for the purposes of Chapter II of Part VI shall not be exercisable by Departmental inspectors (or surveyors of ships in their capacity as Departmental inspectors) in relation to places on land in Northern Ireland and apparatus located in Northern Ireland otherwise than on board ships; but persons appointed by the Department of the Environment for Northern Ireland shall have the like powers; and those subsections shall have effect accordingly in relation to persons so appointed.

(6) The powers conferred by subsection (2)(a), (c) and (j) above shall also be exercisable, in relation to a ship in a harbour in the United Kingdom, by the harbour master or other persons appointed by the Secretary of State for the purpose, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the ship into the harbour.

(7) It is hereby declared that nothing in the preceding provisions of this section authorises a person unnecessarily to prevent a ship from proceeding on a voyage.

(8) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (2)(f) above and subsection (11) below and provision as to the way in which samples that have been so taken are to be dealt with.

(9) Where an inspector proposes to exercise the power conferred by subsection (2)(g) above in the case of an article or substance found in any premises or ship, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.

(10) Before exercising the power conferred by subsection (2)(g) above, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(11) Where under the power conferred by subsection (2)(h) above an inspector takes possession of any article or substance found in any premises or ship, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient

to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.

(12) No answer given by a person in pursuance of a requirement imposed under subsection (2)(i) above shall be admissible in evidence against that person or the husband or wife of that person in any proceedings except proceedings in pursuance of subsection (1)(c) of section 260 in respect of a statement in or a declaration relating to the answer; and a person nominated as mentioned in the said subsection (2)(i) shall be entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him.

260 Provisions supplementary to section 259

(1) A person who—

(a) intentionally obstructs an inspector in the exercise of any power available to him under section 259; or

(b) without reasonable excuse, does not comply with a requirement imposed in pursuance of section 259 or prevents another person from complying with such a requirement; or

(c) without prejudice to the generality of paragraph (b) above, makes a statement or signs a declaration which he knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made in pursuance of subsection (2)(i) of section 259,

shall be liable—

(i) on summary conviction, to a fine not exceeding the statutory maximum;

(ii) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine or both.

(2) Nothing in section 259 shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, as the case may be, on an order for the production of documents in an action in the Court of Session.

(3) A person who complies with a requirement imposed on him in pursuance of paragraph (i)(i) or (k) of subsection (2) of section 259 shall be entitled to recover from the person who imposed the requirement such sums in respect of the expenses incurred in complying with the requirement as are prescribed by regulations made by the Secretary of State.

(4) Regulations under subsection (3) above may make different provision for different circumstances.

(5) Any payments under subsection (3) above shall be made out of money provided by Parliament.

Improvement notices and prohibition notices

261 Improvement notices

(1) If an inspector appointed under section 256(6) is of the opinion that a person—

(a) is contravening one or more of the relevant statutory provisions, or

(b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on that person a notice under this section, (referred to in the following sections of this Part as an improvement notice).

(2) An improvement notice shall—

(a) state that the inspector is of the said opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion, and

(b) require the person on whom the notice is served to remedy the contravention in question or (as the case may be) the matters occasioning it within such period as may be specified in the notice.

(3) The period specified in pursuance of subsection (2)(b) above shall not expire before the end of the period within which a notice can be given under section 264 requiring questions relating to the improvement notice to be referred to arbitration.

(4) In this and the following sections of this Part "the relevant statutory provisions" means—

(a) sections 43, 44, 46 to 55, 85, 86, 88 (and Schedule 2), 89 (and Schedule 3), 90, 99, 109, 115, 116, 121 to 126, 128, 129, 130, 131 to 151 and 272; and

(b) the provisions of any instrument of a legislative character having effect under any of those provisions.

262 Prohibition notices

(1) If, as regards any relevant activities which are being or are likely to be carried on on board any ship by or under the control of any person, an inspector appointed under section 256(6) is of the opinion that, as so carried on or as likely to be so carried on, the activities involve or (as the case may be) will involve the risk of—

(a) serious personal injury to any person (whether on board the ship or not), or

(b) serious pollution of any navigable waters,

the inspector may serve on the first-mentioned person a notice under this section (referred to in the following sections of this Part as a "prohibition notice").

(2) In subsection (1) above "relevant activities" means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned in that subsection, apply.

(3) A prohibition notice shall—

(a) state that the inspector is of the said opinion;

(b) specify the matters which in his opinion give or (as the case may be) will give rise to the said risk;

(c) where in his opinion any of those matters involve or (as the case may be) will involve a contravention of any of the relevant statutory provisions state that

he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and

(d) direct—

(i) that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served, or

(ii) that the ship shall not go to sea,

(or both of those things) unless the matters specified in the notice in pursuance of paragraph (b) above, and any associated contraventions of any provision so specified in pursuance of paragraph (c) above, have been remedied.

(4) A direction contained in a prohibition notice in pursuance of subsection (3)(d) above shall take effect—

(a) at the end of a period specified in the notice, or

(b) if the direction is given in pursuance of subsection (3)(d)(ii) above or the notice so declares, immediately.

