



# Merchant Shipping Act 1988

## 1988 CHAPTER 12

### PART II

#### REGISTRATION OF BRITISH FISHING VESSELS

##### *Preliminary*

#### **12 Interpretation of Part II, etc**

(1) In this Part (unless the context otherwise requires)—

“fishing vessel” means a vessel for the time being used (or, in the context of an application for registration, intended to be used) for or in connection with fishing for sea fish, other than a vessel used (or intended to be used) for fishing otherwise than for profit;

“fishing vessel survey rules” has the meaning given by section 2 of the Fishing Vessels (Safety Provisions) Act 1970, and any reference to a survey under the fishing vessel survey rules is a reference to such a survey carried out in the United Kingdom;

“owner”, in relation to a registered fishing vessel, means registered owner;

“prescribed” means prescribed by regulations under section 13;

“the register” means the register of British fishing vessels referred to in section 13(1)(a);

“registered” and “registration” mean respectively registered and registration in the register;

“sea fish” includes shellfish, salmon and migratory trout (as defined by section 44 of the Fisheries Act 1981);

“share”, in relation to a fishing vessel, means one of the shares into which the property in the vessel is divided, for the purposes of registration, in accordance with section 18.

(2) It is hereby declared that a vessel for the time being used (or intended to be used) wholly for the purpose of conveying persons wishing to fish for pleasure is not a fishing vessel for the purposes of this Part.

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- (3) References in this Part to a fishing vessel being eligible to be registered as a British fishing vessel shall be construed in accordance with section 14.
- (4) For the purposes of this Part the beneficial ownership of a fishing vessel shall be determined by reference to every beneficial interest in that vessel, however arising (whether held by a trustee or nominee or arising under a contract or otherwise), other than an interest held by any person as mortgagee.

*New system of registration for fishing vessels*

### **13 Separate registration of fishing vessels**

- (1) The Secretary of State shall by regulations make provision—
  - (a) for the establishment and maintenance of a register of British fishing vessels; and
  - (b) for the registration in that register of fishing vessels which are, by virtue of section 14, eligible to be registered as British fishing vessels.
- (2) Subject to subsection (3), a fishing vessel shall no longer be capable of being registered under any of the following enactments, namely—
  - (a) Part I of the 1894 Act;
  - (b) section 373 of that Act (registry of British fishing boats); or
  - (c) the Sea Fishing Boats (Scotland) Act 1886.
- (3) Where any fishing vessel is registered under any of those enactments immediately before the commencement of this Part, the registration of the vessel under that enactment shall (notwithstanding any repeals made by this Act) continue in force until—
  - (a) the vessel (being eligible to be registered as a British fishing vessel) is registered under this Part in accordance with regulations under this section, or
  - (b) the end of such period beginning with the commencement of this Part as may be prescribed,
 whichever first occurs.
- (4) Any fishing vessel whose registration under any of those enactments continues in force by virtue of subsection (3) shall be deemed to be a vessel registered under this Part for the purposes of sections 19, 20 and 22 below.
- (5) Where a fishing vessel becomes registered under this Part at a time when it is already registered under the law of any country outside the United Kingdom, the owner of the vessel shall take all reasonable steps to secure the termination of the vessel's registration under the law of that country.
- (6) Any person who contravenes subsection (5) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.
- (7) Schedule 2 shall have effect for the purpose of supplementing this section.

### **14 Eligibility for registration as British fishing vessel**

- (1) Subject to subsections (3) and (4), a fishing vessel shall only be eligible to be registered as a British fishing vessel if—

