
STATUTORY INSTRUMENTS

2008 No. 3257

The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008

PART 7

Inspections, Detentions and Offences

General provisions on detention

38.—(1) Subject to paragraph (2), where regulation 16(1) has effect in relation to a ship, or a surveyor of ships has clear grounds for believing that—

- (a) a Sewage Certificate is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid,
- (b) documentation referred to in regulation 19(2) (“appropriate documentation”) is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid,
- (c) the condition of a ship or its equipment does not correspond substantially with the particulars of that Certificate or other appropriate documentation,
- (d) the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage,
- (e) the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by garbage, or
- (f) an offence under regulation 42(1) is being committed in respect of a ship,

the ship is liable to be detained until a surveyor of ships is satisfied that it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) A person having powers to detain a ship may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) Where a surveyor of ships has clear grounds for believing that an offence under regulation 42(1)(e) or (f) has been committed in respect of a ship, the ship is liable to be detained.

(4) The power under this regulation to detain a ship may only be exercised if the ship in question is in—

- (a) a port in the United Kingdom, in the case of paragraph (1)(e), or
- (b) a port or offshore terminal in the United Kingdom, in any other case.

(5) Section 284 of the 1995 Act(1) (enforcing detention of a ship) applies where a ship is liable to be detained under the preceding provisions of this regulation as if—

(1) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1.

- (a) references to detention of a ship under the Act were references to detention of the ship in question under the preceding provisions of this regulation, and
 - (b) subsection (7) were omitted.
- (6) Where a ship is liable to be detained under the preceding provisions of this regulation, the person detaining the ship must serve on the master of the ship a detention notice which—
- (a) states the grounds for the detention, and
 - (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the 1995 Act.
- (7) Where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.
- (8) Where a ship is detained under paragraph (3), a person having power to detain the ship must, at the request of the owner, master, demise charterer or manager, immediately release the ship—
- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the ship is detained;
 - (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
 - (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security, or
 - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,
 by or on behalf of the owner, manager, demise charterer or master;
 - (d) where the owner, manager, demise charterer or master is convicted of an offence under that regulation, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
 - (e) the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982(2), and any bond or other financial security ordered by such court or tribunal is posted.
- (9) The Secretary of State must repay any sum paid in pursuance of paragraph (8)(c) or release any security so given—
- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if proceedings for that offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (10) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (8)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 42(1)(e) or (f), the sum so paid or the amount made available under the security must be applied as follows—
- (a) first in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
 - (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.

(11) Section 145 of the 1995 Act⁽³⁾ (interpretation of section 144) applies for the purposes of paragraphs (8) to (10), but as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
- (b) references to an offence under section 131 were references to an offence under regulation 42(1)(e) or (f).

(3) Section 145 was amended by the Criminal Justice Act 2003 (c.44), Schedule 36.