



# Merchant Shipping Act 1988 (repealed)

## 1988 CHAPTER 12

### PART III

#### MISCELLANEOUS PROVISIONS RELATING TO MERCHANT SHIPPING ETC.

##### *Safety of navigation, oil pollution etc.*

#### **30 Owner and master liable in respect of dangerously unsafe ship.**

- (1) If, having regard to the nature of the service for which it is intended—
- (a) a ship in a port in the United Kingdom, or
  - (b) a ship registered in the United Kingdom which is in any other port,
- is, by reason of any of the matters mentioned in subsection (3), not fit to go to sea without serious danger to human life, then, subject to subsections (5) and (6), the master and the owner of the ship shall each be guilty of an offence.
- (2) Where, at the time when a ship is not fit to go to sea as mentioned in subsection (1), any responsibilities of the owner with respect to the particular matters by reason of which the ship is not fit to go to sea have been assumed (whether wholly or in part) by any person or persons other than the owner, and have been so assumed by that person or (as the case may be) by each of those persons either—
- (a) directly, under the terms of a charter-party or management agreement made with the owner, or
  - (b) indirectly, under the terms of a series of charter-parties or management agreements,
- the reference to the owner in subsection (1) shall be construed as including a reference to that other person or (as the case may be) to each of those other persons.
- (3) The matters referred to in subsection (1) are—
- (a) the condition, or the unsuitability for its purpose, of—
    - (i) the ship or its machinery or equipment, or
    - (ii) any part of the ship or its machinery or equipment;

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- (b) undermanning;
  - (c) overloading or unsafe or improper loading;
  - (d) any other matter relevant to the safety of the ship.
- (4) A person guilty of an offence under this section 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.
- (5) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence—
- (a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters falling within subsection (3) which are specified in the charge (or, in Scotland, which are libelled in the complaint, petition or indictment); or
  - (b) it was reasonable for such arrangements not to have been made.
- (6) It shall also be a defence in proceedings for an offence under this section to prove—
- (a) that, under the terms of one or more charter-parties or management agreements entered into by the defendant, the relevant responsibilities, namely—
    - (i) where the defendant is the owner, his responsibilities with respect to the matters referred to in subsection (5) (a), or
    - (ii) where the defendant is liable to proceedings under this section by virtue of subsection (2), so much of those responsibilities as had been assumed by him as mentioned in that subsection,
 had at the time of the alleged offence been wholly assumed by some other person or persons party thereto; and
  - (b) that in all the circumstances of the case the defendant had taken such steps as it was reasonable for him to take, and exercised such diligence as it was reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in paragraph (a);
- and, in determining whether the defendant had done so, regard shall be had in particular to the matters mentioned in subsection (7).
- (7) Those matters are—
- (a) whether prior to the time of the alleged offence the defendant was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and
  - (b) the extent to which the defendant was or was not able, under the terms of any such charter-party or management agreement as is mentioned in subsection (6) (a)—
    - (i) to terminate it, or
    - (ii) to intervene in the management of the ship,
 in the event of any such deficiency, and whether it was reasonable for the defendant to place himself in that position.
- (8) No proceedings for an offence under this section shall be instituted—

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- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.
- (9) In this section—
- “management agreement”, in relation to a ship, means any agreement (other than a charter-party or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person);
- “relevant responsibilities” shall be construed in accordance with subsection (6);
- and any reference in this section to going to sea shall, in a case where the service for which a ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.
- (10) References in this section to responsibilities being assumed by a person under the terms of a charter-party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