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- (a) the vessel is British-owned;
  - (b) the vessel is managed, and its operations are directed and controlled, from within the United Kingdom; and
  - (c) any charterer, manager or operator of the vessel is a qualified person or company.
- (2) For the purposes of subsection (1)(a) a fishing vessel is British-owned if—
- (a) the legal title to the vessel is vested wholly in one or more qualified persons or companies; and
  - (b) the vessel is beneficially owned—
    - (i) as to not less than the relevant percentage of the property in the vessel, by one or more qualified persons, or
    - (ii) wholly by a qualified company or companies, or
    - (iii) by one or more qualified companies and, as to not less than the relevant percentage of the remainder of the property in the vessel, by one or more qualified persons.
- (3) The Secretary of State may by regulations specify further requirements which must be satisfied in order for a fishing vessel to be eligible to be registered as a British fishing vessel, being requirements imposed—
- (a) in connection with the implementation of any of the requirements specified in subsection (1)(a) to (c), or
  - (b) in addition to the requirements so specified,
- and appearing to the Secretary of State to be appropriate for securing that such a vessel has a genuine and substantial connection with the United Kingdom.
- (4) Where, in the case of any fishing vessel, the Secretary of State is satisfied that—
- (a) the vessel would be eligible to be registered as a British fishing vessel but for the fact that any particular individual, or (as the case may be) each of a number of particular individuals, is not a British citizen (and is accordingly not a qualified person), and
  - (b) it would be appropriate to dispense with the requirement of British citizenship in the case of that individual or those individuals, in view of the length of time he has or they have resided in the United Kingdom and been involved in the fishing industry of the United Kingdom,
- the Secretary of State may determine that that requirement should be so dispensed with; and, if he does so, the vessel shall, so long as paragraph (a) above applies to it and any such determination remains in force, be treated for the purposes of this Part as eligible to be registered as a British fishing vessel.
- (5) Where any share in a vessel is beneficially owned jointly by persons not all of whom are qualified persons or companies, then, for the purposes of this section, the whole of that share shall be treated as beneficially owned by persons who are not qualified persons or companies.
- (6) For the purpose of determining whether a fishing vessel is eligible to be registered as a British fishing vessel, the Secretary of State may, if he thinks fit, appoint a person—
- (a) to investigate the eligibility of the vessel to be so registered, and
  - (b) to make a report of his conclusions to the Secretary of State;
- and any person so appointed shall, for the purpose of conducting the investigation, have the powers conferred on an inspector by the provisions of section 27 of the

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Merchant Shipping Act 1979 (other than paragraphs (d) to (h) of subsection (1) of that section).

(7) In this section—

“qualified company” means a company which satisfies the following conditions, namely—

- (a) it is incorporated in the United Kingdom and has its principal place of business there;
- (b) at least the relevant percentage of its shares (taken as a whole), and of each class of its shares, is legally and beneficially owned by one or more qualified persons or companies; and
- (c) at least the relevant percentage of its directors are qualified persons;

“qualified person” means—

- (a) a person who is a British citizen resident and domiciled in the United Kingdom, or
- (b) a local authority in the United Kingdom; and

“the relevant percentage” means 75 per cent. or such greater percentage (which may be 100 per cent.) as may for the time being be prescribed.

## **15 Grant or refusal of applications for registration of fishing vessels**

(1) If, on an application for the registration of a fishing vessel made in accordance with regulations under section 13, the Secretary of State is satisfied—

- (a) that the vessel is eligible to be registered as a British fishing vessel, and
- (b) that any relevant requirements of any such regulations have been complied with in relation to the vessel,

he shall (subject to subsection (2)) cause the vessel to be registered as a British fishing vessel.

(2) Notwithstanding that the Secretary of State is so satisfied, he may refuse any such application if he is satisfied that there is not in force in respect of the vessel any certificate required to be so in force by virtue of section 4 of the Fishing Vessels (Safety Provisions) Act 1970 (prohibition on going to sea without appropriate certificates).

(3) If, on any such application, the Secretary of State is not satisfied as mentioned in subsection (1), he shall refuse the application.

## **16 Termination of registration where vessel is not eligible for registration or is not certificated**

(1) If for any reason it appears to the Secretary of State that a registered vessel may no longer be eligible to be registered as a British fishing vessel, he may by notice served on—

- (a) the owner of the vessel, or
- (b) any charterer, manager or operator of the vessel,

require that person, at such time or times as may be specified in the notice—

- (i) to produce to the Secretary of State such documents or descriptions of documents specified in the notice, and
- (ii) to furnish to him, in such form as may be specified in the notice, such accounts, estimates, returns or other information (of whatever nature) specified in the notice,

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as the Secretary of State thinks necessary for the purpose of determining whether the vessel is eligible to be so registered.

