
STATUTORY INSTRUMENTS

2022 No. 737

The Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Regulations 2022

PART 7

Enforcement

Inspection of ships

38.—(1) Insofar as sections 258(1) (powers to inspect ships and their equipment etc.) and 259 (powers of inspectors in relation to premises and ships) of the 1995 Act apply in relation to a ship to which these Regulations apply, for the purpose of checking compliance with these Regulations those sections have effect subject to the following modifications.

(2) The power to inspect a ship and its equipment, any part of the ship, any articles on board and any document carried in the ship, is limited to—

- (a) verifying that there is on board a valid IBWM Certificate in respect of the ship;
- (b) inspecting the ballast water record book; or
- (c) taking samples of the ship's ballast water,

except where paragraph (3) applies.

(3) This paragraph applies—

- (a) where the ship—
 - (i) does not carry a valid IBWM Certificate; or
 - (ii) is detected to have violated these Regulations or the Convention; or
- (b) if there are clear grounds for believing that—
 - (i) the condition of the ship or its equipment does not correspond substantially with the particulars of the IBWM Certificate; or
 - (ii) the master or the crew are not familiar with essential shipboard procedures relating to ballast water management or have not implemented such procedures.

(4) The power in those sections to go on board a ship may only be exercised if the ship is—

- (a) in a port in the United Kingdom;
- (b) at an offshore terminal in United Kingdom waters or controlled waters; or
- (c) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.

(5) Where the ship is inspected for the purposes of paragraph (3)(a)(ii) and is not a United Kingdom ship, the person exercising the powers of inspection must ensure that the report of the inspection is sent to—

(1) Section 258 is amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1, paragraph 4, and Schedule 7, Part 1, and the Protection of Freedoms Act 2012 (c. 9), Schedule 2, Part 1 paragraph 2 and Schedule 10, Part 2.

- (a) the appropriate maritime authorities of the ship's flag State or a diplomatic representative of that State; and
 - (b) any other party to the Convention who requested the inspection.
- (6) Where the ballast water record book is inspected under paragraph (2)(b) the person exercising the power of inspection may—
- (a) make a copy of an entry in that book; and
 - (b) require the master of the ship to certify that the copy is a true copy of the original.
- (7) Any copy certified in accordance with paragraph (6) is to be admissible in any judicial proceedings as evidence of the facts stated in it.
- (8) The inspection of a ballast water record book and the taking of a certified copy of an entry as described in paragraph (6) must be performed as expeditiously as possible without causing the ship to be unduly delayed.
- (9) The time required to analyse samples of a ship's ballast water taken pursuant to this regulation must not be used to unduly delay the operation, movement or departure of the ship.

Prohibition on discharge following sampling

- 39.**—(1) Where a sampling of a ship's ballast water under regulation 38(2)(c) (inspection of ships) indicates that the ship poses a threat to the environment, human health, property or resources, the person exercising the powers of inspection must serve on the master of the ship a notice which—
- (a) prohibits the ship from discharging ballast water until the threat has been removed; and
 - (b) states the grounds for the prohibition.
- (2) The person exercising the powers of inspection must ensure that a copy of the notice is sent—
- (a) in the case of a United Kingdom ship, to the Certifying Authority that issued the ship's IBWM Certificate; or
 - (b) in the case of a ship which is not a United Kingdom ship, immediately to the appropriate maritime authorities of the ship's flag State or a diplomatic representative of that State.
- (3) Where the ship is permitted to proceed to its next port of call, the person exercising the powers of inspection must ensure that a copy of the notice is sent to that port.
- (4) A notice served under paragraph (1) must be complied with.

General provisions on detention

- 40.**—(1) Where—
- (a) a determination is made of a kind mentioned in regulation 35(1) (procedure to be adopted when a ship is deficient) in relation to a ship; or
 - (b) a surveyor of ships has clear grounds for believing that—
 - (i) an IBWM 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;
 - (ii) documentation referred to in regulation 24(b) (prohibition on non-United Kingdom ships proceeding to sea without an IBWM Certificate or appropriate documentation) ("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;
 - (iii) a ship's ballast water management does not conform to the particulars of the IBWM Certificate, if any, or other appropriate documentation issued in respect of that ship;

(iv) the master or crew of a ship are not familiar with essential shipboard procedures relating to the prevention of pollution by ballast water or have not implemented such procedures; or

(v) an offence under regulation 44 (offences) 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 a threat of harm to the environment, human health, property or resources.

(2) Notwithstanding paragraph (1), a person having power 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—

(a) discharging ballast water; or

(b) proceeding to the nearest appropriate repair yard or reception facility available,

provided that in proceeding to sea the ship will not present a threat of harm to the environment, human health, property or resources.

(3) A person permitting a ship to proceed to sea under paragraph (2) must inform the ship's next port of call of all information relevant to the detention of the ship under paragraph (1).

(4) Where a surveyor of ships has clear grounds for believing that an offence under regulation 44(1)(a) (offences) has been committed in respect of a ship, the ship is liable to be detained.