VALID FROM 01/05/1994

### **[<sup>F1</sup>30A Power to detain unsafe ship**

- (1) Where a ship in a port in the United Kingdom appears to a relevant inspector to be an unsafe ship the ship may be detained.
- (2) The power of detention conferred by subsection (1) above is exercisable in relation to foreign ships as well as United Kingdom ships.
- (3) The officer detaining the ship shall serve on the master of the ship a detention notice which shall—
  - (a) state that the relevant inspector is of the opinion that the ship is an unsafe ship;
  - (b) specify the matters which, in the relevant inspector’s opinion, make the ship an unsafe ship; and
  - (c) prohibit the ship from going to sea until it is released by competent authority.
- (4) In the case of a ship which is not a British ship the officer detaining the ship shall cause a copy of the detention notice to be sent as soon as practicable to the nearest consular officer for the country to which the ship belongs.
- (5) In this section—

“competent authority” means any officer mentioned in section 692(1) of the 1894 Act;

“relevant inspector” means any person mentioned in paragraph (a), (b) or (c) of section 76(1) of the Merchant Shipping Act 1970; and

“unsafe ship” means a ship which is not fit to go to sea as mentioned in section 30(1) of this Act;

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and the reference to going to sea shall be construed in accordance with subsection (9) of section 30.]

#### Textual Amendments

**F1** S. 30A inserted (1.5.1994) by 1993 c. 22, s. 8(3), **Sch. 4 para. 12(2)**; S.I. 1993/3137, art. 3(2), **Sch.2**.

### 31 Owner liable for unsafe operation of ship.

- (1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.
- (2) This section applies to—
  - (a) any ship registered in the United Kingdom; and
  - (b) any ship which—
    - (i) is registered under the law of any country outside the United Kingdom, and
    - (ii) is within the seaward limits of the territorial sea of the United Kingdom while proceeding to or from a port in the United Kingdom, unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.
- (3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1), he shall be guilty of an offence and 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.
- (4) Where any such ship—
  - (a) is chartered by demise, or
  - (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of section 30,
 any reference to the owner of the ship in subsection (1) or (3) above shall be construed as including a reference—
  - (i) to the charterer under the charter by demise, or
  - (ii) to any such manager as is referred to in paragraph (b), or
  - (iii) (if the ship is both chartered and managed as mentioned above) to both the charterer and any such manager,
 and accordingly the reference in subsection (1) to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.
- (5) No proceedings for an offence under this section shall be instituted—
  - (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

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## **32 Conduct endangering ships, structures or individuals.**

The following section shall be substituted for section 27 of the <sup>M1</sup>Merchant Shipping Act 1970—

### **“27 Conduct endangering ships, structures or individuals.**

- (1) This section applies—
  - (a) to the master of, or any seaman employed in, a ship registered in the United Kingdom; and
  - (b) to the master of, or any seaman employed in, a ship which—
    - (i) is registered under the law of any country outside the United Kingdom, and
    - (ii) is in a port in the United Kingdom or within the seaward limits of the territorial sea of the United Kingdom while proceeding to or from any such port.
- (2) If a person to whom this section applies, while on board his ship or in its immediate vicinity—
  - (a) does any act which causes or is likely to cause—
    - (i) the loss or destruction of or serious damage to his ship or its machinery, navigational equipment or safety equipment, or
    - (ii) the loss or destruction of or serious damage to any other ship or any structure, or
    - (iii) the death of or serious injury to any person, or
  - (b) omits to do anything required—
    - (i) to preserve his ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged, or
    - (ii) to preserve any person on board his ship from death or serious injury, or
    - (iii) to prevent his ship from causing the loss or destruction of or serious damage to any other ship or any structure, or the death of or serious injury to any person not on board his ship,and either of the conditions specified in subsection (3) of this section is satisfied with respect to that act or omission, he shall (subject to subsections (6) and (7) of this section) be guilty of an offence.
- (3) Those conditions are—
  - (a) that the act or omission was deliberate or amounted to a breach or neglect of duty;
  - (b) that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission.
- (4) If a person to whom this section applies—
  - (a) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a) of this section, or

