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STATUTORY INSTRUMENTS

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**2008 No. 2924**

**The Merchant Shipping (Prevention of Air  
Pollution from Ships) Regulations 2008**

**PART 4**

**Inspections, Detentions and Offences**

**Inspection of ships**

**26.**—(1) In so far as sections 258 and 259 of the 1995 Act<sup>(1)</sup> (powers to inspect ships and their equipment, powers of inspectors in relation to premises and ships) apply in relation to a ship to which any of these Regulations apply, for the purposes of checking compliance with these Regulations those sections have effect subject to the following modifications.

(2) The power in those sections to inspect a ship and its equipment, any part of the ship, any articles on board and any documentation carried in the ship, is limited to—

- (a) verifying whether an appropriate certificate has been issued in respect of the ship and is still valid,
- (b) verifying whether documentation referred to in regulation 19(2) (“appropriate documentation”) has been issued in respect of the ship and is still valid,
- (c) investigating any operation regulated by these Regulations, if there are clear grounds for believing that the master or the crew are not familiar with essential shipboard procedures relating to the prevention of air pollution,
- (d) verifying whether the ship has emitted any substances in violation of these Regulations,
- (e) inspecting the log book entries required under regulation 22(5), or
- (f) inspecting bunker delivery notes that are to be made available for inspection under regulation 25(8)(a),

except where there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the appropriate certificate or other appropriate documentation referred to in sub-paragraph (a) and (b).

(3) The power in those sections to go on board a ship may only be exercised if the ship in question is in a port or offshore terminal in the United Kingdom.

(4) Where the ship is inspected for the purposes of paragraph (2)(d) and is not a United Kingdom ship, the person exercising the powers of inspection must ensure that the report of the inspection is sent to—

- (a) the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State, and
- (b) any other Party to the Convention that requested the inspection.

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(1) Section 258 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1, paragraph (4).

(5) Where log book entries are inspected under paragraph (2)(e), or bunker delivery notes are inspected under paragraph (2)(f), the person exercising the power of inspection may—

- (a) make a copy of an entry in that book, and
- (b) require the master of the ship to certify that the copy is a true copy of the original.

(6) Any copy certified in accordance with paragraph (5) is to be admissible in any judicial proceeding as evidence of the facts stated in it.

### **Investigation of alleged violations by United Kingdom ships**

27. Upon receiving evidence that a United Kingdom ship has emitted a substance in violation of these Regulations the Secretary of State must—

- (a) cause the matter to be investigated,
- (b) inform the IMO of the action taken, and
- (c) where another State has reported the violation, inform that State of the action taken.

### **General provisions on detention**

28.—(1) Where regulation 16(1) has effect in relation to a ship, or a surveyor of ships has clear grounds for believing that—

- (a) an appropriate certificate is required to have been issued in respect of a ship but has not been issued, or has been issued and is not valid,
- (b) documentation referred to in regulation 19(2) (“appropriate documentation”) is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid,
- (c) the condition of a ship or its equipment does not correspond substantially with the particulars of that certificate or other appropriate documentation,
- (d) the master or crew of a ship are not familiar with essential shipboard procedures relating to the prevention of air pollution, or
- (e) an offence under regulation 32(1)(a) to (e) is being committed in respect of the ship,

the ship is liable to be detained until a surveyor of ships is satisfied that it can proceed to sea without presenting any unreasonable threat of harm to the marine environment.

(2) But a person having powers to detain a ship may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.

(3) Where a surveyor of ships has clear grounds for believing that an offence comprising a contravention of regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4), 24(1), (4) or (7) has been committed in respect of a ship, the ship is liable to be detained.

(4) The power under this regulation to detain a ship may only be exercised if the ship in question is in a port or offshore terminal in the United Kingdom.

(5) Section 284 of the 1995 Act<sup>(2)</sup> (enforcing detention of a ship) applies where a ship is liable to be detained under the preceding provisions of this regulation as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under the preceding provisions of this regulation, and
- (b) subsection (7) were omitted.

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(2) Section 284 was amended by the Maritime Shipping and Maritime Security Act 1997 (c.28), Schedule 1.

(6) Where a ship is liable to be detained under the preceding provisions of this regulation, the person detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds of the detention, and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the 1995 Act.

(7) Where a ship other than a United Kingdom ship is detained, the Secretary of State must 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.