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

(a) in a port in the United Kingdom;

(b) at an offshore terminal in United Kingdom waters or controlled waters; or

(c) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.

(6) Section 284 of the 1995 Act⁽²⁾ (enforcing detention of a ship) applies where a ship is liable to be detained under the preceding provisions of this regulation as if—

(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.

(7) 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.

(8) Where a ship is detained the person detaining the ship must—

(a) in the case of a United Kingdom ship, inform the Certifying Authority that issued the ship's IBWM Certificate; or

(b) in the case of a ship which is not a United Kingdom ship, immediately inform the appropriate maritime authorities of the ship's flag State or a diplomatic representative of that State.

(9) Where a ship is detained under paragraph (4), a person having power to detain the ship must immediately release the ship—

(a) if no proceedings for an offence under regulation 44(1)(a) (offences) are instituted within the period of seven days beginning with the day on which the ship is detained;

(2) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1, paragraph 5, and S.I. 2015/664, Schedule 4, Part 1, paragraph 27(1) and (15).

- (b) if any proceedings for an offence under regulation 44(1)(a) (offences), 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 regulation 44(1)(a) (offences), 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 UNCLOS and any bond or other financial security ordered by such court or tribunal is posted.
- (10) The Secretary of State must repay any sum paid in pursuance of paragraph (9)(c) or release any security so given—
- (a) if no proceedings for an offence under regulation 44(1)(a) (offences) are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if any proceedings for an offence under regulation 44(1)(a) (offences), instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (11) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (9)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 44(1)(a) (offences), 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.
- (12) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (9) to (11) 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 (discharge of oil from ships into certain United Kingdom waters) were references to an offence under regulation 44(1)(a) (offences).

Power for a harbour master to detain a ship

41.—(1) Where the harbour master of a harbour in the United Kingdom has clear grounds for believing that an offence has been committed under regulation 44(1)(a) (offences) by the discharge from a ship of any ballast water or sediments into the waters of the harbour, the harbour master may detain the ship.

(2) Section 144(2) and (3) of the 1995 Act (harbour master's power of detention of ships for certain offences) apply to a detention under paragraph (1) as it applies to a detention under section 144(1) of the 1995 Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master 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 the harbour authority.
- (4) Where a ship is detained under this regulation, the harbour master must immediately release the ship—
 - (a) if no proceedings for an offence under regulation 44(1)(a) (offences) 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 regulation 44(1)(a) (offences), 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 harbour authority by way of security; or
 - (ii) security which, in the opinion of the harbour master, is satisfactory and is for an amount not less than £30,000 is given to the harbour authority,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 regulation 44(1)(a) (offences), 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 UNCLOS and any bond or other financial security ordered by such court or tribunal is posted.
- (5) The harbour authority must repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—
 - (a) if no proceedings for an offence under regulation 44(1)(a) (offences) 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 under regulation 44(1)(a) (offences), having been instituted within that period, are concluded without the owner, manager, demise charterer or master 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 owner, manager, demise charterer or master is convicted of an offence under regulation 44(1)(a) (offences), 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.
- (7) Section 145 of the 1995 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 owner, manager, demise charterer or master; and
 - (b) references to an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were references to an offence under regulation 44(1)(a) (offences).

Duty of a harbour master to report deficient ships

42. The harbour master of a harbour in the United Kingdom must immediately notify the Secretary of State if the harbour master has reason to believe that a ship is about to—

- (a) enter the harbour; or

(b) leave the harbour,
and does not comply with the requirements of these Regulations.

Right of appeal and compensation

43.—(1) Regulations 15 (arbitration) and 16 (compensation) of the Merchant Shipping (Port State Control) Regulations 2011⁽³⁾ apply in relation to the exercise of the power of detention under these Regulations as they apply in relation to the exercise of those powers under Part 1 (implementation of [Directive 2009/16/EC](#)) of those Regulations, subject to the modifications referred to in paragraph (2).

(2) The modifications are—

- (a) references to “inspector” are to be taken as references to the authority detaining the ship, or the harbour master, as the case may be;
- (b) references to—
 - (i) “issue of a refusal of access notice”;
 - (ii) “refusal of access”;
 - (iii) “refusal of access notice”;
 - (iv) “served with a refusal of access notice”; and
 - (v) “service of a refusal of access notice”,
 are omitted; and
- (c) in regulation 16(2) after “State” there is added “, except where the ship is detained by a harbour master, in which case any compensation awarded under this section must be paid by the harbour authority”.

