Marine Safety Act 2003

2003 CHAPTER 16

U.K.

An Act to make provision about the giving of directions in respect of ships for purposes relating to safety or pollution and about the taking of action to enforce, in connection with, or in lieu of, directions; to make provision about fire-fighting in connection with marine incidents; and for connected purposes. [10th July 2003]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Safety directions U.K.

(1) The following shall be inserted in Part IV of the Merchant Shipping Act 1995 (c. 21) (safety) after section 108 (births and deaths)—

"**108A Safety directions**

(1) Schedule 3A (safety directions) shall have effect.

(2) A provision made by or by virtue of this Act (including one which creates an offence) shall have no effect in so far as it—

(a) is inconsistent with the exercise by or on behalf of the Secretary of State of a power under Schedule 3A (safety directions),

(b) would interfere with a person's compliance with a direction under that Schedule, or

(c) would interfere with action taken by virtue of that Schedule."

(2) Before Schedule 4 to that Act there shall be inserted new Schedule 3A set out in Schedule 1 to this Act.

[F1]2 Fire authorities: power to charge E+W

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Textual Amendments

F1 S. 2 repealed (7.9.2004 for E. for specified purposes, 1.10.2004 otherwise and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), s. 61, **Sch. 2**; S.I. 2004/2304, art. 2; S.I. 2004/2917, art. 2

3 Amendments and repeals U.K.

(1) Schedule 2 (minor and consequential amendments) shall have effect.

(2) The enactments listed in Schedule 3 are hereby repealed to the extent specified.

4 Commencement U.K.

This Act shall come into force at the end of the period of two months beginning with the date on which it is passed.

5 Extent U.K.

(1) This Act extends to the whole of the United Kingdom.

(2) But section 2 extends to England and Wales only.

6 Short Title U.K.

This Act may be cited as the Marine Safety Act 2003.

***Changes to legislation:** There are currently no known outstanding effects for the Marine Safety Act 2003. (See end of Document for details)*

SCHEDULES

SCHEDULE 1 U.K.

Section 1

NEW SCHEDULE 3A TO THE MERCHANT SHIPPING ACT 1995 – SAFETY DIRECTIONS

"SCHEDULE 3A U.K.

SAFETY DIRECTIONS

Direction following accident: person in control of ship

1 (1) The Secretary of State may give a direction under this paragraph in respect of a ship if in his opinion—

(a) an accident has occurred to or in the ship,

(b) the accident has created a risk to safety or a risk of pollution by a hazardous substance, and

(c) the direction is necessary to remove or reduce the risk.

(2) The direction may be given to—

(a) the owner of the ship,

(b) a person in possession of the ship,

(c) the master of the ship,

(d) a pilot of the ship,

(e) a salvor in possession of the ship,

(f) a person who is the servant or agent of a salvor in possession of the ship and who is in charge of the salvage operation, or

(g) where the ship is in, or has been directed to move into, waters which are regulated or managed by a harbour authority, the harbour authority or the harbour master.

(3) The direction may require the person to whom it is given to take or refrain from taking any specified action in relation to—

(a) the ship;

(b) anything which is or was in the ship;

(c) anything which forms or formed part of the ship;

(d) anything which is or was being towed by the ship;

(e) a person on the ship.

(4) In particular, the direction may require a person to ensure—

(a) that a ship or other thing is moved or not moved;

(b) that a ship or other thing is moved or not moved to or from a specified place or area or over a specified route;

(c) that cargo is or is not unloaded or discharged;

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(d) that a substance is or is not unloaded or discharged;
(e) that specified salvage measures are taken or not taken;
(f) that a person is put ashore or on board a ship.

Direction following accident: person in control of land

2 (1) The Secretary of State may give a direction under this paragraph in respect of a ship if in his opinion—
(a) an accident has occurred to or in the ship,
(b) the accident has created a risk to safety or a risk of pollution by a hazardous substance, and
(c) the direction is necessary to remove or reduce the risk.

(2) The direction may be given to a person in charge of coastal land or premises.

