
STATUTORY INSTRUMENTS

2009 No. 2796

The Merchant Shipping (Anti-Fouling Systems) Regulations 2009

PART 3

INSPECTIONS, DETENTIONS, OFFENCES AND FEES

General provisions on inspection of ships

10.—(1) Subject to paragraph (6), for the purposes of checking compliance with the provisions of the EC Regulation and these Regulations, the following persons, namely—

- (a) a surveyor of ships,
- (b) a superintendent,
- (c) any person appointed by the Secretary of State, either generally or in a particular case, to exercise powers under section 258 of the 1995 Act ^{M1},

may at all reasonable times go on board a ship to which these Regulations apply and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of the EC Regulation.

(2) Section 258(1A), (3) and (5) of the 1995 Act (supplementary provisions relating to powers to inspect ships and their equipment) applies in relation to paragraph (1), and as if references in that section to “subsection (1) above” and “this section” were to paragraph (1).

(3) Subject to paragraph (6), the powers conferred by paragraph (1) are, if the ship is a United Kingdom ship, also exercisable outside United Kingdom waters and controlled waters, and may be so exercised by a proper officer as well as the persons mentioned in that paragraph.

(4) Subject to paragraph (6), sections 259(1), (2), (5), (7) and (9) to (12) and 260(1) and (2) of the 1995 Act (powers of inspectors in relation to premises and ships, and supplementary provisions) apply in relation to the inspection of a ship to which these Regulations apply for the purposes of checking compliance with the provisions of the EC Regulation and these Regulations, as they apply in relation to the inspection of a ship for the purposes of checking compliance with the 1995 Act, and as if—

- (a) references in those sections to “this Act” were to these Regulations;
- (b) for section 259(1)(b) there were substituted a reference to any ship to which these Regulations apply;
- (c) in section 259(2)(h)(iii), “or any instrument made under it” were omitted; and
- (d) in section 259(5), the reference to “subsections (2) and (4) above for the purposes of Chapter II of Part VI” were to “subsection (2) above”, and the reference to “those subsections” were to “that subsection”.

(5) Sections 261 to 266 of the 1995 Act (improvement notices and prohibition notices) ^{M2} apply in relation to improvement notices and prohibition notices to be served in relation to a ship to which

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these Regulations apply, as they apply in relation to improvement notices and prohibition notices to be served in relation to other ships, and as if—

- (a) references in those sections to “the relevant statutory provisions” were to Articles 4 and 5(2), and regulations 5(2) and (3) and 6(2); and
- (b) subsection (4) of section 261 were omitted.

(6) The relevant powers to inspect a ship and its equipment, any part of the ship, any articles on board and any document carried in the ship, are limited to one or both of the following—

- (a) verifying whether the ship holds a valid AFS-Certificate or an AFS-Declaration,
- (b) a brief sampling of the ship's anti-fouling system that does not affect the integrity, structure or operation of the anti-fouling system,

except where there are clear grounds for believing that the ship is in violation of the EC Regulation or these Regulations.

(7) In this regulation—

- (a) “proper officer” has the same meaning as in section 313(1) of the 1995 Act;
- (b) “relevant powers” means the powers conferred by paragraph (1) or (3), or by section 259 of the 1995 Act as applied by paragraph (4); and
- (c) “superintendent” means a mercantile marine superintendent appointed under section 296 of the 1995 Act.

Marginal Citations

- M1** 1995 c.21; section 258(1) was amended by the [Merchant Shipping and Maritime Security Act 1997](#) (c.28), [Schedule 1](#).
- M2** [Section 261](#) has been amended, but the amendments are not relevant to these Regulations.

Inspection of ships following a Government request

11. Where a ship to which these Regulations apply is inspected under regulation 10, following receipt by the Secretary of State of a request for an investigation of the ship from the Government of a Party to the AFS-Convention, the Secretary of State must send a report of the inspection—

- (a) to the Government who requested the investigation; and
- (b) where the ship operates under the authority of the Government of a State other than the United Kingdom, to that Government.

General provisions on detention

12.—(1) Subject to paragraph (2), where a surveyor of ships has clear grounds for believing that, in relation to a ship to which these Regulations apply—

- (a) an AFS-Certificate, or other certificate referred to in paragraph 2.1 of Annex I, is required to have been issued in respect of the ship but has not been issued, or has been issued but is not valid;
- (b) an AFS-Declaration is required to be carried on board the ship, but is not carried;
- (c) where an AFS-Declaration is required to be carried, appropriate documentation referred to in regulation 6(2)(a) is not carried on board the ship, and the AFS-Declaration does not contain an appropriate endorsement; or
- (d) an offence under regulation 14 is being committed in respect of the 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 14(2) has been committed in respect of a ship (but paragraph (1) does not apply), 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—

- (a) a United Kingdom ship;
- (b) in a port or shipyard in the United Kingdom;
- (c) at an offshore terminal in United Kingdom waters or controlled waters;
- (d) a fixed platform in United Kingdom waters or controlled waters; or
- (e) a floating platform, a floating storage unit or a floating production storage and off-loading unit, in United Kingdom waters or controlled waters, other than a platform or unit which is in transit.

