
STATUTORY INSTRUMENTS

1992 No. 98

MARINE POLLUTION

The Merchant Shipping (Prevention of Oil Pollution) (Amendment) Regulations 1992

Made - - - - *21st January 1992*

Coming into force - - *12th February 1992*

The Secretary of State for Transport, in exercise of the powers conferred on him by article 3 of the Merchant Shipping (Prevention of Oil Pollution) Order 1983(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

1. These Regulations may be cited as the Merchant Shipping (Prevention of Oil Pollution) (Amendment) Regulations 1992 and shall come into force on 12th February 1992.

2. The Merchant Shipping (Prevention of Oil Pollution) Regulations 1983(2) shall be amended as follows:—

(a) in regulation 33 the following shall be substituted for paragraph (3)—

“Where a ship other than a United Kingdom ship is—

- (i) denied entry pursuant to paragraph (1) above; or
- (ii) detained pursuant to paragraph (2) above; or
- (iii) detained pursuant to regulation 36(1) below;

the Secretary of State shall 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.”;

(b) the following regulations shall be added at the end—

“35.—(1) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under regulations 12, 13 or 16 above alleged to have been committed by the company as the owner of a ship shall be treated as duly served on that company if the document is served on the master of the ship; and any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under these Regulations (whether or not in

(1) S.I. 1983/1106, amended by S.I. 1985/2002 and S.I. 1991/2885.

(2) S.I. 1983/1398, to which there is an amendment not relevant to these Regulations.

pursuance of the foregoing provisions of this paragraph) shall, for that purpose, have the right to go on board the ship in question.

(2) In paragraph (1) above a “foreign company” means a company or body which is not one to whom any of the following provisions applies—

- (a) section 695 and 725 of the Companies Act 1985⁽³⁾;
- (b) Article 645 and 673 of the Companies (Northern Ireland) Order 1986⁽⁴⁾, so as to authorise the service of the document in question under any of those provisions.

36.—(1) Where a person appointed by the Secretary of State (hereinafter called an “appointed person”) has reason to believe that the master or owner of a ship which is in a port in the United Kingdom has committed an offence under regulations 12, 13, or 16⁽⁵⁾ above by the discharge from the ship of oil, or a mixture containing oil, the appointed person may detain the ship.

(2) Subsections (1) and (2) of section 692 of the Merchant Shipping Act 1894⁽⁶⁾ (enforcing detention of ship) shall apply in relation to a ship detained under paragraph (1) above as they apply in relation to a ship detained under that Act but as if—

- (a) in subsection (1) (penalties where ship proceeds to sea while subject to detention)—
 - (i) for the words from “any commissioned officer” to “and if” there were substituted the word “and”; and
 - (ii) for the reference to competent authority there were substituted a reference to the Secretary of State; and
- (b) in subsection (2) (penalties where a ship so proceeds to sea when any officer authorised to detain the ship is on board), for any reference to any officer authorised to detain the ship, or any surveyor or officer of the Secretary of State or any officer of Customs and Excise there were substituted a reference to the appointed person or any person acting on his behalf.

(3) An appointed person who exercises the power conferred by paragraph (1) above shall immediately release the ship—

- (a) if no proceedings for the offence in question are instituted within the period of 7 days beginning with the day on which the vessel is detained;
- (b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted;
- (c) if either—
 - (i) the sum of £55,000 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 £55,000 is given to the Secretary of State, by or on behalf of the master or owner; or
- (d) where the master or owner is convicted of the offence, if any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid.

(4) The Secretary of State shall repay any sum paid in pursuance of paragraph (3)(c) above or release any security so given—

(3) 1985 c. 6.

(4) S.I. 1986/1032 (N.I. 6).

(5) Regulations 12 and 13 have ceased to have effect to discharges of oil into waters on the landward side of the baseline of UK territorial waters by virtue of section 1 of the Prevention of Oil Pollution Act 1986 (c. 6).

(6) 1894 c. 60.

- (a) if no proceedings for the offence in question are instituted within the period of 7 days beginning with the day on which the sum is paid; or
- (b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted.

(5) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (3)(c) above and the master or owner is convicted of the offence in question, the sum so paid or the amount made available under the security shall be applied as follows—

- (a) first in payment of any costs or expenses ordered by the court to be paid by the master or owner; and
- (b) next in payment of any fine imposed by the court;

and any balance shall be repaid to the first mentioned person.

