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STATUTORY INSTRUMENTS

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**2014 No. 1512**

**The Merchant Shipping (International Safety Management (ISM) Code) Regulations 2014**

**PART 4**

**Detentions and Offences**

**Detention**

**14.**—(1) Where an inspector has clear grounds for believing that, in relation to a ship to which these Regulations apply, there has been a failure to comply with regulation 4, 5, 7 or 8 or a breach of any term of an exemption granted under regulation 12 or a derogation from the ISM Code granted under Article 7 of the EU Regulation, or there will be if the ship puts to sea, the ship is liable to be detained.

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

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

(4) Section 284 of the 1995 Act<sup>(1)</sup> (enforcing detention of a ship) applies where a ship is liable to be detained under this regulation as if—

- (a) references to the owner of a ship were references to the ISM Company under these Regulations;
- (b) references to detention of a ship under the Act were references to detention of the ship in question under this regulation; and
- (c) subsection (7) were omitted.

(5) Where a ship is detained under paragraph (1), the person 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 any person mentioned in section 284(1) of the 1995 Act.

(6) 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.

(7) Where a ship is detained under paragraph (1) but the failure to comply referred to in that paragraph has ceased, a person having power to detain the ship must, at the request of the ISM company or master, immediately release the ship—

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<sup>(1)</sup> Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, section 9 and Schedule 1.

- (a) if no proceedings for an offence under regulation 15 are instituted within the period of seven days beginning with the day on which the ship is detained;
  - (b) if proceedings for such an offence, having been instituted within that period, are concluded without the ISM company 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 ISM company or master;
  - (d) where the ISM company or master is convicted of an offence under regulation 15, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
  - (e) if 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(2), and any bond or other financial security ordered by such court or tribunal is posted.
- (8) The Secretary of State must repay any sum paid in pursuance of paragraph (7)(c) or release any security so given—
- (a) if no proceedings for an offence under regulation 15 are instituted within the period of seven days beginning with the day on which the sum is paid or the security is given; or
  - (b) if proceedings for such an offence, having been instituted within that period, are concluded without the ISM company or master being convicted.
- (9) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (7)(c) and the ISM company or master is convicted of an offence under regulation 15, 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 ISM company 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.
- (10) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (7) to (9) as if—
- (a) references to the owner of a ship were references to the ISM Company under these Regulations; and
  - (b) references to an offence under section 131 were references to an offence under regulation 15.

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**Commencement Information**

**II** [Reg. 14](#) in force at 18.7.2014, see [reg. 1\(1\)](#)

**Offences and penalties**

**15.—(1)** Any contravention of—

- (a) regulation 4;
- (b) regulation 5; or

(c) regulation 8(1),

is an offence by the ISM company, punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by a fine.

(2) Any contravention of—

(a) regulation 7; or

(b) regulation 8(2),

is an offence, punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by imprisonment for a term not exceeding two years, or a fine, or both.

(3) Any breach of a term of an exemption granted under regulation 12 or a derogation from the ISM Code granted under Article 7 of the EU Regulation is an offence by the ISM company, punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by a fine.

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**Commencement Information**

**I2** [Reg. 15](#) in force at 18.7.2014, see [reg. 1\(1\)](#)

**Defence**

**16.** It is a defence for a person charged with an offence under regulation 15(1)(b), (1)(c), (2) or (3) to show that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

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**Commencement Information**

**I3** [Reg. 16](#) in force at 18.7.2014, see [reg. 1\(1\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Merchant Shipping (International Safety Management (ISM) Code) Regulations 2014, PART 4.