



Merchant Shipping Act 1995

1995 CHAPTER 21

PART XII

LEGAL PROCEEDINGS

Prosecution of offences

274 Time limit for summary offences

- (1) Subject to subsections (2) and (3) below, no person shall be convicted of an offence under this Act in summary proceedings unless—
 - (a) the proceedings were commenced within six months beginning with the date on which the offence was committed; or
 - (b) in a case where the accused happens during that period to be out of the United Kingdom, the proceedings were commenced within two months after he first happens to arrive within the United Kingdom and before the expiration of three years beginning with the date on which the offence was committed.
- (2) Nothing in subsection (1) above shall apply in relation to any indictable offence.
- (3) Subsection (1) above shall not prevent a conviction for an offence in summary proceedings begun before the expiration of three years beginning with the date on which the offence was committed and before—
 - (a) the expiration of the period of six months beginning with the day when evidence which the Secretary of State considers is sufficient to justify a prosecution for the offence came to his knowledge; or
 - (b) the expiration of two months beginning with the day when the accused was first present in the United Kingdom after the expiration of the period mentioned in paragraph (a) above if throughout that period the accused was absent from the United Kingdom.
- (4) For the purpose of subsection (3) above—
 - (a) a certificate of the Secretary of State stating that evidence came to his knowledge on a particular day shall be conclusive evidence of that fact; and

- (b) a document purporting to be a certificate of the Secretary of State and to be signed on his behalf shall be presumed to be such a certificate unless the contrary is proved.
- (5) In the application of this section to Scotland—
- (a) in subsection (3)(a) above, for the words from “Secretary” to “knowledge” there shall be substituted the words “Lord Advocate considers is sufficient to justify a prosecution for the offence came to his knowledge, or, where such evidence is reported to him by the Secretary of State, the expiration of the period of six months beginning with the day when it came to the knowledge of the Secretary of State”;
 - (b) in subsection (4)(a) and (b) above, for the words “Secretary of State” there shall be substituted the words “Lord Advocate or the Secretary of State, as the case may be,”.

275 Time limit for summary orders

No order for the payment of money shall be made under this Act in proceedings before a magistrates' court unless—

- (a) the proceedings were commenced within six months beginning with the date on which the matter of complaint arose; or
- (b) in a case where both or either of the parties to the proceedings happen during that period to be out of the United Kingdom, the proceedings were commenced within six months after they both first happen to arrive, or to be at one time, within the United Kingdom.

276 Summary offences: Scotland

In Scotland all prosecutions in respect of offences under this Act in respect of which the maximum penalty which may be imposed does not exceed imprisonment for a period of three months or a fine of level 4 on the standard scale or both may be tried in a summary manner before the district court.

277 Offences by officers of bodies corporate

- (1) Where a body corporate is guilty of an offence under this Act or any instrument made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such a capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

278 Offences by partners, etc. in Scotland

Where, in Scotland, a partnership or unincorporated association (other than a partnership) is guilty of an offence under this Act or any instrument made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership or, as

the case may be, a person concerned in the management or control of the association, he as well as the partnership or association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Jurisdiction

279 Jurisdiction in relation to offences

- (1) For the purpose of conferring jurisdiction, any offence under this Act shall be deemed to have been committed in any place in the United Kingdom where the offender may for the time being be.
- (2) For the same purpose, any matter of complaint under this Act shall be deemed to have arisen in any place in the United Kingdom where the person complained against may for the time being be.
- (3) The jurisdiction under subsections (1) and (2) above shall be in addition to and not in derogation of any jurisdiction or power of a court under any other enactment.

280 Jurisdiction over ships lying off coasts

- (1) Where the area within which a court in any part of the United Kingdom has jurisdiction is situated on the coast of any sea or abuts on or projects into any bay, channel, lake, river or other navigable water the court shall have jurisdiction as respects offences under this Act over any vessel being on, or lying or passing off, that coast or being in or near that bay, channel, lake, river or navigable water and over all persons on board that vessel or for the time being belonging to it.
- (2) The jurisdiction under subsection (1) above shall be in addition to and not in derogation of any jurisdiction or power of a court under the Magistrates' Courts Act 1980 or the Magistrates' Courts (Northern Ireland) Order 1981.

