



Merchant Shipping Act 1988 (repealed)

1988 CHAPTER 12

PART III

MISCELLANEOUS PROVISIONS RELATING TO MERCHANT SHIPPING ETC.

Safety of navigation, oil pollution etc.

F130

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F1 S. 30 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

F230A

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S. 30A inserted (1.5.1994) by 1993 c. 22, s. 8(3), **Sch. 4 para. 12(2)**; S.I. 1993/3137, art. 3(2), **Sch. 2** and repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

F331

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F3 S. 31 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

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Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1988 (repealed), Cross Heading: Safety of navigation, oil pollution etc.. (See end of Document for details)

F432

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F4 S. 32 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

F533

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F5 S. 33 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

F634

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F6 S. 34 repealed (1.5.1994) by 1993 c. 22, s. 8(4), **Sch. 5 Pt. II**; S.I. 1993/3137, art. 3(2), **Sch.2** and repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

F735

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F7 S. 35 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

F836 **Amendments of Coast Protection Act 1949 relating to safety of navigation.**

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Textual Amendments
F8 S. 36 repealed (E.W.) (6.4.2011) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 22 Pt. 2**; S.I. 2011/556, art. 3(2)(d); and (S.) by Marine (Scotland) Act 2010 (asp 5), s. 168(1), Sch. 4 para. 2 (with s. 162); S.S.I. 2011/58, art. 3(d)

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 ^{M1}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

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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;
- (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.

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- (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).
- (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—

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- (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.

Marginal Citations

M1 1949 c. 74.

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