- (2) In a case where the owner of a registered vessel is a company, subsection (1) shall apply to any person holding any shares in the company as it applies to the company.
- (3) Where the Secretary of State has served a notice under subsection (1) with respect to any vessel, then, unless he has become satisfied that the vessel is eligible to be registered as a British fishing vessel—
  - (a) he shall, as soon as practicable after the end of the period of 30 days beginning with the date of service of that notice, serve a notice under subsection (6) on the owner of the vessel, and
  - (b) the vessel's registration shall terminate by virtue of this subsection at the relevant time.
- (4) Where it appears to the Secretary of State that there is not in force in respect of any registered vessel any such certificate as is mentioned in section 15(2), he may by notice served on the owner of the vessel require the vessel to be presented for a survey under the fishing vessel survey rules within the period of 30 days beginning with the date of service of the notice.
- (5) If the vessel is not presented for such a survey within that period—
  - (a) the Secretary of State shall serve a notice under subsection (6) on the owner of the vessel, and
  - (b) the vessel's registration shall terminate by virtue of this subsection at the relevant time.
- (6) A notice under this subsection is a notice stating—
  - (a) that the Secretary of State is not satisfied that the vessel in question is eligible to be registered as a British fishing vessel, or
  - (b) that the vessel has not been presented for a survey as required by a notice under subsection (4),as the case may be, and that the vessel's registration will accordingly terminate at the relevant time by virtue of subsection (3) or (5).
- (7) In this section "the relevant time", in relation to a notice under subsection (6), means the end of the period of 14 days beginning with the date of service of that notice.

## **17 Consequences of termination of registration by virtue of s.16**

- (1) Where the registration of any vessel has terminated by virtue of section 16(3) or (5), then, without prejudice to the operation of any other provision of this Part of this Act or of regulations under section 13, the vessel shall not again be registered as a British fishing vessel unless—
  - (a) the Secretary of State is satisfied that the earlier failure of the vessel to be eligible to be so registered or (as the case may be) to be presented for a survey was due to inadvertence, and (in the latter case) that the vessel has since been presented for a survey, or
  - (b) the Secretary of State consents to the vessel being so registered, or
  - (c) in the case of a vessel whose registration terminated by virtue of section 16(3), the Secretary of State is satisfied that the vessel has been disposed of by its former registered owner by means of a transaction at arm's length and that no

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person who for the time being is a relevant owner of the vessel was a relevant owner of it at the time when its registration terminated.

- (2) In subsection (1)(a) “survey” means a survey under the fishing vessel survey rules.
- (3) For the purposes of subsection (1)(c) a person is a relevant owner of a vessel at any time if at that time—
- (a) the legal title to the vessel or any share in it is vested in that person, or
  - (b) the vessel or any share in it is beneficially owned by that person, or
  - (c) any shares in a company falling within paragraph (a) or (b) above are legally or beneficially owned by that person,
- whether vested in, or (as the case may be) owned by, that person alone or together with any other person or persons.

## **18 Registration of property in fishing vessels**

- (1) For the purposes of the registration of a fishing vessel—
- (a) the property in the vessel shall be divided into 64 shares;
  - (b) except as provided by paragraph (c), the number of persons registered as owners of the vessel shall not at any time exceed 64;
  - (c) any number of persons not exceeding five may be registered as joint owners of the vessel or of any share in the vessel (but for the purposes of paragraph (b) the registered joint owners of any such share shall be treated as constituting one person);
  - (d) a registered joint owner of the vessel or of any share in the vessel shall not be entitled to dispose of his interest in the vessel or share separately from the interest or interests in it of the other joint owner or joint owners; and
  - (e) a person shall not be entitled to be registered as the owner of a fractional part of a share in the vessel.
- (2) Subsection (1)(b) and (c) do not prejudice any beneficial interest of any person represented by or claiming under or through a registered owner (including a registered joint owner).

### *Transfers etc. of registered vessels*

## **19 Transfer of vessel or share by bill of sale**

- (1) Any transfer of—
- (a) a registered vessel (not being a vessel registered in pursuance of paragraph 2(c) of Schedule 2), or
  - (b) a share in any such vessel,
- shall be effected by a bill of sale satisfying the requirements specified in subsection (2), unless the transfer will result in the vessel ceasing to be British-owned for the purposes of section 14(1)(a).
- (2) Those requirements are that the bill of sale—
- (a) is in such form as may be prescribed or approved by the Secretary of State; and
  - (b) contains a description of the vessel sufficient to identify the vessel to the satisfaction of the Secretary of State.