(8) Where a ship is detained under paragraph (3), a person having power to detain the ship must, at the request of the owner, master, demise charterer or manager, immediately release the ship—

- (a) if no proceedings for an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4), 24(1), (4) or (7) are instituted within the period of seven days beginning with the day on which the ship is detained,
- (b) if proceedings for any offence under those regulations having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted,
- (c) if either—

- (i) the sum of £30,000 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 £30,000 is given to the Secretary of State,

by or on behalf of the owner, manager, demise charterer or master.

- (d) where the owner, manager, demise charterer or master is convicted of an offence under that regulation, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid, or
- (e) the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea<sup>(3)</sup>, and any bond or other financial security ordered by such court or tribunal is posted.

(9) The Secretary of State must repay any sum paid in pursuance of paragraph (8)(c) or release any security so given—

- (a) if no proceedings for an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3), or (4), 24(1), (4) or (7) are instituted within the period of seven days beginning with the day on which the sum is paid, or
- (b) if proceedings for any such offence, having been instituted within that period, are concluded without the owner, manager or demise charterer or master being convicted.

(10) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (8)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4), 24(1), (4) or (7), the sum so paid or the amount made available under the security must be applied as follows—

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

and any balance must be repaid to the first-mentioned person.

(11) Section 145 of the 1995 Act (4) (interpretation of section 144) applies for the purposes of paragraphs (8) to (10) as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master, and
- (b) references to an offence under section 131 were references to an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4), 24(1), (4) or (7).

### **Power for harbour master to detain**

**29.**—(1) Where the harbour master of a harbour in the United Kingdom has clear grounds for believing that an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4), 24(1), 24(4) or (7) has been committed the harbour master may detain that ship.

(2) Section 144(2) and (3) of the 1995 Act (harbour master's power of detention of ships for certain offences) applies to a detention under paragraph (1) as it applies to a detention under section 144(1) of the 1995 Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention, and
- (b) requires the terms of the notice to be complied with until the ship is released by the harbour authority.

(4) Where a ship is detained under paragraph (2), the harbour master must immediately release the ship—

- (a) if no proceedings for an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4), 24(1), (4) or (7) are instituted within the period of seven days beginning with the day on which the ship is detained,
- (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted,
- (c) if either—
  - (i) the sum of £30,000 is paid to the harbour authority by way of security, or
  - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than £30,000 is given to the harbour authority,
 by or on behalf of the owner, manager, demise charterer or master,
- (d) where the owner, manager, demise charterer or master is convicted of an offence under any of those regulations if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid, or
- (e) the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such court or tribunal is posted.

(5) The harbour authority must repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—

- (a) if no proceedings for an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3), or (4), 24(1), (4) or (7) are instituted within the period of seven days beginning with the day on which the sum is paid, or

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(4) Section 145 was amended by the Criminal Justice Act 2003 (c.44), Schedule 36.

- (b) if proceedings for any offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4), 24(1), (4) or (7), the sum so paid or the amount made available under the security must be applied as follows—
  - (a) first in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master, and
  - (b) next in payment of any fine imposed by the court,and any balance must be repaid to the first-mentioned person,
- (7) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if—
  - (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master, and
  - (b) references to an offence under section 131 were references to an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4), 24(1), (4) or (7).

#### **Duty of harbour master to report deficient ships**

**30.** If the harbour master of a harbour in the United Kingdom has reason to believe that a ship is about to enter or leave the harbour and does not comply with the requirements of these Regulations, the harbour master must immediately report the matter to the Secretary of State.

#### **Right of appeal and compensation**

**31.**—(1) — Regulations 11 and 12 of the 1995 Regulations (right of appeal and compensation) apply in relation to the exercise of the powers of detention under these Regulations as they apply in relation to the exercise of those powers under Part 1 of those Regulations, subject to the modifications referred to in paragraph (2).

- (2) The modifications are—
  - (a) references to “inspector” are to be taken as references to the authority detaining the ship or the harbour master, as the case may be,
  - (b) references to “access refusal notice”, “service of access refusal notice” and “refusal of access” are to be omitted, and
  - (c) in regulation 12(2) after “State” there is added “, except where the ship is detained by a harbour master, in which case any compensation awarded under this section shall be payable by the harbour authority.”.