281 Jurisdiction in case of offences on board ship

Where any person is charged with having committed any offence under this Act then—

- (a) if he is a British citizen and is charged with having committed it—
 - (i) on board any United Kingdom ship on the high seas,
 - (ii) in any foreign port or harbour, or
 - (iii) on board any foreign ship to which he does not belong; or
- (b) if he is not a British citizen and is charged with having committed it on board any United Kingdom ship on the high seas;

and he is found within the jurisdiction of any court in any part of the United Kingdom which would have had jurisdiction in relation to the offence if it had been committed on board a United Kingdom ship within the limits of its ordinary jurisdiction to try the offence that court shall have jurisdiction to try the offence as if it had been so committed.

282 Offences committed by British seamen

- (1) Any act in relation to property or person done in or at any place (ashore or afloat) outside the United Kingdom by any master or seaman who at the time is employed in

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a United Kingdom ship, which, if done in any part of the United Kingdom, would be an offence under the law of any part of the United Kingdom, shall—

- (a) be an offence under that law, and
 - (b) be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the Admiralty of England.
- (2) Subsection (1) above also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done.
- (3) Subsections (1) and (2) above apply to omissions as they apply to acts.

Return of offenders

283 Return of offenders

- (1) The powers conferred on a British consular officer by subsection (2) below are exercisable in the event of any complaint being made to him—
- (a) that any offence against property or persons has been committed at any place (ashore or afloat) outside the United Kingdom by any master or seaman who at the time when the offence was committed, or within three months before that time, was employed in a United Kingdom ship; or
 - (b) that any offence on the high seas has been committed by any master or seaman belonging to any United Kingdom ship.
- (2) Those powers are—
- (a) to inquire into the case upon oath, and
 - (b) if the case so requires, to take any steps in his power for the purpose of placing the offender under the necessary restraint and sending him by United Kingdom ship as soon as practicable in safe custody to the United Kingdom for proceedings to be taken against him.
- (3) The consular officer may, subject to subsections (4) and (5) below, order the master of any United Kingdom ship bound for the United Kingdom to receive and carry the offender and the witnesses to the United Kingdom; and the officer shall endorse upon the agreement of the ship such particulars with respect to them as the Secretary of State requires.
- (4) A consular officer shall not exercise the power conferred by subsection (3) above unless no more convenient means of transport is available or it is available only at disproportionate expense.
- (5) No master of a ship may be required under subsection (3) above to receive more than one offender for every 100 tons of his ship's registered tonnage, or more than one witness for every 50 tons of his ship's registered tonnage.
- (6) The master of any ship to whose charge an offender has been committed under subsection (3) above shall, on his ship's arrival in the United Kingdom, give the offender into the custody of some police officer or constable.
- (7) If any master of a ship, when required under subsection (3) above to receive and carry any offender or witness in his ship—
- (a) fails to do so; or

- (b) in the case of an offender, fails to deliver him as required by subsection (6) above;
he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) The expense of imprisoning any such offender and of carrying him and witnesses to the United Kingdom otherwise than in the ship to which they respectively belong shall be paid out of money provided by Parliament.
- (9) References in this section to carrying a person in a ship include affording him subsistence during the voyage.

Detention of ship and distress on ship

284 Enforcing detention of ship

- (1) Where under this Act a ship is to be or may be detained any of the following officers may detain the ship—
 - (a) any commissioned naval or military officer,
 - (b) any Departmental officer,
 - (c) any officer of customs and excise, and
 - (d) any British consular officer.
- (2) If a ship which has been detained or as respects which notice of detention or an order for detention has been served on the master proceeds to sea before it is released by competent authority the master of the ship shall be liable—
 - (a) on summary conviction, to a fine not exceeding £50,000;
 - (b) on conviction on indictment, to a fine.
- (3) The owner of a ship, and any person who sends to sea a ship, as respects which an offence is committed under subsection (2) above shall, if party or privy to the offence, also be guilty of an offence under that subsection and liable accordingly.
- (4) Where a ship proceeding to sea in contravention of subsection (2) above takes to sea any of the following who is on board the ship in the execution of his duty, namely—
 - (a) any officer authorised by subsection (1) above to detain the ship, or
 - (b) any surveyor of ships,the owner and master of the ship shall each—
 - (i) be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea; and
 - (ii) be guilty of an offence.
- (5) A person guilty of an offence under subsection (4) above shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (6) Where under this Act a ship is to be detained an officer of customs and excise shall, and where under this Act a ship may be detained an officer of customs and excise may, refuse to clear the ship outwards or grant a transire to the ship.
- (7) When any provision of this Act provides that a ship may be detained until any document is produced to the proper officer of customs and excise the officer able to

grant a clearance or transire of the ship is (unless the context otherwise requires) that officer.

