



Merchant Shipping Act 1979

1979 CHAPTER 39

Inspectors

26 Extension of power to appoint Department of Trade inspectors

In section 728 of the Merchant Shipping Act 1894 (under which the Secretary of State may appoint a person as an inspector to report to him whether, among other things, the provisions of regulations made by virtue of that Act have been complied with) after the words " by virtue of this Act" there shall be inserted the words " or the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations".

27 Powers of Department of Trade inspectors

(1) An inspector appointed in pursuance of section 728 of the Merchant Shipping Act 1894—

(a) may at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time)—

(i) enter any premises in the United Kingdom, or

(ii) board any ship which is registered in the United Kingdom wherever it may be and any other ship which is present in the United Kingdom or the territorial waters of the United Kingdom,

if he has reason to believe that it is necessary for him to enter the premises or board the ship for the purpose of performing his functions as such an inspector;

(b) may, on entering any premises by virtue of paragraph (a) above or on boarding a ship by virtue of that paragraph, take with him any other person authorised in that behalf by the Secretary of State and any equipment or materials required to assist him in performing the said functions;

(c) may make such examination and investigation as he considers necessary for the purpose of performing the said functions;

(d) may, as regards any premises or ship which he has power to enter or board, give a direction requiring that the premises or ship or any part of the premises or ship or any thing in the premises or ship or such a part shall be left

Status: This is the original version (as it was originally enacted).

undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c) above;

- (e) may take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
- (f) may take samples of any articles or substances found in any premises or ship which he has power to enter or board and of the atmosphere in or in the vicinity of any such premises or ship ;
- (g) may, in the case of any article or substance which he finds in any such premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary for the purpose of performing the said functions);
- (h) may, in the case of any such article or substance as is mentioned in paragraph (g) above, take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it and do to it anything which he has power to do under that paragraph,
 - (ii) to ensure that it is not tampered with before his examination of it is completed,
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the Merchant Shipping Acts or under regulations made by virtue of any provision of those Acts;
- (i) may require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c) above—
 - (i) to attend at a place and time specified by the inspector, and
 - (ii) to answer (in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask, and
 - (iii) to sign a declaration of the truth of his answers;
- (j) may require the production of, and inspect and take copies of or of any entry in.—
 - (i) any books or documents which by virtue of any provision of the Merchant Shipping Acts are required to be kept; and
 - (ii) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under paragraph (c) above;
- (k) may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this subsection.

(2) It is hereby declared that nothing in the preceding provisions of this section authorises a person unnecessarily to prevent a ship from proceeding on a voyage.

(3) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (1)(f) above and

subsection (6) below and provision as to the way in which samples that have been so taken are to be dealt with.

- (4) Where an inspector proposes to exercise the power conferred by subsection (1)(g) above in the case of an article or substance found in any premises or ship, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.
- (5) Before exercising the power conferred by subsection (1)(g) above, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.
- (6) Where under the power conferred by subsection (1)(h) above an inspector takes possession of any article or substance found in any premises or ship, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.
- (7) No answer given by a person in pursuance of a requirement imposed under subsection (1)(i) above shall be admissible in evidence against that person or the husband or wife of that person in any proceedings except proceedings in pursuance of subsection (1)(c) of the following section in respect of a statement in or a declaration relating to the answer; and a person nominated as mentioned in the said subsection (1)(i) shall be entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him.

28 Provisions supplementary to s. 27

- (1) A person who—
 - (a) wilfully obstructs a Department of Trade inspector in the exercise of any power conferred on him by the preceding section; or
 - (b) without reasonable excuse, does not comply with a requirement imposed in pursuance of the preceding section or prevents another person from complying with such a requirement; or
 - (c) without prejudice to the generality of the preceding paragraph, makes a statement or signs a declaration which he knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made in pursuance of subsection (1)(i) of the preceding section,shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000 or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (2) In relation to a person, other than a Department of Trade inspector, who has the powers conferred on such an inspector by the preceding section—
 - (a) that section and the preceding subsection shall have effect as if for references to such an inspector there were substituted references to the person ; and

Status: This is the original version (as it was originally enacted).