#### **Offences**

- 32.**—(1) Any contravention of—
  - (a) regulation 5(1), 6(1), 7(1), 8(1), 9(1), (2) or (3), 10(2), 18(4), 19(1) or (2), 20(3), 23(3) or (4) or 25(9)(c) of these Regulations is an offence by the owner and by the master of the ship in question,
  - (b) regulation 18(5), 21(6) or 24(2) is an offence by the owner of the ship in question,
  - (c) regulation 20(1), 21(4), 22, 23(6), 24(1), (4), (6), (7), (8) (9), (10) or (11), 25(3), (4), (5), (8), (10) or (11) is an offence by the master of the ship in question;

- (d) regulation 15(5) or 19 is an offence by the owner, manager, demise charterer and master of the ship in question;
  - (e) regulation 18(3) is an offence by the person in question;
  - (f) regulation 23(1) or (2) is an offence by the harbour authority or terminal operator in question;
  - (g) regulation 25(2) is an offence by the fuel oil supplier in question;
  - (h) regulation 25(7) or (9)(a) or (b) is an offence by the local supplier of fuel oil in question.
- (2) An offence under paragraph (1) is punishable—
- (a) on summary conviction by a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment by a fine.
- (3) A fuel oil supplier’s representative who makes a false declaration in a bunker delivery note is guilty of an offence and punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine.
- (4) Where an offence under these Regulations is committed, or would be committed save for the operation of regulation 37(1), by any person due to the act or default of some other person, that other person is also guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first person.
- (5) “Fuel oil supplier’s representative”, “fuel oil supplier” and “local supplier of fuel oil” have the same meaning as in regulation 25.

#### **Service of documents of foreign companies**

**33.** Section 143(6) of the 1995 Act (service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 131 of the 1995 Act) applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under section 131 as if—

- (a) the reference for section 131 were to these Regulations,
- (b) in the case of an offence in respect of a ship other than a platform, the reference to the owner were to the owner, manager or demise charterer, and
- (c) in the case of an offence in respect of a platform the reference to—
  - (i) the owner of the ship were to the owner of the platform, and
  - (ii) the master of the ship were to the manager of the platform.

#### **Enforcement and application of fines**

**34.** Section 146 of the 1995 Act (enforcement and application of fines) applies to any fine for an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4) or 24(1), (4) or (7) as if—

- (a) in subsection (1) of that section the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 were a reference to proceedings against the owner, master, demise charterer or manager for an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 23(3) or (4) or 24(1), (4) or (7), and
- (b) in subsection (2) of that section, the reference to an offence under section 131 were a reference to an offence under regulation 20(1), 21(4), 22(1), (2) or (4), 24(3) or (4) or 24(1), (4) or (7).

### **Restriction on jurisdiction over offences outside United Kingdom limits**

**35.**—(1) Where there has been an offence of a provision of regulation 2 1(4) or 22(1) or (2) in respect of a ship which is not a United Kingdom ship in the internal waters, territorial sea or exclusive economic zone of a foreign State, proceedings in respect of that offence must not be instituted in the United Kingdom unless—

- (a) that foreign State, the flag State of the ship in question or a State polluted or threatened with pollution as a result of the offence requests that proceedings be taken, or
- (b) the offence has caused or is likely to cause air pollution in controlled waters or United Kingdom waters.

(2) Where proceedings have been instituted but not concluded, they must be suspended upon the request of the foreign State in question and the Secretary of State must send all the evidence, court records and documents relating to the case, together with any sum paid or security given, to the foreign State.

(3) In this regulation “foreign State” means a State other than the United Kingdom.

### **Suspension of proceedings at flag state request**

**36.**—(1) This regulation applies to proceedings instituted but not concluded in the United Kingdom in respect of a contravention of regulation 21(4) or 22(1) or (2) committed outside United Kingdom waters by a ship which is not a United Kingdom ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the court is satisfied that the flag State of the ship in question has instituted proceedings corresponding to the proceedings in the United Kingdom in respect of the contravention of that provision within six months of the institution of the proceedings by the United Kingdom.

(3) Paragraph (2) does not apply—

- (a) where the contravention of regulation 21(4) or 22(1) or (2) resulted in serious pollution to the United Kingdom; or
- (b) the Secretary of State certifies that the flag State in question has repeatedly disregarded its obligation to enforce effectively the requirements of the Convention in respect of its ships.

(4) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings must be terminated.

### **Defences**

**37.**—(1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that person took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings for an offence under regulation 22(4) or 23(1) or (2) it is a defence for the person charged to prove that—

- (a) the ship was not a United Kingdom ship,
- (b) the emission took place in waters that were neither controlled waters nor United Kingdom waters.
- (c) the ship was in a port in the United Kingdom at the time of the institution of proceedings by reason only of stress of weather or any other reason beyond the control of the master or owner or any charterer or manager.