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- (b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things,
- he shall (subject to subsections (6) and (7) of this section) be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (6) In proceedings for an offence under this section it shall be a defence to prove—
- (a) in the case of an offence under subsection (2) of this section where the act or omission alleged against the defendant constituted a breach or neglect of duty, that the defendant took all reasonable steps to discharge that duty;
  - (b) in the case of an offence under subsection (4) of this section, that the defendant took all reasonable precautions and exercised all due diligence to avoid committing the offence; or
  - (c) in the case of an offence under either of those subsections—
    - (i) that he could have avoided committing the offence only by disobeying a lawful command, or
    - (ii) that in all the circumstances the loss, destruction, damage, death or injury in question, or (as the case may be) the likelihood of its being caused, either could not reasonably have been foreseen by the defendant or could not reasonably have been avoided by him.
- (7) In the application of this section to any person falling within subsection (1)(b) of this section, subsections (2) and (4) shall have effect as if paragraphs (a)(i) and (b)(i) of subsection (2) were omitted; and no proceedings for an offence under this section shall be instituted against any such person—
- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.
- (8) In this section—
- “breach or neglect of duty”, except in relation to a master, includes any disobedience to a lawful command;
- “duty”—
- (a) in relation to a master or seaman, means any duty falling to be discharged by him in his capacity as such; and
  - (b) in relation to a master, includes his duty with respect to the good management of his ship and his duty with respect to the safety of operation of his ship, its machinery and equipment; and
- “structure” means any fixed or movable structure (of whatever description) other than a ship.”

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#### Marginal Citations

M1 1970 c. 36.

### 33 Investigation of marine accidents.

- (1) The Secretary of State shall, for the purpose of the investigation of any such accidents as are mentioned in subsection (2), appoint such number of persons as he may determine to be inspectors of marine accidents, and he shall appoint one of those persons to be Chief Inspector of Marine Accidents.
- (2) The accidents referred to in subsection (1) are—
  - (a) any accident involving a ship or ship's boat where, at the time of the accident—
    - (i) the ship is registered in the United Kingdom, or
    - (ii) the ship, or (in the case of an accident involving a ship's boat) that boat, is within the seaward limits of the territorial sea of the United Kingdom; and
  - (b) such other accidents involving ships or ships' boats as the Secretary of State may determine.
- (3) The Secretary of State may by regulations make such provision as he considers appropriate with respect to the investigation of any such accidents as are mentioned in subsection (2).
- (4) Any such regulations may, in particular, make provision—
  - (a) with respect to the definition of "accident" for the purposes of this section and the regulations;
  - (b) imposing requirements as to the reporting of accidents;
  - (c) prohibiting, pending investigation, access to or interference with any ship or ship's boat involved in an accident;
  - (d) authorising any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat;
  - (e) specifying, with respect to the investigation of accidents, the functions of the Chief Inspector of Marine Accidents (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged;
  - (f) for the appointment by the Chief Inspector of Marine Accidents, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not inspectors of marine accidents;
  - (g) for the appointment by any Minister of the Crown of persons to review any findings or conclusions of a person carrying out an investigation under this section;
  - (h) for the procedure to be followed in connection with investigations or reviews under this section;

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- (i) for conferring on persons discharging functions under the regulations who are not inspectors of marine accidents all or any of the powers conferred on an inspector by section 27 of the <sup>M2</sup>Merchant Shipping Act 1979;
  - (j) for the submission to the Secretary of State, and the publication by him, of reports of investigations or reviews under this section;
  - (k) for the publication by the Chief Inspector of Marine Accidents of reports and other information relating to accidents.
- (5) Regulations under this section may provide for any provisions of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships' boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely—
- (a) the loss or destruction of or serious damage to any ship or structure,
  - (b) the death of or serious injury to any person, or
  - (c) environmental damage,
- whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.
- (6) Regulations under this section may provide that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by a fine.
- (7) The Chief Inspector of Marine Accidents, or (as the case may be) inspectors of marine accidents generally, shall discharge such functions in addition to those conferred by or under the preceding provisions of this section as the Secretary of State may determine.
- (8) Any inspector of marine accidents shall, for the purpose of discharging any functions conferred on him by or under this section, have the powers conferred on an inspector by section 27 of the <sup>M3</sup>Merchant Shipping Act 1979.
- (9) Nothing in this section shall limit the powers of any authority under sections 530 to 537 of the 1894 Act (removal of wrecks).
- (10) In this section—
- (a) references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any reference to a ship or ship's boat involved in an accident shall be construed accordingly); and
  - (b) "ship's boat" includes a liferaft.