Offences

44.—(1) Any contravention of—

- (a) regulation 5(1) (requirement to conduct ballast water management) or 39(4) (prohibition on discharge following sampling) is an offence by the owner, manager, demise charterer and master of the ship;
- (b) regulation 9(1), (4) or (5) (ballast water management plan), 10(1)(a), (2) to (4), (6) or (8) (ballast water record book), 16(2) (approval of ballast water management systems) or 29(2) (extension of periods of validity of IBWM Certificates by a Certifying Authority), is an offence by the owner, manager, demise charterer and master of the ship;
- (c) regulation 9(3) (ballast water management plan) or 10(5) (ballast water record book) is an offence by the master of the ship;
- (d) regulation 10(4) (ballast water record book) is an offence by the officer in charge of the relevant operation;
- (e) regulation 10(10) (ballast water record book), 16(1) (approval of ballast water management systems) or 35(5) (procedure to be adopted when a ship is deficient) is an offence by the owner of the ship;
- (f) regulation 14(2) (requirement to provide sediment reception facilities) is an offence by the owner and operator of the shipyard in question;
- (g) regulation 20(4) (ballast water management systems which use active substances), 23 (prohibition on United Kingdom ships proceeding to sea without an IBWM Certificate), 24 (prohibition on non-United Kingdom ships proceeding to sea without an IBWM Certificate

(3) [S.I. 2011/2601](#), to which there are amendments not relevant to these Regulations.

- or appropriate documentation), 31(1) or (2) (responsibilities of the owner and the master), 32(2) (additional surveys of United Kingdom ships) or 37(5) (miscellaneous provisions relating to IBWM Certificates) is an offence by the owner and the master of the ship;
- (h) regulation 31(3) (responsibilities of the owner and the master) is an offence by the owner, demise charterer and the master of the ship; or
- (i) regulation 37(4) (miscellaneous provisions relating to IBWM Certificates) is an offence by the person in question.
- (2) Any failure by a master to comply with a requirement under regulation 38(6)(b) (inspection of ships) is an offence.
- (3) An offence under paragraphs (1) or (2) is punishable—
- (a) on summary conviction—
- (i) in England and Wales, by a fine; or
- (ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment by a fine.

Defences

45.—(1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that they took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings for an offence comprising a contravention of regulation 5(1) (requirement to conduct ballast water management) or regulation 39(4) (prohibition on discharge following sampling) it is a defence for the person charged to prove that—

- (a) the ship was not a United Kingdom ship;
- (b) the discharge took place in waters that were not United Kingdom waters or controlled waters; and
- (c) the ship was in a port in the United Kingdom at the time of the institution of the proceedings by reason only of stress of weather or any other reason beyond the control of the owner, manager, charterer or master of the ship.

Restriction on jurisdiction over offences outside United Kingdom limits

46.—(1) In respect of a ship which is not a United Kingdom ship, proceedings for an offence under regulation 44(1)(a) (offences) alleged to have been committed in the internal waters, territorial sea or exclusive economic zone of a foreign State must not be instituted in the United Kingdom unless—

- (a) that foreign State, the flag State of the ship or a foreign State polluted or threatened with pollution as a result of the offence requests that such proceedings be taken; or
- (b) the offence has caused or is likely to cause pollution in United Kingdom waters or controlled waters.

(2) Where such proceedings have been instituted but not concluded, they must be suspended upon the request of the foreign State in question and the Secretary of State must send all the evidence, court records and documents relating to the case, together with any sum paid or security given, to the foreign State.

(3) In this regulation “exclusive economic zone” in relation to a foreign State, means the area beyond and adjacent to the territorial sea of that State, but not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Suspension of proceedings at flag State request

47.—(1) This regulation applies to proceedings instituted but not concluded in the United Kingdom for an offence under regulation 44(1)(a) (offences) alleged to have been committed outside United Kingdom waters in relation to a ship which is not a United Kingdom ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the court is satisfied that the ship's flag State has instituted proceedings corresponding to the proceedings in paragraph (1) within six months of the institution of the proceedings in the United Kingdom.

(3) Paragraph (2) does not apply—

- (a) where the offence resulted in serious pollution of the United Kingdom; or
- (b) if the Secretary of State certifies that the ship's flag State has repeatedly disregarded its obligations to enforce effectively the requirements of the Convention in respect of its ships.

(4) Where proceedings instituted by the ship's flag State have been brought to a conclusion, the suspended proceedings must be terminated.

Service of documents on foreign companies

48. Section 143(6) of the 1995 Act(4) (service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 131 of the 1995 Act) applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) of the 1995 Act, as if—

- (a) the reference to section 131 were to these Regulations;
- (b) in the case of an offence in respect of a ship other than a floating platform, the reference to the owner were to the owner, manager or demise charterer; and
- (c) in the case of any offence in respect of a floating platform, the reference to—
 - (i) the owner of the ship were to the owner of the platform; and
 - (ii) the master of the ship were to the manager of the platform.

Enforcement and application of fines

49. Section 146 of the 1995 Act (enforcement and application of fines) applies to any fine for an offence under regulation 44(1)(a) (offences) as if—

- (a) in subsection (1) of that section the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 were a reference to proceedings against the owner, manager, demise charterer or master for an offence under regulation 44(1)(a) (offences); and
- (b) in subsection (2) of that section, the reference to an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were a reference to an offence under regulation 44(1)(a) (offences).

(4) Section 143(6) is amended by [S.I. 2009/1941](#), Schedule 1, paragraph 152(1) and (2).