- (b) that section shall have effect as if for references to the functions of such an inspector there were substituted references to the functions in connection with which those powers are conferred on the person.
- (3) Nothing in the preceding section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, as the case may be, on an order for the production of documents in an action in the Court of Session.
- (4) A person who complies with a requirement imposed on him in pursuance of paragraph (i)(i) or (k) of subsection (1) of the preceding section shall be entitled to recover from the person who imposed the requirement such sums in respect of the expenses incurred in complying with the requirement as are prescribed by regulations made by the Secretary of State, and the regulations may make different provision for different circumstances ; and any payments in pursuance of this subsection shall be made out of money provided by Parliament.
- (5) References in the Merchant Shipping Acts to a Department of Trade inspector are to an inspector appointed in pursuance of section 728 of the Merchant Shipping Act 1894.
- (6) Sections 729 and 730 of the Merchant Shipping Act 1894 (which relate to the powers and to obstruction of inspectors shall cease to have effect and the following enactments (which provide for certain persons to have the powers of a Department of Trade inspector in connection with the functions there mentioned) shall cease to have effect, namely—
- section 420(3) of the Merchant Shipping Act 1894 and in sections 369(3) and 431(1) of that Act the words from " and " onwards ;
 - in section 7(2) of the Merchant Shipping Act 1964 the words from " and for that purpose " to " Acts " ;
 - section 11(2) of the Merchant Shipping (Load Lines) Act 1967 and in sections 17(1) and 24(6) of that Act the words from " and " onwards;
 - in section 1(3) of the Fishing Vessels (Safety Provisions) Act 1970 the words from " and " onwards;
- and in section 14(3) of the Merchant Shipping (Safety Convention) Act 1949 (which also provides as aforesaid) for the words from " shall have all the powers " onwards there shall be substituted the words " may go on board the ship and inspect it and anything on it " .
- (7) Without prejudice to the operation of section 17(2) of the Interpretation Act 1978 (which relates to the repeal and re-enactment of enactments)—
- (a) in sections 386(2), 459(6), 463(5), 465(2), 471(3)(b), 488(2) and 517(3) of the Merchant Shipping Act 1894 (which refer to the powers of a Department of Trade inspector under that Act) for the words "under this Act" there shall be substituted the words " under section 27 of the Merchant Shipping Act 1979 ";
 - (b) in sections 55(2) and 61(2) of the Merchant Shipping Act 1970 and in paragraph 5(2) of Schedule 2 to that Act (which refer to the powers conferred on an inspector by section 729 of the Merchant Shipping Act 1894) for the words " section 729 of the Merchant Shipping Act 1894 " there shall be substituted the words " section 27 of the Merchant Shipping Act 1979 " ; and
 - (c) in section 18 of the Prevention of Oil Pollution Act 1971 (which among other things applies the said section 729 to inspectors appointed under the said section 18)—

Status: This is the original version (as it was originally enacted).

- (i) in subsection (3) for the words " Section 729 of the Merchant Shipping Act 1894" there shall be substituted the words " Sections 27 and 28(1), (3) and (4) of the Merchant Shipping Act 1979 " and for paragraph (a) there shall be substituted the following paragraph—
 - (a) any reference to a ship included any vessel, any reference to the Merchant Shipping Acts (except the second reference in subparagraph (iii) of section 27(1)(h)) were a reference to this Act and the reference in that sub-paragraph to regulations were omitted;
- (ii) in subsections (4) and (5) for the words " under section 729 " there shall be substituted the words " under section 27 " and in subsection (5) the words from " and in subsection (3)" onwards shall be omitted;
- (iii) in subsection (8) after the words "by virtue of this section " there shall be inserted the words " and the obstruction is not punishable by virtue of the said section 28(1) ".