(5) Section 284 of the 1995 Act^{M3} (enforcing detention of a ship) applies where a ship is liable to be detained under this regulation as if—

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

(6) Where a ship is liable to be detained under 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 or master, immediately release the ship—

- (a) if no proceedings for an offence under regulation 14(2) 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 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 or master;
- (d) where the owner 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

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- (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^{M4}, 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 14(2) 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 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 or master is convicted of an offence under regulation 14(2), 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 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^{M5} (interpretation of section 144) applies for the purposes of paragraphs (8) to (10) as if references to an offence under section 131 were references to an offence under regulation 14(2).

Marginal Citations

- M3** Section 284 was amended by the [Merchant Shipping and Maritime Security Act 1997 \(c.28\), Schedule 1](#).
- M4** Cmnd. 8941.
- M5** Section 145 was amended by the [Criminal Justice Act 2003 \(c.44\), Schedule 36](#).

Right of appeal and compensation

13.—(1) Regulations 11 and 12 (right of appeal and compensation) of the Merchant Shipping (Port State Control) Regulations 1995^{M6} (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 under these Regulations as if these Regulations were made under section 85 of the 1995 Act, 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; and
 - (b) references to “access refusal notice”, “service of an access refusal notice” and “refusal of access” are omitted.

Marginal Citations

- M6** [S.I. 1995/3128](#), amended by [S.I. 1998/1433](#), [1998/2198](#), [2001/2349](#) and [2003/1636](#).

Offences

14.—(1) Paragraphs (2) and (3) apply in relation to a ship referred to in regulation 3(1), except that paragraph (3) does not apply in relation to—

- (a) a fixed or floating platform;
- (b) a floating storage unit; or
- (c) a floating production storage and off-loading unit,

which was constructed before 1st July 2003 and has not been in dry-dock on or after 1st July 2003.

(2) Where a contravention of Article 4 (which prohibits the application on ships of organotin compounds which act as biocides) occurs on or after the date on which these Regulations come into force, the owner and master of the ship in question are each guilty of an offence.

(3) Where a contravention of Article 5(2) (which prohibits ships from bearing organotin compounds, unless they have a barrier coating) occurs or continues after the date on which these Regulations come into force, the owner and master of the ship in question are each guilty of an offence.

(4) Any contravention of—

- (a) regulation 5(2) or (3), 6(2), or 9(1) or (2) is an offence by the owner and the master of the ship;
- (b) regulation 8(4) is an offence by the person in question.

(5) An offence under this regulation is punishable—

- (a) on summary conviction by a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment by a fine.

Service of documents on foreign companies

15. Section 143(6) of the 1995 Act (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 regulation 14 as it applies to proceedings for an offence under section 131, and as if the reference in section 143(6) to section 131 were to regulation 14.

Enforcement and application of fines

16. Section 146(1) of the 1995 Act (enforcement of fines) applies to any fine for an offence under regulation 14, and 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 the owner or master for an offence under regulation 14.

Offences committed due to the act or default of another person

17. Where an offence under regulation 14 is committed, or would be committed but for the operation of regulation 19, by any person due to the act or default of some other person, that other person is also guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this regulation whether or not proceedings are taken against the first mentioned person.

Offences by officers of bodies corporate

18.—(1) Where a body corporate is guilty of an offence under regulation 14 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

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or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and 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 person's functions of management as if that person were a director of the body corporate.

(3) Where an offence under regulation 14 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 liable to be proceeded against and punished accordingly.

Defences

19. In any proceedings for an offence under regulation 14, it is a defence for the person charged to prove that that person took all reasonable steps and exercised all due diligence to ensure that the requirement in question was complied with.

Fees

20. Section 302(1) and (3) of the 1995 Act (power of the Secretary of State, with the consent of the Treasury, to make regulations prescribing fees to be charged) applies in relation to the making of regulations to prescribe fees to be charged in respect of the doing of anything in pursuance of the EC Regulation or these Regulations, and as if—

- (a) in paragraphs (a) and (b) of section 302(1), the references to “this Act” were to the EC Regulation or these Regulations; and
- (b) in section 302(3), the reference to “this Act” were to the regulations prescribing those fees.

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