#### **Marginal Citations**

**M2** 1979 c. 39.

**M3** 1979 c. 39.

### **34 Liability and compensation for oil pollution damage.**

- (1) The <sup>M4</sup>Merchant Shipping (Oil Pollution) Act 1971 ("the 1971 Act") and the <sup>M5</sup>Merchant Shipping Act 1974 ("the 1974 Act") shall be amended in accordance with Parts I and II of Schedule 4 to this Act (which contain amendments designed to implement provisions of the following Conventions, namely—



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- (a) the International Convention on Civil Liability for Oil Pollution Damage 1984; and
  - (b) the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1984).
- (2) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate in connection with the implementation of any transitional provisions contained in those Conventions; and any such Order may in particular provide, in relation to occurrences of any description specified in the Order—
- (a) for provisions of the 1971 Act or the 1974 Act to have effect —
    - (i) to such extent as is so specified, as if Schedule 4 to this Act were not in force, and
    - (ii) to such extent as is so specified, as if that Schedule were in force;
  - (b) for any such provisions to have effect (whether as amended by that Schedule or not) subject to such modifications as are so specified.

#### Marginal Citations

**M4** 1971 c. 59.

**M5** 1974 c. 43.

### 35 Regulation of transfers between ships in territorial waters.

- (1) The Secretary of State may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within the seaward limits of the territorial sea of the United Kingdom, such provision as he considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.
- (2) Regulations under this section may, in particular, do any of the following things, namely—
- (a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;
  - (b) make provision about—
    - (i) the design of, and standards to be met by, ships and equipment,
    - (ii) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board, and
    - (iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary thereto;
  - (c) provide for proposed transfers to be notified to and approved by persons appointed by the Secretary of State or another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
  - (d) provide—
    - (i) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations, and

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- (ii) for references in the regulations to any document so specified to operate as references to that document as revised or re-issued from time to time;
  - (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
  - (f) require the payment of fees determined with the approval of the Treasury;
  - (g) provide for the granting by the Secretary of State or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the Secretary of State or that other person may specify, and for altering or cancelling exemptions;
  - (h) limit any provision of the regulations to specified cases or kinds of case.
- (3) Regulations under this section may provide—
- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding £25,000 and on conviction on indictment by imprisonment for a term not exceeding two years or a fine or both;
  - (b) that any such contravention shall be an offence punishable only on summary conviction by a fine not exceeding £25,000 or such lower amount as is prescribed by the regulations;
  - (c) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (a) or (b) above.

### **36 Amendments of Coast Protection Act 1949 relating to safety of navigation.**

- (1) The <sup>M6</sup>Coast Protection Act 1949 shall be amended as follows.
- (2) In section 34(1) (restriction of works detrimental to navigation and carried out below high water mark of ordinary spring tides)—
- (a) in paragraph (a), for “high water mark of ordinary spring tides” there shall be substituted “ the level of mean high water springs ”;
  - (b) in paragraph (c), for “low water mark of ordinary spring tides” there shall be substituted “ the level of mean low water springs ”; and
  - (c) for the words from “so that” onwards there shall be substituted “ if the operation (whether while being carried out or subsequently) causes or is likely to result in obstruction or danger to navigation. ”
- (3) The following subsection shall be inserted after section 34(3)—
- “(3A) Any reference in subsection (1) or (3) above to an operation being likely to result in obstruction or danger to navigation shall, in the case of an operation falling within subsection (1)(a) above, be construed as including a reference to its being likely to result in obstruction or danger to navigation by reason of any use intended to be made of the works in question when constructed, altered or improved.”
- (4) The following subsection shall be inserted after section 34(4)—
- “(4A) Any condition subject to which the Secretary of State has given his consent for an operation falling within subsection (1)(a) of this section—
- (a) shall (subject to paragraph (d) below) either remain in force for a specified period or remain in force without limit of time;