(3) For the purposes of this paragraph—
(a) a person is in charge of land or premises if he is wholly or partly able to control the use made of the land or premises, and
(b) "coastal" means adjacent to or accessible from United Kingdom waters over which the public are permitted to navigate.

(4) The direction may require the person to whom it is given to grant access or facilities to or in relation to the ship or any person or thing which is or was on the ship.

(5) In particular, a direction may require a person—
(a) to permit persons to land;
(b) to make facilities available for the undertaking of repairs or other works;
(c) to make facilities available for the landing, storage and disposal of cargo or of other things.

(6) A direction under this paragraph—
(a) must be given in writing, or
(b) where it is not reasonably practicable to give it in writing, must be confirmed in writing as soon as is reasonably practicable.

Other direction

3 (1) The Secretary of State may give a direction in respect of a ship under this paragraph if in his opinion it is necessary for the purpose of—
(a) securing the safety of the ship or of other ships;
(b) securing the safety of persons or property;
(c) preventing or reducing pollution.

(2) The direction may be given to—
(a) the owner of the ship;
(b) a person in possession of the ship;
(c) the master of the ship.

(3) The direction may require the person to whom it is given to ensure that—
(a) the ship is moved or not moved from a specified place or area in United Kingdom waters;

(b) the ship is moved or not moved to a specified place or area in United Kingdom waters;

(c) the ship is moved or not moved over a specified route in United Kingdom waters;

(d) the ship is removed from United Kingdom waters.

Action in lieu of direction

4 (1) This paragraph applies where the Secretary of State thinks—

(a) that circumstances exist which would entitle him to give a direction under this Schedule, but

(b) that the giving of a direction would not be likely to achieve a sufficient result.

(2) This paragraph also applies where—

(a) the Secretary of State has given a direction under this Schedule, but

(b) in his opinion the direction has not achieved a sufficient result.

(3) The Secretary of State may take such action as appears to him necessary or expedient for the purpose for which the direction could have been given or was given.

(4) In particular, the Secretary of State may—

(a) authorise a person to enter land or make use of facilities;

(b) do or authorise a person to do anything which the Secretary of State could require a person to do by a direction;

(c) authorise a person to assume control of a ship;

(d) make arrangements or authorise the making of arrangements for the sinking or destruction of a ship.

Enforcement

5 A person to whom a direction is given under this Schedule—

(a) must comply with the direction, and

(b) must try to comply with the direction in a manner which avoids risk to human life.

Enforcement

6 (1) A person commits an offence if he contravenes paragraph 5(a).

(2) It is a defence for a person charged with an offence under sub-paragraph (1) to prove—

(a) that he tried as hard as he could to comply with the relevant direction, or

(b) that he reasonably believed that compliance with the direction would involve a serious risk to human life.

Enforcement

7 A person commits an offence if he intentionally obstructs a person who is—

(a) acting on behalf of the Secretary of State in connection with the giving of a direction under this Schedule,

(b) complying with a direction under this Schedule, or

(c) acting by virtue of paragraph 4.

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Enforcement

8 A person guilty of an offence under paragraph 6 or 7 shall be liable—
(a) on summary conviction, to a fine not exceeding £50,000, or
(b) on conviction on indictment, to a fine.

Enforcement

9 (1) Proceedings for an offence under paragraph 6 or 7 may be brought in England and Wales only—
(a) by or with the consent of the Attorney General, or
(b) by or with the authority of the Secretary of State.

(2) Proceedings for an offence under paragraph 6 or 7 may be brought in Northern Ireland only—
(a) by or with the consent of the Attorney General for Northern Ireland, or
(b) by or with the authority of the Secretary of State.

Variation and revocation

10 (1) A direction under this Schedule may be varied or revoked by a further direction.

(2) If the Secretary of State thinks that a direction under this Schedule is wholly or partly no longer necessary for the purpose for which it was given, he shall vary or revoke the direction as soon as is reasonably practicable.

