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STATUTORY INSTRUMENTS

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**2004 No. 1495**

**The Ship and Port Facility (Security) Regulations 2004**

**PART 6**

**ENFORCEMENT AND PENALTIES**

**Enforcement notices**

**13.**—(1) A duly authorised officer may serve a notice (in this Part referred to as an “enforcement notice”) on any person listed in paragraph (2) where it appears to him that that person has failed to comply with —

- (a) the requirements of Chapter XI-2 of the SOLAS Convention;
  - (b) the requirements of Part A of the ISPS Code;
  - (c) the requirements of paragraphs 1.12, 6.1, 8.3, 8.5, 8.7, 8.8, 8.9, 8.10, 13.6, 13.7, 18.5 or 18.6 of Part B of the ISPS Code;
  - (d) the requirement to submit to an inspection by the European Commission, and to rectify any shortcomings identified following such an inspection in accordance with regulation 7;
  - (e) the requirement to submit specified changes or amendments to a ship security plan or a port facility security plan to the Secretary of State for approval in accordance with regulation 19.
- (2) The persons referred to in paragraph (1) are—
- (a) the company;
  - (b) the company security officer;
  - (c) the ship security officer;
  - (d) the master of a ship;
  - (e) the port facility security officer;
  - (f) the owner of the port facility security plan; and
  - (g) any person who carries on port operations in a port facility.

**Contents of enforcement notices**

**14.**—(1) An enforcement notice shall state the matters which appear to the duly authorised officer to constitute a failure to comply with the requirements specified in regulation 13.

(2) An enforcement notice may be framed so as to afford the person on whom it is served a choice between different ways of complying with the requirements set out in the notice.

(3) An enforcement notice shall specify the steps which the duly authorised officer requires to be taken, or the activity or the activities which the duly authorised officer requires to cease in order to achieve compliance with the requirements specified in regulation 13.

(4) An enforcement notice shall specify the date on which it is to take effect and shall take effect on that date.

(5) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities.

(6) Where different periods apply to different steps or activities, references in these Regulations to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(7) An enforcement notice requiring a person not to cause or permit anything to be done shall be construed as requiring him to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done.

### **Offences relating to enforcement notices**

**15.**—(1) Any person, who without reasonable excuse, fails to comply with an enforcement notice served on him is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale, or
- (b) on conviction on indictment to a fine.

(2) Where a person is convicted of an offence under paragraph (1) and if without reasonable excuse the failure in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable on summary conviction to a fine not exceeding £100 for each day on which the failure continues.

### **Objections to enforcement notices**

**16.**—(1) A person on whom an enforcement notice is served may serve on the Secretary of State a notice in writing of his objection to the enforcement notice.

(2) The grounds of objection to an enforcement notice are—

- (a) that the steps required by the notice to be taken for the purposes of regulation 13 have been complied with;
- (b) that the steps required by the notice to be taken do not constitute a failure to comply with the requirements specified in regulation 13;
- (c) that any requirement of the notice —
  - (i) is unnecessary for complying with the requirements specified in regulation 13 and should be dispensed with or;
  - (ii) having regard to the terms of those requirements, is excessively onerous or inconvenient and should be modified in a manner specified in the notice of objection served under paragraph (1).

(3) An objection to an enforcement notice under this regulation shall be served on the Secretary of State within seven days of the date on which the enforcement notice was served.

(4) A person making an objection to an enforcement notice under this regulation shall submit to the Secretary of State, either when making the objection or within the seven days referred to in paragraph (3), a statement in writing—

- (a) specifying the grounds on which he is objecting to the enforcement notice, and
- (b) providing such further information as may be appropriate.

(5) Where the person on whom an enforcement notice is served serves a notice under paragraph (1), the Secretary of State shall consider the grounds of the objection and, if so required by the objector, shall afford to him an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and shall then serve on the objector a notice in writing either—

- (a) confirming the enforcement notice as originally served, or
- (b) confirming it subject to one or more modifications specified in the notice, or
- (c) cancelling the enforcement notice.

(6) An enforcement notice to which an objection has been made under paragraph (1) shall not take effect until it has been confirmed, with or without modification, by a notice under paragraph (5).

(7) An enforcement notice served on any person —

- (a) may be revoked by a notice served on him by a duly authorised officer, and
- (b) may be varied by a further enforcement notice served on him by a duly authorised officer.