



# Merchant Shipping Act 1984

## 1984 CHAPTER 5

### PART I

#### IMPROVEMENT NOTICES AND PROHIBITION NOTICES

##### *Service of notices by inspectors*

#### **1 Improvement notices**

- (1) If an inspector is of the opinion that a person—
  - (a) is contravening one or more of the relevant statutory provisions, or
  - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,he may serve on that person a notice under this section, referred to in this Part of this Act as an improvement notice.
- (2) An improvement notice shall—
  - (a) state that the inspector is of the said opinion, specify the relevant statutory provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion, and
  - (b) require the person on whom the notice is served to remedy the contravention in question or (as the case may be) the matters occasioning it within such period as may be specified in the notice.
- (3) The period specified in pursuance of subsection (2) (b) above shall not expire before the end of the period within which a notice can be given under section 4 below requiring questions relating to the improvement notice to be referred to arbitration.

#### **2 Prohibition notices**

- (1) If, as regards any relevant activities which are being or are about to be carried on on board any ship by or under the control of any person, an inspector is of the opinion

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that, as so carried on or as about to be so carried on, the activities involve or (as the case may be) will involve the risk of—

- (a) serious personal injury to any person (whether on board the ship or not), or
- (b) serious pollution of any navigable waters,

the inspector may serve on the first-mentioned person a notice under this section, referred to in this Part of this Act as a prohibition notice.

- (2) In subsection (1) above "relevant activities" means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned in that subsection, apply.
- (3) A prohibition notice shall—
  - (a) state that the inspector is of the said opinion;
  - (b) specify the matters which in his opinion give or (as the case may be) will give rise to the said risk ;
  - (c) where in his opinion any of those matters involve or (as the case may be) will involve a contravention of any of the relevant statutory provisions, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
  - (d) direct—
    - (i) that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served, or
    - (ii) that the ship shall not go to sea, (or both of those things) unless the matters specified in the notice in pursuance of paragraph (b) above, and any associated contraventions of any provision so specified in pursuance of paragraph (c) above, have been remedied.
- (4) A direction given in pursuance of subsection (3)(d) above shall take immediate effect if the notice contains a statement to the effect that the inspector is of the opinion that the risk in question is or (as the case may be) will be imminent, and in any other case shall have effect at the end of a period specified in the notice

### **3 Supplementary provisions as to notices**

- (1) An improvement notice or a prohibition notice may (but need not) include directions to the measures to be taken to remedy any contravention or matter to which the notice relates ; and any such directions may be amended so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (2) An improvement notice or a prohibition notice shall not direct any measures to be taken to remedy the contravention of any of the relevant statutory provisions that are more onerous than those necessary to secure compliance with that provision.
- (3) Where an improvement notice or a prohibition notice that is not to take immediate effect has been served—
  - (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it in pursuance of section 1(2)(b) or (as the case may be) section 2(4) above ; and
  - (b) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending under section 4 below.

### *Arbitration and compensation*

#### **4 Reference of notices to arbitration**

(1) Any question—

- (a) as to whether any of the reasons or matters specified in an improvement notice or a prohibition notice in pursuance of section 1(2)(a) or 2(3)(b) or (c) above in connection with any opinion formed by the inspector constituted a valid basis for that opinion, or
- (b) as to whether any directions included in the notice in pursuance of section 3(1) above were reasonable,

shall, if the person on whom the notice was served so requires by a notice given to the inspector within twenty-one days from the service of the notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.

(2) Where a notice is given by a person in accordance with subsection (1) above, then—

- (a) in the case of an improvement notice, the giving of the notice shall have the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by that person;
- (b) in the case of a prohibition notice, the giving of the notice shall have the effect of so suspending the operation of the prohibition notice if, but only if, on the application of that person the arbitrator so directs (and then only from the giving of the direction).

(3) Where on a reference under this section the arbitrator decides as respects any reason, matter or directions to which the reference relates, that in all the circumstances—

- (a) the reason or matter did not constitute a valid basis for the inspector's opinion, or
- (b) the directions were unreasonable,

he shall either cancel the notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.

(4) Where any reference under this section involves the consideration by the arbitrator of the effects of any particular activities or state of affairs on the health or safety of any persons, he shall not on that reference make any decision such as is mentioned in subsection (3)(a) or (b) above except after—

- (a) in the case of an improvement notice, affording an opportunity of making oral representations to him with respect to those effects to a member of any such panel of representatives of maritime trade unions as may be appointed by the Secretary of State for the purposes of this subsection; or
- (b) in the case of a prohibition notice, affording an opportunity of making such representations to him to either—
  - (i) a representative of a trade union representing persons whose interests it appears to him that the notice was designed to safeguard, or
  - (ii) a member of any such panel as is referred to in paragraph (a) above, as he thinks appropriate; and
- (c) (in either case) considering any representations made to him in pursuance of paragraph (a) or (b) above.