(3) Where the Secretary of State has given a direction to a person under this Schedule he shall consider any representations about varying or revoking the direction which are made to him by that person.

Procedure

11 (1) This paragraph applies where the Secretary of State—
(a) proposes to give a direction under this Schedule to a company or other body, and
(b) thinks that neither of sections 695 and 725 of the Companies Act 1985 (c. 6) (service) apply.

(2) The Secretary of State may serve the direction in such manner as he thinks most suitable.

(3) In the application of this paragraph to Northern Ireland the reference to sections 695 and 725 of the Companies Act 1985 shall be taken as a reference to Articles 645 and 673 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).

Procedure

12 A person acting on behalf of the Secretary of State may—
(a) board a ship for the purpose of serving a direction under this Schedule;
(b) enter land or premises for that purpose.

Procedure

13 Before giving a direction under paragraph 2 in respect of land or premises the Secretary of State shall, unless he thinks that it is not reasonably practicable—

(a) give the person to whom he proposes to give the direction an opportunity to make representations, and

(b) consider any representations made.

Unreasonable loss and damage

14 (1) This paragraph applies where action taken in accordance with a direction under this Schedule or by virtue of paragraph 4 ("remedial action")—

(a) was not reasonably necessary for the purpose for which the direction was given, or

(b) caused loss or damage which could not be justified by reference to that purpose.

(2) The Secretary of State shall pay compensation to any person who—

(a) suffered loss or damage as a result of the remedial action (whether it was taken by him or someone else), and

(b) applies to the Secretary of State for compensation.

(3) In considering what is reasonably necessary or justifiable for the purpose of sub-paragraph (1) account shall be taken of—

(a) the extent of the risk to safety or threat of pollution which the direction was intended to address,

(b) the likelihood of the remedial action being effective, and

(c) the extent of the loss or damage caused by the remedial action.

Expenses

15 (1) This paragraph applies where—

(a) a direction is given to a person in respect of a ship under paragraph 2, or

(b) the Secretary of State relies on paragraph 4 to take or authorise action in respect of a ship in lieu of a direction under paragraph 2.

(2) The person to whom a direction is given shall be entitled to recover the costs of his compliance with the direction from the owner of the ship.

(3) A person in charge of coastal land or premises shall be entitled to recover from the owner of the ship costs incurred by him as a result of action taken by virtue of paragraph 4 in relation to that land or premises.

(4) The Secretary of State may make payments to a person on account of sums recoverable by that person under sub-paragraph (2) or (3).

(5) The Secretary of State shall be entitled to recover from the owner of the ship—

(a) costs incurred in connection with the giving of a direction;

(b) costs incurred in connection with action taken under paragraph 4;

(c) costs incurred under sub-paragraph (4).

(6) A right under sub-paragraph (2), (3) or (5) permits the recovery of costs only in so far as they are not recoverable—

(a) under another enactment,

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(b) by virtue of an agreement, or
(c) under the law relating to salvage.

Jurisdiction

16 The Admiralty jurisdiction of the High Court and of the Court of Session shall include jurisdiction to hear and determine any claim arising under paragraph 14 or 15.

Ships to which Schedule applies

17 A direction under paragraph 1 or 2, in so far as it relates to a risk of pollution, may have effect in respect of a ship only if it—
(a) is a United Kingdom ship, or
(b) is in United Kingdom waters or an area of the sea specified under section 129(2)(b).

Ships to which Schedule applies

18 (1) Her Majesty may by Order in Council provide that a direction under paragraph 1 or 2, in so far as it relates to a risk of pollution, may have effect in respect of a ship which—
(a) is not a United Kingdom ship, and
(b) is not in United Kingdom waters or an area of the sea specified under section 129(2)(b).

(2) An Order in Council under this paragraph—
(a) may be expressed to apply generally or only in specified circumstances;
(b) may make different provision for different circumstances;
(c) may provide for this Schedule to have effect in cases to which the Order in Council applies with specified modifications;
(d) may contain transitional or consequential provision (including provision amending an enactment).