263 Provisions supplementary to sections 261 and 262

(1) An improvement notice or a prohibition notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(2) An improvement notice or a prohibition notice shall not direct any measures to be taken to remedy the contravention of any of the relevant statutory provisions that are more onerous than those necessary to secure compliance with that provision.

(3) Where an improvement notice or a prohibition notice that is not to take immediate effect has been served—

(a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it in pursuance of section 261(2)(b) or (as the case may be) section 262(4); and

(b) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending under section 264.

264 References of notices to arbitration

(1) Any question—

(a) as to whether any of the reasons or matters specified in an improvement notice or a prohibition notice in pursuance of section 261(2)(a) or 262(3)(b) or (c) in connection with any opinion formed by the inspector constituted a valid basis for that opinion, or

(b) as to whether any directions included in the notice in pursuance of section 263(1) were reasonable,

shall, if the person on whom the notice was served so requires by a notice given to the inspector within 21 days from the service of the notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.

(2) Where a notice is given by a person in accordance with subsection (1) above, then—

(a) in the case of an improvement notice, the giving of the notice shall have the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by that person;

(b) in the case of a prohibition notice, the giving of the notice shall have the effect of so suspending the operation of the prohibition notice if, but only if, on the application of that person the arbitrator so directs (and then only from the giving of the direction).

(3) Where on a reference under this section the arbitrator decides as respects any reason, matter or direction to which the reference relates, that in all the circumstances—

(a) the reason or matter did not constitute a valid basis for the inspector's opinion, or

(b) the direction was unreasonable,

he shall either cancel the notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.

(4) Where any reference under this section involves the consideration by the arbitrator of the effects of any particular activities or state of affairs on the health or safety of any persons, he shall not on that reference make any decision such as is mentioned in subsection (3)(a) or (b) above except after—

(a) in the case of an improvement notice, affording an opportunity of making oral representations to him with respect to those effects to a member of any such panel of representatives of maritime trade unions as may be appointed by the Secretary of State for the purposes of this subsection; or

(b) in the case of a prohibition notice, affording an opportunity of making such representations to him to either—

(i) a representative of a trade union representing persons whose interests it appears to him that the notice was designed to safeguard, or

(ii) a member of any such panel as is referred to in paragraph (a) above,

as he thinks appropriate; and

(c) (in either case) considering any representations made to him in pursuance of paragraph (a) or (b) above.

(5) A person shall not be qualified for appointment as an arbitrator under this section unless he is—

(a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;

(b) a naval architect;

(c) a person falling with subsection (6); or

(d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

(6) For the purposes of subsection (5)(c) a person falls within this subsection if—

(a) he has a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990);

(b) he is an advocate or solicitor in Scotland of at least 10 years' standing; or

(c) he is a member of the bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing.

(7) In connection with his functions under this section an arbitrator shall have the powers conferred on an inspector by section 259 other than subsections (3), (4) and (6).

(8) In the application of this section to Scotland any reference to an arbitrator shall be construed as a reference to an arbiter and the reference in subsection (1) above to a single arbitrator appointed by agreement between the parties shall be construed as a reference to a single arbiter so appointed or, in default of agreement, appointed by the sheriff.

(9) The Arbitration Act (Northern Ireland) 1937 shall apply in relation to an arbitration in pursuance of this section as if this section related to a matter in respect of which the Parliament of Northern Ireland had power to make laws.

265 Compensation in connection with invalid prohibition notices

(1) If on a reference under section 264 relating to a prohibition notice—

(a) the arbitrator decides that any reason or matter did not constitute a valid basis for the inspector's opinion, and

(b) it appears to him that there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may, subject to subsection (3) below, award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the service of the notice as the arbitrator thinks fit.

(2) If on any such reference the arbitrator decides that any direction included in the notice was unreasonable, the arbitrator may, subject to subsection (3) below, award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the direction as the arbitrator thinks fit.

(3) An arbitrator shall not award any compensation under subsection (1) or (2) above in the case of any prohibition notice unless—

(a) it appears to him that the direction given in pursuance of section 262(3)(d) contained any such requirement as is mentioned in subparagraph (ii) of that provision; or

(b) it appears to him that—

(i) the inspector was of the opinion that there would be such a risk of injury or pollution as is referred to in the notice if the ship went to sea, and

(ii) the effect of the direction given in pursuance of section 262(3)(d) was to prohibit the departure of the ship unless the matters, or (as the case may be) the matters and contraventions, referred to in the direction were remedied.

(4) Any compensation awarded under this section shall be payable by the Secretary of State.

(5) In the application of this section to Scotland any reference to an arbitrator shall be construed as a reference to an arbiter.

266 Offences

(1) Any person who contravenes any requirement imposed by an improvement notice shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;
(b) on conviction on indictment, to a fine.

(2) Any person who contravenes any prohibition imposed by a prohibition notice 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 for a person charged with an offence under this section to prove that he exercised all due diligence to avoid a contravention of the requirement or prohibition in question.

(4) In this section any reference to an improvement notice or a prohibition notice includes a reference to any such notice as modified under section 264(3).