



Merchant Shipping and Maritime Security Act 1997

1997 CHAPTER 28

Pollution control and marine safety

5 Waste reception facilities at harbours

In Part VI of the 1995 Act (prevention of pollution), after Chapter I there is inserted—

“CHAPTER IA

WASTE RECEPTION FACILITIES AT HARBOURS

130A General

- (1) The Secretary of State may by regulations make such provision as he considers appropriate in relation to—
 - (a) the provision at harbours in the United Kingdom of facilities for the reception of waste from ships (in this Chapter referred to as “waste reception facilities”); and
 - (b) the use of waste reception facilities provided at such harbours.
- (2) In making the regulations, the Secretary of State shall take into account the need to give effect to provisions—
 - (a) which are contained in any international agreement mentioned in section 128(1) which has been ratified by the United Kingdom; and
 - (b) which relate to waste reception facilities.
- (3) Sections 130B to 130D make further provision with respect to the regulations that may be made under this section.

Status: This is the original version (as it was originally enacted).

130B Waste management plans

- (1) The regulations may make provision requiring a harbour authority for a harbour in the United Kingdom—
 - (a) in such circumstances as may be prescribed, to prepare a plan with respect to the provision and use of waste reception facilities at the harbour; and
 - (b) to submit the plan to the Secretary of State for approval.
- (2) The regulations may make provision requiring a person—
 - (a) if directed to do so by the Secretary of State, to prepare a plan with respect to the provision and use of waste reception facilities at any terminals operated by him within a harbour which is in the United Kingdom and is specified in the direction; and
 - (b) to submit the plan to the Secretary of State for approval.
- (3) For the purposes of this Chapter—
 - (a) “terminal” means any terminal, jetty, pier, floating structure or other works within a harbour at which ships can obtain shelter or ship and unship goods or passengers; and
 - (b) a person operates a terminal if activities at the terminal are under his control.
- (4) In the following provisions of this section, “waste management plan” means a plan of a description mentioned in subsection (1) or (2) above.
- (5) The regulations may make provision with respect to the form and content of waste management plans and may in particular require such plans to include—
 - (a) proposals as to the information to be provided about waste reception facilities to those who are expected to use them;
 - (b) proposals designed to ensure that adequate provision will be made for the disposal of waste deposited in waste reception facilities; and
 - (c) proposals about how costs incurred in establishing and running waste reception facilities will be recovered.
- (6) The regulations may require a person preparing a waste management plan to have regard to such matters as the Secretary of State may prescribe or in a particular case direct.
- (7) The regulations may make provision as to the procedures to be followed in connection with waste management plans and may in particular—
 - (a) require a person preparing a waste management plan to consult such persons as the Secretary of State may prescribe or in a particular case direct;
 - (b) enable the Secretary of State to approve waste management plans with or without modification or to reject such plans;
 - (c) enable the Secretary of State, if he is satisfied that a person who is required to prepare a waste management plan is not taking any steps necessary in connection with the preparation of the plan, to prepare such a plan;

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- (d) require harbour authorities and persons operating terminals to implement waste management plans once approved, or to take such steps as the Secretary of State may in a particular case direct for the purpose of securing that approved plans are implemented;
- (e) enable waste management plans, in such circumstances as may be prescribed, to be withdrawn, altered or replaced.