(6) For the purposes of this regulation in its application to England and Wales and subject to paragraph (8) below in its application to Northern Ireland—

- (a) proceedings for an offence are instituted—
 - (i) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980(7) in respect of the offence,
 - (ii) when a person is charged with the offence after being taken into custody without a warrant,
 - (iii) when a bill of indictment is preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933(8);

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times; and

- (b) proceedings for an offence are concluded without the master or owner being convicted on the occurrence of one of the following events—
 - (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the master or owner;
 - (iii) the quashing of the master or owner's conviction for the offence;
 - (iv) the grant of Her Majesty's pardon in respect of the master or owner's conviction for the offence.

(7) For the purposes of this regulation in its application to Scotland—

- (a) proceedings for an offence are instituted—
 - (i) on the granting by the sheriff of a warrant in respect of the offence on presentation of a petition under section 12 of the Criminal Procedure (Scotland) Act 1975(9);
 - (ii) when, in the absence of a warrant or citation, the master or owner is first brought before a court competent to deal with the case;
 - (iii) when, in the case where he is liberated upon a written undertaking in terms of section 18(2)(a), 294(2)(a) or 295(1)(a) of the Criminal Procedure (Scotland) Act 1975, the master or owner appears at the specified court at the specified time;

(7) 1980 c. 43.
(8) 1933 c. 36.
(9) 1975 c. 21.

- (iv) when, in a case mentioned in paragraph (iii) above where the master or owner fails to appear at the specified court at the specified time, the court grants warrant for his apprehension;
- (v) when summary proceedings are commenced in terms of section 331(3) of the Criminal Procedure (Scotland) Act 1975; and
- (b) proceedings for an offence are concluded without the master or owner being convicted on the occurrence of one of the following events—
 - (i) the court pronounces a verdict of not guilty or not proven against the master or owner in respect of the offence;
 - (ii) the proceedings are expressly abandoned (other than pro loco et tempore) by the prosecutor or are deserted simpliciter;
 - (iii) the conviction is quashed;
 - (iv) the accused receives Her Majesty's pardon in respect of the conviction.
- (8) In its application to proceedings in Northern Ireland, paragraph (6)(a) above shall have effect as if—
 - (a) in sub-paragraph (i), for the references to section 1 of the Magistrates' Courts Act 1980 there were substituted a reference to Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹⁰⁾; and
 - (b) for sub-paragraph (iii) there were substituted—
 - “(iii) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand jury (Abolition) Act (Northern Ireland) 1969⁽¹¹⁾.”

Enforcement and application of fines

37.—(1) Where a fine imposed by a court in proceedings against the owner or master of a ship for an offence under regulations 12, 13 or 16 above is not paid or any costs or expenses ordered to be paid by him or not paid at the time ordered by the court, the court shall, in addition to any other powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress or arrestment and sale of the ship, her tackle, furniture and apparel.

(2) Where a person is convicted of an offence under regulations 12, 13 or 16 above, and the court imposes a fine in respect of the offence, then if it appears to the court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.”.

Signed by authority of the Secretary of State for Transport

21st January 1992

Peter McLoughlin
Parliamentary Under Secretary of State,
Department of Transport

⁽¹⁰⁾ S.I. 1981/1657 (N.I. 26).

⁽¹¹⁾ 1969 c. 15 (N.I.).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Merchant Shipping (Prevention of Oil Pollution) Regulations 1983, to make ancillary provisions in connection with offences of discharge of oil in breach of regulations 12 (ships other than oil tankers and machinery space bilges of oil tankers), 13 (oil tankers) and 16 (methods for the prevention of oil pollution from ships operating in special areas).

A new regulation 35 enables documents in connection with proceedings against shipowners who are foreign companies to be served on the master. Regulation 36 empowers a person appointed by the Secretary of state to detain ships in ports in the United Kingdom which are suspected of breaching regulations 12, 13 or 16 by discharging oil. The ship is to be released unless proceedings are started within seven days or security of £55,000 is put up, or proceedings are completed in seven days and any fine and costs paid.

Under regulation 37 a fine if unpaid can be met from the sale of the ship; and a fine can be used to recompense anyone incurring expense in removing the pollution.

These new provisions correspond to provisions inserted by the Environmental Protection Act 1990 into the Prevention of Oil Pollution Act 1971, in connection with offences under section 2(2A) of that Act (discharge of oil from ships into waters on the landward side or the baseline of UK territorial sea).