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- (b) shall (in addition to binding the person to whom the consent is given) bind, so far as is appropriate, any other person who for the time being owns, occupies, or enjoys any use of, the works in question;
  - (c) may, if the condition relates—
    - (i) to the provision of any lights, signals or other aids to navigation, or
    - (ii) to the stationing of guard ships in the vicinity of the works in question or to the taking of any other measures for the purpose of, or in connection with, controlling the movements of ships in the vicinity of those works,be varied by the Secretary of State in the interests of the safety of navigation (whether or not the operation has been completed) in such manner as he thinks fit for the purpose of enhancing the effectiveness of any such aids or measures as are mentioned in sub-paragraph (i) or (ii) above; and
  - (d) may, if the Secretary of State thinks fit, be revoked by him.”
- (5) In section 36 (enforcement of section 34)—
- (a) after subsection (1) there shall be inserted—

“(1A) Where a person is bound by any condition subject to which any such consent has been given under that section but is not the person to whom the consent was given, then, for the purposes of subsection (1) of this section, he shall not be taken to have failed to comply with the condition unless—

    - (a) he has been served by the Secretary of State with a notice requiring him to comply with the condition within such period (not being less than thirty days) as may be specified in the notice; and
    - (b) he has failed to comply with the condition within that period”;
  - (b) in subsection (2), for “the last foregoing subsection” there shall be substituted “ subsection (1) of this section ”; and
  - (c) in subsection (4), after “from the person” there shall be inserted “ on whom the notice was served under subsection (2) of this section or (if no such notice was served) from the person ”.
- (6) After section 36 insert—

**“36A Imposition by Secretary of State of safety requirements in cases of emergency.**

- (1) Where at any time after the Secretary of State has given his consent for an operation falling within section 34(1)(a) of this Act (“the relevant consent”), it appears to him—
  - (a) that any danger to navigation has arisen by reason of—
    - (i) any substantial damage to any works to which that consent relates, or
    - (ii) any other substantial and unforeseen change in the state or position of any such works, and
  - (b) that it is urgently necessary to do so in the interests of the safety of navigation,

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he may, by notice served on the person to whom the consent was given, impose on that person such requirements as he thinks fit with respect to any of the matters referred to in subsection (2) below.