- (3) Where any such vessel or share has been transferred in accordance with subsection (1), the transferee shall not be registered as owner of the vessel or share unless—
  - (a) he has made an application for the purpose in accordance with regulations under section 13 and has produced to the Secretary of State the bill of sale by which the vessel or share has been so transferred, and
  - (b) the Secretary of State is satisfied as mentioned in section 15(1);and section 15(2) and (3) shall apply in relation to an application under this subsection as they apply in relation to an application for the registration of a fishing vessel.
- (4) If an application under subsection (3) is granted by the Secretary of State, the Secretary of State shall—
  - (a) register the bill of sale referred to in paragraph (a) of that subsection by causing the applicant's name to be entered in the register as owner of the vessel or share in question, and
  - (b) endorse on the bill of sale the fact that that entry has been made, together with the date and time when it was made.
- (5) Bills of sale shall be registered under subsection (4) in the order in which they are produced to the Secretary of State for the purposes of registration.
- (6) If on an application under subsection (3) the Secretary of State is not satisfied that the vessel with respect to which the application is made is eligible to be registered as a British fishing vessel—
  - (a) the Secretary of State shall serve a notice under subsection (7) on the owner of the vessel; and
  - (b) the vessel's registration shall terminate by virtue of this subsection at the end of the period of 14 days beginning with the date of service of that notice.
- (7) A notice under this subsection is a notice stating—
  - (a) that the Secretary of State is not satisfied that the vessel in question is eligible to be registered as a British fishing vessel; and
  - (b) that the vessel's registration will accordingly terminate by virtue of subsection (6) at the end of the period referred to in that subsection.

## **20 Transmission of property in vessel or share other than under s.19**

- (1) Where a registered vessel, or a share in a registered vessel, is transmitted to any person by any lawful means other than by a transfer under section 19, that person shall not be registered as owner of the vessel or share unless—
  - (a) he has made an application for the purpose in accordance with regulations under section 13 and has produced to the Secretary of State such evidence of the transmission as may be prescribed; and
  - (b) the Secretary of State is satisfied as mentioned in section 15(1);and section 15(2) and (3) shall apply in relation to an application under this subsection as they apply in relation to an application for the registration of a fishing vessel.
- (2) If an application under subsection (1) is granted by the Secretary of State, he shall cause the applicant's name to be entered in the register as owner of the vessel or share.
- (3) The preceding provisions of this section shall apply in relation to the transmission of the interest of a joint owner in a registered vessel or in a share in any such vessel as they apply in relation to the transmission of any such vessel or share, except that

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anything required to be done by virtue of subsection (1)(a) shall be done by both or all of the joint owners of the vessel or share.

- (4) If on an application under subsection (1) the Secretary of State is not satisfied that the vessel with respect to which the application is made is eligible to be registered as a British fishing vessel—
- (a) the Secretary of State shall serve a notice under subsection (5) on the owner of the vessel; and
  - (b) the vessel's registration shall terminate by virtue of this subsection at the end of the period of 14 days beginning with the date of service of that notice.
- (5) A notice under this subsection is a notice stating—
- (a) that the Secretary of State is not satisfied that the vessel in question is eligible to be registered as a British fishing vessel; and
  - (b) that the vessel's registration will accordingly terminate by virtue of subsection (4) at the end of the period referred to in that subsection.

#### *Mortgages of registered vessels*

### **21 Mortgages of registered vessels**

- (1) Schedule 3 to this Act (which makes provision with respect to the registration of mortgages) shall have effect.
- (2) Where the registration of any fishing vessel terminates by virtue of any provision of this Act, the termination of that registration shall not affect any entry made in the register under Schedule 3 so far as relating to any undischarged registered mortgage of that vessel or of any share in it.
- (3) In subsection (2) “registered mortgage” has the same meaning as in Schedule 3.

#### *Unregistered fishing vessels*

### **22 Offences relating to, and liabilities of, unregistered fishing vessels**

- (1) If any fishing vessel to which this subsection applies fishes for profit—
- (a) the skipper, the owner and any charterer of the vessel shall each be guilty of an offence; and
  - (b) the vessel shall be liable to forfeiture.
- (2) Subsection (1) applies to any fishing vessel which is either—
- (a) eligible to be registered under this Part, or
  - (b) wholly owned by one or more persons qualified to be owners of British ships for the purposes of Part I of the 1894 Act,
- but is neither registered under this Part nor excluded from registration by regulations under section 13 nor registered under the law of any country outside the United Kingdom.
- (3) Subsection (1) also applies to any fishing vessel which (notwithstanding that it is not entitled to be so registered) is for the time being registered in the United Kingdom under Part I of the 1894 Act or section 5 of the Merchant Shipping Act 1983 (registration of small ships).