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- (5) A person shall not be qualified for appointment as an arbitrator under this section unless he is—
- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
  - (b) a naval architect;
  - (c) a barrister, advocate or solicitor of at least ten years' standing; or
  - (d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.
- (6) In connection with his functions under this section an arbitrator shall have the powers conferred on an inspector by section 27 of the Merchant Shipping Act 1979.
- (7) In the application of this section to Scotland any reference to an arbitrator shall be construed as a reference to an arbiter and the reference in subsection (1) above to a single arbitrator appointed by agreement between the parties shall be construed as a reference to a single arbiter so appointed or, in default of agreement, appointed by the sheriff.
- (8) The Arbitration Act (Northern Ireland) 1937 shall apply in relation to an arbitration in pursuance of this section as if this section related to a matter in respect of which the Parliament of Northern Ireland had power to make laws.

## **5 Compensation in connection with invalid prohibition notices**

- (1) If on a reference under section 4 above relating to a prohibition notice—
- (a) the arbitrator decides that any reason or matter did not constitute a valid basis for the inspector's opinion, and
  - (b) it appears to him that there were no reasonable grounds for the inspector to form that opinion,
- the arbitrator may, subject to subsection (3) below, award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the service of the notice as the arbitrator thinks fit.
- (2) If on any such reference the arbitrator decides that any directions included in the notice were unreasonable, the arbitrator may, subject to subsection (3) below, award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of those directions as the arbitrator thinks fit.
- (3) An arbitrator shall not award any compensation under subsection (1) or (2) above in the case of any prohibition notice unless—
- (a) it appears to him that the direction given in pursuance of section 2(3)(d) above contained any such requirement as is mentioned in sub-paragraph (ii) of that provision; or
  - (b) it appears to him that—
    - (i) the inspector was of the opinion that there would be such a risk of injury or pollution as is referred to in the notice if the ship went to sea, and
    - (ii) the effect of the direction given in pursuance of section 2(3)(d) above was to prohibit the departure of the ship unless the matters, or (as the case may be) the matters and contraventions, referred to in the direction were remedied.

- (4) Any compensation awarded under this section shall be payable by the Secretary of State.
- (5) In the application of this section to Scotland any reference to an arbitrator shall be construed as a reference to an arbiter.

### *Supplementary*

## **6 Offences**

- (1) Any person who contravenes any requirement imposed by an improvement notice shall be guilty of an offence and liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum or, as respects Northern Ireland, £1,000;
  - (b) on conviction on indictment, to a fine.
- (2) Any person who contravenes any prohibition imposed by a prohibition notice shall be guilty of an offence and liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum or, as respects Northern Ireland, £1,000;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (3) It shall be a defence for a person charged with an offence under this section to prove that he exercised all due diligence to avoid a contravention of the requirement or prohibition in question.
- (4) In this section any reference to an improvement notice or a prohibition notice includes a reference to any such notice as modified under section 4(3) above, and " statutory maximum " has the meaning given by section 74 of the Criminal Justice Act 1982.

## **7 Appointment of inspectors**

- (1) The Secretary of State may appoint any person to be an inspector for the purposes of this Part of this Act.
- (2) Every inspector appointed under section 728 of the Merchant Shipping Act 1894 shall be taken to be a person appointed under subsection (1) above.
- (3) Any person who is an inspector for the purposes of this Part of this Act and is not such an inspector as is mentioned in subsection (2) above shall, in connection with his functions under this Part, have the powers conferred on such an inspector by section 27 of the Merchant Shipping Act 1979.

## **8 Service of notices**

- (1) Any notice authorised by this Part of this Act to be given to an inspector may be given by delivering it to him or by leaving it at, or sending it by post to, his office.
- (2) Any notice required or authorised by this Part to be served on a person other than an inspector may be served by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

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- (3) Any such notice may—
- (a) in the case of a body corporate, be served on the secretary or clerk of that body ;
  - (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business or, in Scotland, on the firm.
- (4) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on whom any such notice is to be served shall be his last known address, except that—
- (a) in the case of a body corporate or their secretary or clerk it shall be the address of the registered or principal office of that body ;
  - (b) in the case of a partnership or a person having the control or the management of the partnership business, it shall be the principal office of the partnership;
- and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.
- (5) If the person to be served with any such notice has specified an address within the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.
- (6) This section is without prejudice to any other lawful method of serving or giving a notice.

## **9 Application to hovercraft**

The enactments with respect to which provision may be made by Order in Council in pursuance of section 1(1)(h) of the Hovercraft Act 1968 shall include this Part of this Act

## **10 Expenses of Secretary of State**

Any expenses incurred by the Secretary of State in consequence of this Part of this Act shall be paid out of money provided by Parliament.

## **11 Interpretation of Part I**

In this Part of this Act—

"contravention" includes failure to comply and "contravene " shall be construed accordingly ;

"improvement notice" means a notice under section 1 above;

" inspector " means an inspector appointed under section 7 above;

"prohibition notice" means a notice under section 2 above;

" the relevant statutory provisions " means—

- (a) the provisions of the Acts mentioned in Schedule 1 to this Act which are specified in the third column of that Schedule (while and to the extent to which they remain in force); and

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- (b) the provisions of any instrument of a legislative character having effect under any of those provisions (whether made before or after the passing of this Act).