130C Charges for and use of waste reception facilities

- (1) The regulations may make provision enabling a statutory harbour authority, on levying ship, passenger and goods dues, to impose charges for the purpose of recovering the whole or a part of the costs of the provision by or on behalf of the authority of waste reception facilities at the harbour.
- (2) The regulations may make provision requiring the master of a ship—
 - (a) if reasonably required to do so by a Departmental officer, or
 - (b) in such other circumstances as may be prescribed,to deposit any waste carried by the ship, or any prescribed description of such waste, in waste reception facilities provided at a harbour in the United Kingdom.
- (3) The regulations may make provision—
 - (a) for the reference to arbitration of questions as to whether requirements made under regulations made in pursuance of subsection (2)(a) above were reasonable, and
 - (b) for compensation to be payable by the Secretary of State where a requirement is found to have been unreasonable.
- (4) The regulations may make—
 - (a) provision prohibiting the imposition by persons providing waste reception facilities at harbours in the United Kingdom of charges for the depositing of waste, or any prescribed description of waste, in the facilities; or
 - (b) provision authorising the imposition by such persons of such charges subject to such restrictions as may be prescribed.
- (5) The regulations may provide for charges to be imposed by virtue of subsection (4)(b) above—
 - (a) even though the charges are for the depositing of waste in compliance with a requirement imposed by virtue of subsection (2) above; and
 - (b) even though charges are also imposed by virtue of subsection (1) above.
- (6) Subsections (7) to (9) below apply if the regulations make provision enabling a statutory harbour authority to impose charges of a description mentioned in subsection (1) above.
- (7) The regulations may require information about the charges to be published in a way that is designed to bring the charges to the notice of persons likely to be affected.
- (8) The regulations may provide for the charges to be reduced at the instance of the Secretary of State following the making of an objection by a person of a prescribed description.

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- (9) Regulations made by virtue of subsection (8) above may in particular make provision which corresponds to that made by section 31(3) to (12) of the Harbours Act 1964.
- (10) The regulations may make provision as to the recovery of any charges imposed by virtue of this section.

130D Supplementary

- (1) The regulations may provide that where a person contravenes a requirement under the regulations he 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) The regulations may—
 - (a) provide for exemptions from any provision of the regulations;
 - (b) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time;
 - (c) make different provision for different cases;
 - (d) include such incidental, supplemental and transitional provision as appears to the Secretary of State to be expedient.
- (3) Regulations under section 130A which contain any provision of a description mentioned in section 130C (whether or not they also contain other provision) shall not be made unless a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of each House of Parliament.
- (4) A statutory instrument containing regulations under section 130A to which subsection (3) above does not apply (including regulations which revoke provision of a description mentioned in section 130C but do not contain any other provision made by virtue of section 130C) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

130E Interpretation of Chapter IA

In this Chapter—

“prescribe” means prescribe by regulations;

“ship, passenger and goods dues” has the same meaning—

- (a) in relation to Great Britain, as in the Harbours Act 1964; and
- (b) in relation to Northern Ireland, as in the Harbours Act (Northern Ireland) 1970;

“waste reception facilities” has the meaning given by section 130A(1).”

6 Indemnities in connection with counter-pollution measures

In section 293 of the 1995 Act (functions of Secretary of State in relation to marine pollution), after subsection (4) there is inserted—

“(4A) Where under subsection (1) above the Secretary of State agrees that another person shall take any measures to prevent, reduce or minimise the effects of marine pollution, he may agree to indemnify that other person in respect of liabilities incurred by that person in connection with the taking of the measures.”

7 Increased penalty for causing pollution, etc

- (1) In section 131(3)(a) of the 1995 Act (fine on summary conviction of offence of discharging oil into certain United Kingdom waters), for “£50,000” there is substituted “£250,000”.
- (2) Subsection (1) applies in relation to fines imposed in respect of offences committed after the commencement of this section.
- (3) In section 144(4)(c)(i) and (ii) of the 1995 Act (security for release of ship in case where offence under section 131 suspected) for “£55,000”, in both places where it occurs, there is substituted “£255,000”.
- (4) Subsection (3) applies in relation to ships detained after the commencement of this section.
- (5) Nothing in this section affects any Order in Council or instrument which is in force immediately before the commencement of this section and which—
 - (a) applies section 131(3) of the 1995 Act; or
 - (b) makes provision corresponding to that made in connection with offences under section 131 by section 144(4) of the 1995 Act.
- (6) Subsection (7) applies where immediately before the commencement of this section there is in force any Order in Council made under section 128(1) of the 1995 Act that confers power by any instrument made under the Order—
 - (a) to apply section 131(3) of the 1995 Act; or
 - (b) to make provision corresponding to that made in connection with offences under section 131 by section 144(4) of the 1995 Act.
- (7) The power conferred by the Order in Council shall be construed as a power to apply section 131(3) as amended by subsection (1) or (as the case may be) to make provision corresponding to that made by section 144(4) as amended by subsection (3).

