



# Merchant Shipping Act 1988 (repealed)

## 1988 CHAPTER 12

### PART III

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

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

**F1**30 .....

#### Textual Amendments

**F1** S. 30 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

**F2**30A .....

#### Textual Amendments

**F2** S. 30A inserted (1.5.1994) by 1993 c. 22, s. 8(3), **Sch. 4 para. 12(2)**; S.I. 1993/3137, art. 3(2), **Sch. 2** and repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

**F3**31 .....

#### Textual Amendments

**F3** S. 31 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

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F4 32 .....

**Textual Amendments**  
F4 S. 32 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), Sch. 12 (with s. 312(1), Sch. 14 para. 1)

F5 33 .....

**Textual Amendments**  
F5 S. 33 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), Sch. 12 (with s. 312(1), Sch. 14 para. 1)

F6 34 .....

**Textual Amendments**  
F6 S. 34 repealed (1.5.1994) by 1993 c. 22, s. 8(4), Sch. 5 Pt. II; S.I. 1993/3137, art. 3(2), Sch.2 and repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), Sch. 12 (with s. 312(1), Sch. 14 para. 1)

F7 35 .....

**Textual Amendments**  
F7 S. 35 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), Sch. 12 (with s. 312(1), Sch. 14 para. 1)

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

- (1) The <sup>M1</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

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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;
- (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—

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**“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,

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.

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- (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)—
- “(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

M1 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>M2</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 sub-paragraph (i) above or any of paragraphs (b) to (g) below to have

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- 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;
- (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.

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- (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).
- (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—

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- (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**

**M2** 1949 c. 74.



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