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## STATUTORY INSTRUMENTS

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### 2010 No. 330

## The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) Regulations 2010

### PART 3

#### ENFORCEMENT

##### Offences and penalties

**15.**—(1) Any person who acts in contravention of, or fails to comply with, regulation 6, 7, 8, 9 or 11(6) or the conditions attached under regulation 11(5)(c) is guilty of an offence and is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

(2) Any person who acts in contravention of, or fails to comply with, regulation 13 is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Any person who acts in contravention of, or fails to comply with, regulation 10, 12 or 23 is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A worker who fails to comply with regulation 14(2) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) Section 146(1) of the Act (enforcement of fines) applies to any fine imposed for an offence under paragraphs (1) to (3), as if the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 were a reference to proceedings against any person for an offence under those paragraphs.

##### Offences by body corporate

**16.**—(1) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

(3) Where an offence under these Regulations committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of that offence and is liable to be proceeded against and punished accordingly.

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## **Onus of proving what is reasonably practicable**

17. In any proceedings under these Regulations consisting of a failure to comply with the duty in regulation 4(3) to do something so far as is reasonably practicable, it shall be for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy that duty.

## **Detention of a United Kingdom ship**

18.—(1) Where a surveyor of ships is satisfied that there is or has been a failure to comply in relation to any ship with the requirements of these Regulations, that ship is liable to be detained until a surveyor of ships is satisfied that those requirements are complied with.

(2) A surveyor of ships 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.

(3) A ship shall not be delayed or detained unreasonably under this regulation.

(4) Where a ship is detained because in relation to it there has been a failure to comply with the requirements of these Regulations, and that failure has ceased, a person having power to detain the ship shall, at the request of the owner or master, immediately release the ship—

- (a) if no proceedings for an offence arising from the failure in question are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the employer or other person having control of the matter in question 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 employer or other person having control of the matter in question;
- (d) where the employer or other person having control of the matter in question is convicted of an offence arising from the failure in question, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) if 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<sup>M1</sup>, and any bond or other financial security ordered by such court or tribunal is posted.

(5) The Secretary of State shall repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—

- (a) if no proceedings for an offence arising from the failure in question are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the employer or other person having control of the matter in question being convicted.

(6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the employer or other person having control of the matter in question is convicted of an offence arising from the failure in question, the sum so paid or the amount made available under the security shall be applied as follows—

- (a) first in payment of any costs or expenses ordered by the court to be paid by the employer or other person having control of the matter in question, and
- (b) next in payment of any fine imposed by the court,

and any balance shall be repaid to the first-mentioned person.

(7) Section 145 of the Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if—

- (a) references to the master or owner of the ship were references to the employer or other person having control of the matter in question; and
- (b) references to an offence under section 131 were references to an offence arising from the failure in question.

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**Marginal Citations**

**M1** Cmnd. 8941.

**Inspection and other measures in respect of ships registered outside the United Kingdom**

**19.**—(1) When a ship which is not a United Kingdom ship is in United Kingdom waters, a relevant inspector may inspect that ship to ascertain whether the standards required in relation to United Kingdom ships by these Regulations are met in relation to that ship.

(2) Where a surveyor of ships is satisfied that the standards required in relation to United Kingdom ships by these Regulations are not met in relation to a ship which is not a United Kingdom ship but is in United Kingdom waters, that surveyor of ships may—

- (a) send a report to the government of the State whose flag the ship is entitled to fly, and a copy to the Director General of the International Labour Office <sup>M2</sup>; and
- (b) where conditions on board are clearly hazardous to health and safety, take such measures as are necessary to ensure those conditions are rectified.

(3) A ship to which paragraph (2)(b) applies is liable to be detained until a surveyor of ships is satisfied that those conditions are rectified.

(4) A surveyor of ships may permit a ship which is liable to be detained under paragraph (3) to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard.

(5) If any of the measures specified in paragraph (2)(b) or (3) are taken, the surveyor of ships shall immediately notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(6) A ship shall not in the exercise of the power under this regulation be delayed or detained unreasonably.

(7) In paragraph (1), “relevant inspector” means a person mentioned in paragraph (a), (b) or (c) of section 258(1) of the Act <sup>M3</sup>.

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**Marginal Citations**

**M2** The International Labour Office is the permanent secretariat of the International Labour Organisation which is an agency of the United Nations.

**M3** Section 258(1) was amended by the [Merchant Shipping and Maritime Security Act 1997 \(c.28\)](#), [Schedule 1 paragraph 4](#) and [Schedule 7 Part1](#).

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## Application of powers of inspectors in relation to Government ships

**20.** Sections 258 to 266 of the Act <sup>M4</sup> apply to these Regulations as if they were for all purposes made under section 85 of the Act and accordingly those sections apply in relation to Government ships.

### Marginal Citations

**M4** These sections provide powers to inspect ships and their equipment, powers of inspectors in relation to premises and ships, for the service of improvement notices and prohibition notices and their reference to arbitration, compensation for invalid prohibition notices and offences.

## Enforcement of detention

**21.**—(1) Section 284 of the Act <sup>M5</sup> (enforcing detention of ship) applies where a ship is liable to be detained under these Regulations as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under these Regulations; and
- (b) subsection (7) were omitted.

(2) Where a ship is liable to be detained under these Regulations the person detaining the ship shall serve on the master of the ship a detention notice which shall—

- (a) state that a surveyor of ships is of the opinion that in relation to that ship there is a failure to comply with the requirements of these Regulations;
- (b) specify the matters which, in the opinion of the surveyor of ships, have the effect that in relation to that ship those requirements are not met; and
- (c) require the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the Act.

### Marginal Citations

**M5** Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 1 paragraph 5.

## Right of appeal and compensation

**22.** Regulations 11 and 12 (right of appeal and compensation) of the Merchant Shipping (Port State Control) Regulations 1995 <sup>M6</sup> (which, by virtue of regulation 19 of those regulations apply in relation to the exercise of powers of detention contained in safety regulations) apply in relation to a detention notice served on a Government ship under these Regulations as if these Regulations were for all purposes made under section 85 of the Act.

### Marginal Citations

**M6** [S.I. 1995/3128](#), as amended by [S.I. 2003/1636](#) and other amendments not relevant to these Regulations.

## Prohibition on levy

**23.** No charge in respect of anything done or provided in pursuance of any specific requirement of these Regulations shall be levied or permitted to be levied on any worker.

## [<sup>F1</sup>Review

**24.—**(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive (in so far as it is implemented in the United Kingdom by means of these Regulations) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with 10th August 2012.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.]

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### Textual Amendments

**F1** Reg. 24 inserted (10.8.2012) by [The Merchant Shipping and Fishing Vessels \(Health and Safety at Work\) \(Chemical Agents\) \(Amendment\) Regulations 2012 \(S.I. 2012/1844\)](#), regs. 1(2), 3

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- [Blanket amendment words substituted by S.I. 2011/1043 art. 3-68-10](#)