8 Safety regulations

- (1) Section 85 of the 1995 Act (safety and health on ships) is amended as mentioned in subsections (2) to (5).
- (2) In subsection (1), for paragraphs (b) and (c) and the words following paragraph (c) there is substituted—
 - “(b) for securing the safety of other ships and persons on them while they are within United Kingdom waters and for protecting the health of persons on ships other than United Kingdom ships while they are within United Kingdom waters.”

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(3) After subsection (1) there is inserted—

“(1A) Except as provided by subsection (1B) below, safety regulations shall not apply in relation to—

- (a) a qualifying foreign ship while it is exercising—
 - (i) the right of innocent passage; or
 - (ii) the right of transit passage through straits used for international navigation; or
- (b) persons on such a ship while it is exercising any such right.

(1B) Safety regulations shall apply in relation to a qualifying foreign ship, and persons on such a ship, even though the ship is exercising a right mentioned in subsection (1A)(a) above, to the extent that the safety regulations give effect to any provisions of an international agreement ratified by the United Kingdom so far as it relates to the safety of ships or persons on them or to the protection of the health of persons on ships.”

(4) In subsection (3)—

- (a) the words from “and regulations” to “relates to safety” are omitted; and
- (b) for “paragraph (a), (b) or (c)” there is substituted “paragraph (a) or (b)”.

(5) In subsection (4) for “subsection (1)(a)” there is substituted “subsection (1)”.

(6) Section 86(5) and (6) of the 1995 Act (under which certain safety regulations are subject to affirmative resolution procedure) shall cease to have effect.

9 Inspection and detention of ships

Schedule 1 (amendments of the 1995 Act relating to the inspection and detention of ships) shall have effect.

10 Power to require ships to be moved

(1) After section 100B of the 1995 Act (which is inserted by section 1 of this Act) there is inserted—

“Power to require ships to be moved

100C Power to require ships to be moved

(1) The powers conferred by this section shall be exercisable where a ship in United Kingdom waters—

- (a) is not a qualifying foreign ship, or
- (b) is such a ship but appears to the Secretary of State to be exercising neither of the following rights—
 - (i) the right of innocent passage, and
 - (ii) the right of transit passage through straits used for international navigation.

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- (2) Subject to subsection (3) below, the Secretary of State may, for any one or more of the purposes specified in subsection (4) below, give directions to any of the persons specified in subsection (5) below requiring—
 - (a) that the ship is to be moved, or is to be removed from a specified area or locality or from United Kingdom waters, or
 - (b) that the ship is not to be moved to a specified place or area within United Kingdom waters, or over a specified route within United Kingdom waters.
- (3) The power of the Secretary of State under subsection (2)(a) above to require a ship to be removed from United Kingdom waters is not exercisable in relation to a United Kingdom ship.
- (4) The purposes referred to in subsection (2) above are—
 - (a) the purpose of securing the safety of the ship or of other ships, of persons on the ship or other ships, or of any other persons or property, or of preventing or reducing any risk to such safety, and
 - (b) the purpose of preventing or reducing pollution in the United Kingdom, in United Kingdom waters or in a part of the sea specified by virtue of section 129(2)(b), or of preventing or reducing any risk of such pollution.
- (5) The persons referred to in subsection (2) above are—
 - (a) the owner of the ship or any person in possession of the ship, or
 - (b) the master of the ship.
- (6) If in the opinion of the Secretary of State the powers conferred by subsection (2) above are, or have proved to be, inadequate for any of the purposes specified in subsection (4) above, the Secretary of State may for that purpose take any such action as he has power to require to be taken by a direction under this section.
- (7) The powers of the Secretary of State under subsection (6) above shall also be exercisable by such persons as may be authorised for the purpose by the Secretary of State.
- (8) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.
- (9) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (6) or (7) above—
 - (a) does not constitute contempt of court; and
 - (b) does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.
- (10) In this section—
 - (a) unless a contrary intention appears, “specified” in relation to a direction under this section, means specified by the direction; and

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- (b) the reference in subsection (9) above to the Admiralty Marshal includes a reference to the Admiralty Marshal of the Supreme Court of Northern Ireland.