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- (4) Subject to subsection (8), if any prescribed marks are displayed on a fishing vessel which is not a registered vessel, the skipper, the owner and any charterer of the vessel shall each be guilty of an offence.
- (5) If the skipper or owner of a fishing vessel which is not a registered vessel does anything, or permits anything to be done, for the purpose of causing the vessel to appear to be a registered vessel, then (subject to subsection (8))—
  - (a) the skipper, the owner and any charterer of the vessel shall each be guilty of an offence; and
  - (b) the vessel shall be liable to forfeiture.
- (6) Where a fishing vessel is not a British ship and is not registered under the law of any country outside the United Kingdom, but—
  - (a) it is eligible to be registered under this Part, or
  - (b) it is wholly owned by one or more such persons as are mentioned in subsection (2)(b), or
  - (c) (subject to subsection (8)) any prescribed marks are displayed on it,then (notwithstanding that the vessel is not entitled to any benefits, privileges, advantages or protection usually enjoyed by a British ship) the vessel shall, for the purposes mentioned in subsection (7), be dealt with in the same manner in all respects as if the vessel were a British ship.
- (7) Those purposes are—
  - (a) the payment of dues, fees or other charges;
  - (b) liability to fines and forfeiture; and
  - (c) the punishment of offences committed on board the vessel, or by any persons belonging to it.
- (8) Where the registration of any vessel has terminated by virtue of any provision of this Part, any prescribed marks displayed on the vessel within the period of 14 days beginning with the date of termination of that registration shall be disregarded for the purposes of subsections (4) to (6).
- (9) Subsections (1), (4) and (5)(a) apply to offences falling within those provisions wherever committed.
- (10) Section 76 of the 1894 Act (proceedings on forfeiture of ship) shall apply to any vessel liable to forfeiture under this section as it applies to any such ship as is mentioned in subsection (1) of that section.

### *Supplemental*

## **23 Notification of changes in ownership etc., and offences relating to furnishing of information**

- (1) If at any time there occurs, in relation to a registered vessel—
  - (a) any change affecting the eligibility of the vessel to be registered as a British fishing vessel, or
  - (b) any change (not falling within paragraph (a)) in the percentage of the property in the vessel which is beneficially owned by persons who are qualified persons or companies within the meaning of section 14,

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the owner of the vessel shall, as soon as practicable after the change occurs, notify the Secretary of State in writing of that change.

- (2) Any person who contravenes subsection (1) shall be guilty of an offence.
- (3) Any person who—
- (a) in connection with the registration of any vessel or the making of any other entry in the register in pursuance of this Part, or
  - (b) in purported compliance with the requirements of any notice under section 16(1),
- knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence.
- (4) Any person who intentionally alters, suppresses, conceals or destroys a document which he has been required to produce by a notice under section 16(1) shall be guilty of an offence.

## **24 Penalties for offences under s. 22 or 23 and other provisions relating to such offences**

- (1) Any person guilty of an offence under section 22 or 23 shall be liable—
- (a) on summary conviction, to a fine not exceeding £50,000;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (2) Proceedings for an offence under section 22 or 23 shall not be instituted—
- (a) in England and Wales, except by or with the consent of the Attorney General, the Secretary of State or the Minister; or
  - (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland, the Secretary of State or the Minister.
- (3) Proceedings for an offence under section 22 may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (4) In this section “the Minister”—
- (a) in relation to England and Wales, means the Minister of Agriculture, Fisheries and Food; and
  - (b) in relation to Northern Ireland, means the Secretary of State concerned with sea fishing in Northern Ireland.

## **25 Application of other enactments, etc**

- (1) Any reference (however phrased) in any statutory provision not contained in this Act to the registration of a fishing vessel under any of the enactments specified in section 13(2) shall, so far as the context permits, be construed as, or as including, a reference to the registration of a fishing vessel under this Part; and connected phrases shall be construed accordingly.
- (2) The following provisions of the 1894 Act, namely—
- (a) section 69 (penalty for unduly assuming British character), and
  - (b) section 71 (penalty for acquiring ownership if unqualified),

shall not apply to a registered vessel; and section 72 of that Act (liabilities of unregistered ships) shall not apply to a fishing vessel (whether registered or not).

- (3) Sections 8 and 9 of the Sea Fisheries Act 1968 (general powers of British sea-fishery officers and powers of sea-fishery officers to enforce conventions) shall apply in relation to—

- (a) this Part of this Act, and
- (b) any regulations made under it,

as they apply in relation to any order mentioned in section 8 of that Act and in relation to any convention mentioned in section 9 of that Act respectively; and sections 10 to 12 and 14 of that Act (offences and supplemental provisions as to legal proceedings) shall apply accordingly.

- (4) A document purporting to be a copy of any information contained in an entry in the register and to be certified as a true copy by an authorised officer of the Secretary of State shall be evidence (and, in Scotland, sufficient evidence) of the matters stated in the document.