- (2) Those matters are—
  - (a) the provision on, or in the vicinity of, the works in question of any lights, signals or other aids to navigation, and
  - (b) the stationing of guard ships in the vicinity of those works.
- (3) Where the person on whom a notice is served under subsection (1) above fails to comply with any requirements of the notice within the period of 24 hours beginning with the time when it is served on him or as soon after the end of that period as is reasonably practicable, the Secretary of State may make such arrangements as he thinks fit for the purpose of securing that those requirements are implemented.
- (4) Where under subsection (3) above the Secretary of State makes any such arrangements, he shall be entitled to recover the cost, as certified by him, of making those arrangements from such one or more of the following, namely—
  - (a) the person to whom the relevant consent was given, and
  - (b) any other person or persons who is or are, in accordance with section 34(4A)(b) of this Act, bound by any condition subject to which that consent was given,
 as he thinks fit.
- (5) Once the requirements of a notice under subsection (1) above have been complied with by the person on whom it was served, or implemented in accordance with arrangements made by the Secretary of State under subsection (3) above, those requirements shall, subject to subsection (6) below, be treated for the purposes of this Part of this Act as conditions subject to which the relevant consent was given.
- (6) Section 34(4A)(a) and (d) of this Act shall not apply to any such requirements; but if it appears to the Secretary of State (whether on the application of any person or otherwise) that the circumstances giving rise to the urgent necessity for the imposition of the requirements no longer exist, he shall revoke them by notice served on the person to whom the relevant consent was given.
- (7) Where the Secretary of State has served a notice under subsection (1) above in respect of any particular circumstances, subsection (5) above shall not preclude him from serving a further notice under subsection (1) in respect of those circumstances.
- (8) A notice may be served by the Secretary of State under subsection (1) above whether or not—
  - (a) the operation in question has been completed, or
  - (b) any condition was imposed by him, on giving the relevant consent, with respect to any of the matters referred to in subsection (2) above.”
- (7) In section 49 (interpretation)—
  - (a) in subsection (1), in the definitions of “sea” and “seashore”, for “the next following subsection” there shall be substituted “ subsections (2) and (2A) of this section ”; and
  - (b) the following subsection shall be inserted after subsection (2)—

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“(2A) For the purposes of Part II of this Act the expression “sea” includes any part of the sea within the seaward limits of the territorial sea of the United Kingdom, and the expression “seashore” shall be construed accordingly.”

#### Marginal Citations

M6 1949 c. 74.

### 37 Licensing of tidal works by harbour authorities.

(1) Where—

- (a) it appears to the Secretary of State that any harbour authority have, by virtue of any statutory provision, power to license or otherwise regulate operations of any description falling within any of paragraphs (a) to (c) of section 34(1) of the <sup>M7</sup>Coast Protection Act 1949 (“the relevant power”), and
- (b) he considers it appropriate to do so, he may make regulations providing for section 34 of that Act not to apply to operations of that description in relation to which the relevant power is exercisable and which are carried out within such area or areas falling within the jurisdiction of that harbour authority as may be specified in the regulations (“the prescribed operations”); and, if he does so, the relevant power shall be exercisable by the harbour authority, in relation to the prescribed operations, subject to and in accordance with the following provisions of this section.

(2) Regulations made by the Secretary of State under this section with respect to any harbour authority may make provision—

- (a) in connection with the exercise by the authority of the relevant power in relation to the prescribed operations—
  - (i) for any matter for which provision is made by sections 34(2) to (4A) and 36 of the Coast Protection Act 1949, and
  - (ii) for any provision of the regulations made in pursuance of subparagraph (i) above or any of paragraphs (b) to (g) below to have effect in addition to or in substitution for any other statutory provision which (apart from the regulations) has effect in that connection;
- (b) requiring the authority to advertise in such manner as may be specified in the regulations—
  - (i) any application made to them for the grant, in the exercise of the relevant power, of a licence to carry out a prescribed operation, and
  - (ii) the grant of any such licence and any conditions subject to which it has been granted,

and to give to the Secretary of State such notice of any of those matters as may be so specified;

- (c) enabling representations to be made with respect to any such application in such manner as may be specified in the regulations;
- (d) requiring the authority, when determining any such application, to have regard to any representations made in accordance with the regulations so far as touching on any consideration material to the authority’s decision on the application;