100D Offences in relation to section 100C

- (1) If the person to whom a direction is duly given under section 100C contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.
- (2) If a person intentionally obstructs any person who is—
 - (a) acting on behalf of the Secretary of State in connection with the giving or service of a direction under section 100C;
 - (b) acting in compliance with a direction under that section; or
 - (c) acting under section 100C(6) or (7);
 he shall be guilty of an offence.
- (3) In proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.
- (4) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding £50,000;
 - (b) on conviction on indictment, to a fine.

100E Service of directions under section 100C

- (1) If the Secretary of State is satisfied that a company or other body is not one to which section 695 or section 725 of the Companies Act 1985 (service of notices) applies so as to authorise the service of a direction on that body under either of those sections, he may give a direction under section 100C of this Act to that body, as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship.
- (2) For the purpose of giving or serving a direction under section 100C to or on any person on a ship, a person acting on behalf of the Secretary of State shall have the right to go on board the ship.
- (3) In the application of subsection (1) above to Northern Ireland, for references to sections 695 and 725 of the Companies Act 1985 there shall be substituted references to Articles 645 and 673 of the Companies (Northern Ireland) Order 1986.”

11 Ships receiving trans-shipped fish

After section 100E of the 1995 Act (which is inserted by section 10 of this Act) there is inserted—

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

“100F Requirements to be met by ships in respect of which trans-shipment licences in force

- (1) In this section and section 100G “trans-shipment licence” means a licence under section 4A of the Sea Fish Conservation Act 1967 (prohibition of trans-shipment of fish unless authorised by a licence).
- (2) The Secretary of State may, for all or any of the purposes specified in subsection (3) below, by regulations prescribe requirements to be met by ships in respect of which trans-shipment licences are in force.
- (3) Those purposes are—
 - (a) the purpose of securing the safety of ships in respect of which trans-shipment licences are in force and persons on them,
 - (b) the purpose of protecting the health of persons on such ships,
 - (c) the purpose of securing the safety of any other persons or property, and
 - (d) the purpose of preventing or reducing pollution.
- (4) The matters with respect to which requirements may be prescribed under subsection (2) above include, in particular, the construction and equipment of ships, the manning of ships, and operational matters.
- (5) Without prejudice to the generality of subsection (2) above, regulations under that subsection may apply in relation to a ship in respect of which a trans-shipment licence is in force any requirements contained in—
 - (a) safety regulations,
 - (b) regulations under section 128, or
 - (c) any international agreement,whether or not those requirements would otherwise apply in relation to that ship.

100G Failure to comply with prescribed standards in respect of ship in respect of which trans-shipment licence is in force

- (1) If it appears to the Secretary of State that any requirement of regulations under section 100F(2) or regulations under section 192A is being contravened in respect of a ship in respect of which a trans-shipment licence is in force, he may serve on the master a notice under subsection (2) below.
- (2) A notice under this subsection must specify the contravention by reason of which it is given and must—
 - (a) prohibit the receiving by the ship of fish trans-shipped from another ship,
 - (b) prohibit the processing of fish on the ship, or
 - (c) prohibit both such receiving and such processing.
- (3) The Secretary of State shall revoke a notice under subsection (2) above if he is satisfied that the contravention specified in it has been remedied.
- (4) If a trans-shipment licence ceases to be in force in respect of a ship to which a notice under subsection (2) above relates, the notice is revoked by virtue of this subsection.

- (5) If without reasonable excuse the master of a ship causes or permits any prohibition imposed by a notice under subsection (2) above to be contravened in respect of the ship, he shall be liable—
- (a) on summary conviction, to a fine not exceeding £50,000;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (6) The obligation imposed by regulations under section 100F(2) shall not be enforceable except in accordance with this section, but this subsection does not limit the powers conferred by section 258.”

12 Preparation of plans under International Convention on Oil Pollution Preparedness, Response and Co-operation

In section 128 of the 1995 Act (prevention of pollution from ships etc.) after subsection (3) there is inserted—

- “(3A) An order under subsection (1) above in pursuance of paragraph (d) of that subsection may include provision imposing on local authorities responsibilities in relation to the preparation, review and implementation of any plans required by the agreement mentioned in that paragraph.”