Ships to which Schedule applies

19 A direction under paragraph 1 or 2, in so far as it relates to a risk to safety, may have effect in respect of a ship only if it is in United Kingdom waters and—
(a) it is not a qualifying foreign ship, or
(b) it is a qualifying foreign ship which in the Secretary of State's opinion is exercising neither the right of innocent passage nor the right of transit passage through straits used for international navigation.

Ships to which Schedule applies

20 (1) A direction under paragraph 3 may have effect in respect of a ship only if it is in United Kingdom waters and—
(a) it is not a qualifying foreign ship, or
(b) it is a qualifying foreign ship which in the Secretary of State's opinion is exercising neither the right of innocent passage nor the right of transit passage through straits used for international navigation.

(2) A direction may not be given under paragraph 3(3)(d) in respect of a United Kingdom ship.

Ships to which Schedule applies

21 A direction may not be given under paragraph 1(2)(a) to (d) or 3 in respect of—

(a) a ship of Her Majesty's Navy, or

(b) a Government ship.

Interpretation

22 (1) In this Schedule—

"accident" means a collision of ships, a stranding, another incident of navigation or another event (whether on board a ship or not) which results in material damage to a ship or its cargo or in an imminent threat of material damage to a ship or its cargo,

"action" includes omission,

"enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament,

"harbour authority" has the meaning given by section 151(1),

"harbour master" includes a dock master or pier master, and any person specially appointed by a harbour authority for the purpose of enforcing the provisions of this Schedule in relation to the harbour,

"hazardous substance" has the meaning given by sub-paragraph (2),

"owner", in relation to the ship to or in which an accident has occurred, includes its owner at the time of the accident,

"pilot" means a person who does not belong to a ship but who has the conduct of it,

"pollution" means significant pollution in the United Kingdom, United Kingdom waters or an area of the sea specified under section 129(2)(b), and

"risk to safety" means a risk to the safety of persons, property or anything navigating in or using United Kingdom waters.

(2) In this Schedule "hazardous substance" means—

(a) oil (within the meaning given by section 151(1)),

(b) any other substance which creates a hazard to human health, harms living resources or marine life, damages amenities or interferes with lawful use of the sea, and

(c) any substance prescribed by order of the Secretary of State.

Savings

23 Nothing in this Schedule shall be taken to prejudice any right or power of Her Majesty's Government.

Savings

24 (1) This paragraph applies where action is taken—

(a) in respect of a ship which is under arrest or in respect of anything in a ship which is under arrest, and

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(b) in accordance with a direction under this Schedule or by virtue of paragraph 4.

(2) The action shall not—

(a) be treated as a contempt of court, or

(b) give rise to civil liability on the part of the Admiralty Marshal (including the Admiralty Marshal of the Supreme Court in Northern Ireland)."

SCHEDULE 2 U.K.

Section 3

MINOR AND CONSEQUENTIAL AMENDMENTS

Dangerous Vessels Act 1985 (c. 22)

1 The following shall be inserted after section 6 of the Dangerous Vessels Act 1985 (saving)—

"**6A Saving for safety directions**

Directions under section 1 of this Act shall have no effect in so far as they—

(a) are inconsistent with the exercise by or on behalf of the Secretary of State of a power under Schedule 3A to the Merchant Shipping Act 1995 (c. 21) (safety directions),

(b) would interfere with a person's compliance with a direction under that Schedule, or

(c) would interfere with action taken by virtue of that Schedule."

Merchant Shipping Act 1995 (c. 21)

2 The following provisions of the Merchant Shipping Act 1995 shall cease to have effect—

(a) sections 100C to 100E (movement of ship), and

(b) sections 137 to 141 (pollution directions).

SCHEDULE 3 U.K.

Section 3

REPEALS

Short title and chapter	***Extent of repeal***
Merchant Shipping Act 1995 (c. 21)	Sections 100C to 100E. Sections 137 to 141.
Merchant Shipping and Maritime Security Act 1997 (c. 28)	Section 2. Section 3. Section 10.

Changes to legislation:
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