- (8) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending or taking to sea shall be construed accordingly.

285 Sums ordered to be paid leviable by distress on the ship

- (1) Where any court has power to make an order directing payment to be made of any seaman's wages, fines or other sums of money, then, if the person directed to pay is the master or owner of the ship and the money directed to be paid is not paid in accordance with the order, the court who made the order may—
- (a) except in Scotland, direct the amount remaining unpaid to be levied by distress,
 - (b) in Scotland, grant warrant authorising the arrestment and sale, of the ship and its equipment.
- (2) The remedy made available by this section is in addition to any other powers for compelling the payment of money ordered to be paid.

Special evidential provisions

286 Depositions of persons abroad admissible

- (1) If the evidence of any person is required in the course of any legal proceeding before a judge or magistrate in relation to the subject matter of the proceeding and it is proved that that person cannot be found in the United Kingdom, any deposition that he may have previously made at a place outside the United Kingdom in relation to the same subject matter shall, subject to subsection (2) below, be admissible in evidence in those proceedings.
- (2) For a deposition to be admissible under subsection (1) above in any proceedings, the deposition—
- (a) must have been taken on oath;
 - (b) must have been taken before a justice or magistrate in any colony or a British consular officer in any other place;
 - (c) must be authenticated by the signature of the justice, magistrate or officer taking it; and
 - (d) must, if the proceedings are criminal proceedings, have been taken in the presence of the accused;
- and, in a case falling within paragraph (d) above, the deposition shall be certified by the justice, magistrate or officer taking it to have been taken in the presence of the accused.
- (3) No proof need be given of the signature or official character of the person appearing to have signed any such deposition and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the accused shall, unless the contrary is proved, be evidence (and in Scotland sufficient evidence) of that fact.
- (4) This section also applies to proceedings before any person authorised by law or consent of the parties to receive evidence.

- (5) Nothing in this section affects the admissibility in evidence of depositions under any other enactment or the practice of any court.

287 Admissibility in evidence and inspection of certain documents

- (1) The following documents shall be admissible in evidence and, when in the custody of the Registrar General of Shipping and Seamen, shall be open to public inspection—
- (a) documents purporting to be submissions to or decisions by superintendents or proper officers under section 33;
 - (b) the official log book of any ship kept under section 77 and, without prejudice to section 288(2), any document purporting to be a copy of an entry therein and to be certified as a true copy by the master of the ship;
 - (c) crew agreements, lists of crews made under section 78 and notices given under Part III of additions to or changes in crew agreements and lists of crews;
 - (d) returns or reports under section 108;
 - (e) documents transmitted to the Registrar General of Shipping and Seamen under section 298.
- (2) A certificate issued under section 47 shall be admissible in evidence.

288 Admissibility of documents in evidence

- (1) Where a document is by this Act declared to be admissible in evidence the document shall, on its production from proper custody—
- (a) be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence; and
 - (b) subject to all just exceptions, be evidence (or in Scotland sufficient evidence) of the matters stated in the document.
- (2) A copy of, or extract from, any document so made admissible in evidence shall, subject to subsection (3) below, also be admissible in evidence and evidence (and in Scotland sufficient evidence) of the matters stated in the document.
- (3) A copy of, or extract from, a document shall not be admissible by virtue of subsection (2) above unless—
- (a) it is proved to be an examined copy or extract; or
 - (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted;
- and that officer shall furnish the certified copy or extract to any person who applies for it at a reasonable time and pays such reasonable price as the Secretary of State determines.
- (4) A person shall, on payment of such reasonable price as the Secretary of State determines, be entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Act.
- (5) If any officer having duties of certification under subsection (3) above in relation to any document intentionally certifies any document as being a true copy or extract knowing that the copy or extract is not a true copy or extract he shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum;

