



# Merchant Shipping Act 1988

## 1988 CHAPTER 12

### PART III

#### MISCELLANEOUS PROVISIONS RELATING TO MERCHANT SHIPPING ETC.

##### *Protection of shipping interests*

#### **40 Enforcement of s. 39**

(1) Where—

- (a) any ship is used in the course of the provision of any shipping services to which section 39 applies, or
- (b) anything is done on board a ship with a view to its being used to provide any such services,

and the provision of those services is prohibited by virtue of subsection (1) of that section and is not sanctioned by any licence issued by virtue of subsection (3)(b) of that section, then (subject to subsections (6) and (7)), the master and the owner of the ship shall each be guilty of an offence.

(2) Where the ship—

- (a) is chartered by demise, or
- (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement,

the reference in subsection (1) to the owner of the ship shall be construed as including a reference—

- (i) to the charterer under the charter by demise, or
- (ii) to any such manager as is referred to in paragraph (b) above, or
- (iii) (if the ship is both chartered and managed as mentioned above) to both the charterer and any such manager.

(3) Any person who—

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*Status: This is the original version (as it was originally enacted).*

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- (a) in connection with an application for such a licence as is mentioned in subsection (3)(b) of section 39, or
  - (b) in purported compliance with the requirements of any notice served on him by virtue of subsection (3)(e) of that section,knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence.
- (4) Any person who—
  - (a) without reasonable excuse (the proof of which lies on him) fails to comply with the requirements of any such notice, or
  - (b) intentionally alters, suppresses, conceals or destroys a document which he has been required to produce in pursuance of subsection (3)(e) of that section,shall be guilty of an offence.
- (5) Any 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 imprisonment for a term not exceeding two years or a fine, or both.
- (6) It shall be a defence in proceedings brought under subsection (1) against the master of a ship to prove—
  - (a) that the master did not know and had no reason to suspect that, in the circumstances of the case, the provision of the shipping services referred to in paragraph (a) or (as the case may be) paragraph (b) of that subsection was prohibited by virtue of subsection (1) of section 39, or
  - (b) that the master had reasonable grounds for believing that the provision of those services was sanctioned by a licence issued by virtue of subsection (3)(b) of that section.
- (7) It shall be a defence in proceedings brought under subsection (1) against a person other than the master of a ship to prove that, under the terms of one or more charter-parties or management agreements entered into by the defendant, the right to determine the purpose for which the ship in question was being used at the time of the alleged offence was wholly vested in some other person or persons party thereto (whether or not any such other person or persons had entered into a further charter-party or management agreement providing for that right to be vested in some other person).
- (8) Subsections (1), (3) and (4) apply to offences falling within those subsections wherever committed.
- (9) Proceedings for an offence under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (10) Proceedings for an offence under this section shall not be instituted—
  - (a) in England and Wales, except by or with the consent of the Attorney General or the Secretary of State; or
  - (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland or the Secretary of State.
- (11) Any document required or authorised, by virtue of any statutory provision, to be served for the purpose of the institution of, or otherwise in connection with, proceedings for

an offence under subsection (1) shall, where it is to be served on a person who was, at the time of the alleged offence—

- (a) the owner of the ship in question, or
- (b) such a charterer by demise or manager of that ship as is mentioned in subsection (2),

be treated as duly served on that person if—

- (i) sent to him by post at his last-known address (whether of his residence or of a place where he carries on business), or
- (ii) left for him at that address,

or if the document is served on the master of the ship in question.

(12) In this section “management agreement” has the same meaning as in section 30.