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- (e) enabling an appeal to the Secretary of State to be brought, by such persons, on such grounds and in such manner as may be specified in the regulations, against—
    - (i) the grant or refusal of any such licence, or
    - (ii) any conditions imposed on the grant of any such licence;
  - (f) for the operation of any such licence to be suspended during the period during which such an appeal may be brought and, if such an appeal is brought by a person other than the applicant, until such time (if any) as the authority's decision on the application is affirmed by the Secretary of State;
  - (g) authorising the Secretary of State on such an appeal to do any of the things mentioned in subsection (6)(a) to (c) below;
  - (h) for any statutory provision having effect in relation to the authority to have effect subject to such modifications as appear to the Secretary of State to be necessary or expedient—
    - (i) for the purpose of making provision for any matter for which provision may be made by virtue of any of paragraphs (a) to (g) above, or
    - (ii) in consequence of any provision of the regulations made in pursuance of any of those paragraphs.
- (3) Where—
- (a) any regulations under this section are in force in relation to a harbour authority, and
  - (b) the authority have determined an application made to them for the grant, in the exercise of the relevant power, of a licence to carry out a prescribed operation, and
  - (c) no appeal has been brought (whether under the regulations or otherwise) in respect of their determination of the application, but
  - (d) the Secretary of State considers that it would be appropriate in the interests of the safety of navigation for the application to be redetermined by him,
- the Secretary of State may, within the period of 60 days beginning with the date of the authority's determination, serve a notice on the authority requiring them to furnish him with written particulars of their determination, and with any documents in their possession relating to the application, in order that he may redetermine the application.
- (4) Where the Secretary of State serves a notice under subsection (3) in respect of any application—
- (a) the Secretary of State shall serve a copy of that notice on the applicant and shall, in such manner as he thinks fit, advertise the fact that the application is to be redetermined by him; and
  - (b) the operation of any licence granted by the authority in pursuance of the application shall be suspended until such time (if any) as the authority's decision to grant the licence is affirmed by the Secretary of State under subsection (6).
- (5) The Secretary of State shall, when redetermining any application, have regard to any representations made to him by persons appearing to him to be likely to be affected by the operation to which the application relates where those representations have been made to him within the period of 30 days beginning with the date (or, as the case may be, the latest date) of the publication of any advertisement published in pursuance of subsection (4)(a).

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- (6) Where the Secretary of State redetermines an application, he may (according to the circumstances of the case)—
- (a) direct the harbour authority to grant either—
    - (i) a licence free from conditions, or
    - (ii) a licence subject to such conditions as are specified in the direction, as he thinks fit;
  - (b) direct the harbour authority to cancel any licence granted by them in pursuance of the application; or
  - (c) affirm the harbour authority’s determination of the application.
- (7) Any direction given by the Secretary of State under subsection (6)(a) shall be a direction requiring the authority in question to grant such a licence as is mentioned in sub-paragraph (i) or (ii) of that provision either—
- (a) in the form in which it was originally applied for by the applicant, or
  - (b) in that form but subject to such modifications as are specified in the direction, as the Secretary of State thinks fit; but where the Secretary of State proposes to specify any modifications under paragraph (b) above which appear to him to be capable of resulting in any substantial interference with navigation—
    - (i) he shall take such steps as appear to him to be reasonably practicable for informing persons likely to be concerned, and
    - (ii) shall not so specify those modifications unless there has elapsed such period for consideration of, and comment upon, them as he thinks reasonable.
- (8) The power of the Secretary of State to make any regulations under this section with respect to any harbour authority shall be exercisable by him either—
- (a) on the application of the harbour authority, or
  - (b) of his own motion after consulting the authority.
- (9) On each occasion when a harbour authority grant a licence in the exercise of any such power as is mentioned in subsection (1) (whether they do so in pursuance of the preceding provisions of this section or not) they shall furnish the Hydrographer of the Navy—
- (a) before the operation to which the licence relates has been begun, with written particulars of the operation and with a plan showing where it is to be carried out, and
  - (b) once the operation has been carried out, with a notification of that fact, and with such plans and additional information relating to the completed operation as he may require for the purpose of determining whether, and if so what, changes should be made to any chart or other publication produced under his superintendence.
- (10) It shall be the duty of any harbour authority to whom the Secretary of State gives a direction under or by virtue of this section to give effect to the direction.
- (11) In this section “licence” includes a consent or permission and references to the grant of a licence accordingly include references to the giving of a consent or permission.

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**Marginal Citations**

M7 1949 c. 74.

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