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (6) Subject to subsection (7) below, in Scotland, if any person forges the seal, stamp or signature of any document (or copy document) declared by this Act to be admissible in evidence or tenders in evidence any such document (or copy document) with, and knowing it to have, a false or counterfeit seal, stamp or signature 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 for a term not exceeding seven years or to both.
- (7) Subsection (6) above does not apply in respect of actings which constitute an offence under section 300(8).
- (8) Without prejudice to section 6(1) of the Civil Evidence (Scotland) Act 1988 (production of copy documents) subsections (2) and (3) above shall not apply, for the purposes of civil proceedings in Scotland, as respects the admissibility of a copy document; but subsection (5) above shall apply to a person purporting to authenticate any such document and to authentication as it applies to an officer purporting to certify any such document and to certification.

289 Inspection and admissibility in evidence of copies of certain documents

- (1) Where under any enactment a document is open to public inspection when in the custody of the Registrar General of Shipping and Seamen—
- (a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original; but
 - (b) the original shall nevertheless be made available for public inspection if the copy or other reproduction is illegible.
- (2) Where the Registrar General of Shipping and Seamen destroys any document which has been sent to him under or by virtue of any enactment, and keeps a copy or other reproduction of that document, then—
- (a) any enactment providing for that document to be admissible in evidence or open to public inspection, and
 - (b) in the case of a document falling within subsection (1) above, that subsection, shall apply to the copy or other reproduction as if it were the original.
- (3) For the purposes of this section, and of section 288(2) in its application to documents in the custody of the Registrar General of Shipping and Seamen, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original.

290 Proof, etc of exemptions

- (1) Where any exception, exemption, excuse or qualification applies in relation to an offence under this Act—
- (a) it may be proved by the defendant, but
 - (b) need not be specified or negatived in any information or complaint;
- and, if so specified or negatived, shall not require to be proved by the informant or complainant.

- (2) This section applies in relation to an offence whether or not the exception, exemption, excuse or qualification is contained in the section creating the offence.
- (3) This section does not apply to Scotland.

Service of documents

291 Service of documents

- (1) Any document authorised or required to be served on any person may be served on that person—
 - (a) by delivering it to him;
 - (b) by leaving it at his proper address; or
 - (c) by sending it by post to him at his proper address.
- (2) Any such document required to be served on the master of a ship may be served—
 - (a) where there is a master, by leaving it for him on board the ship with the person appearing to be in command or charge of the ship;
 - (b) where there is no master, on—
 - (i) the managing owner of the ship; or
 - (ii) if there is no managing owner, on any agent of the owner; or
 - (iii) where no such agent is known or can be found, by leaving a copy of the document fixed to the mast of the ship.
- (3) Any document authorised or required to be served on any person may—
 - (a) in the case of a body corporate, be served on the secretary or clerk of that body;
 - (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business or, in Scotland, on the firm.
- (4) Any notice authorised or required by or under Part II to be served on the Secretary of State may be served by post.
- (5) Any notice authorised by section 261, 262, 263 or 264 to be given to an inspector may be given by delivering it to him or by leaving it at, or sending it by post to, his office.
- (6) Any document authorised or required by or under any enactment to be served on the registered owner of a United Kingdom ship shall be treated as duly served on him if served on such persons, in such circumstances and by such method, as may be specified in registration regulations.
- (7) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on whom any document is to be served shall be his last known address, except that—
 - (a) in the case of a body corporate or their secretary or clerk it shall be the address of the registered or principal office of that body;
 - (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be the principal office of the partnership;and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office in the United Kingdom.

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- (8) If the person to be served with any notice has (whether in pursuance of registration regulations or otherwise) specified an address in the United Kingdom other than his proper address within the meaning of subsection (7) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.
- (9) For the purposes of the said section 7 a letter containing—
- (a) a notice to be served on any person in pursuance of subsection (6) above, or
 - (b) a notice authorised or required to be served under registration regulations on a representative person (within the meaning of those regulations),
- shall be deemed to be properly addressed if it is addressed to that person at the address for the time being recorded in relation to him in the register; and a letter containing any other notice under registration regulations shall be deemed to be properly addressed if it is addressed to the last known address of the person to be served (whether of his residence or of a place where he carries on business).