



Merchant Shipping Act 1995

1995 CHAPTER 21

PART IV

SAFETY

Unsafe ships

94 Meaning of “dangerously unsafe ship”.

(1) For the purposes of sections 95, 96, 97 and 98 a ship [^{F1}in port] is “dangerously unsafe” if, having regard to the nature of the service for which it is intended, the ship is, by reason of the matters mentioned in subsection (2) below, unfit to go to sea without serious danger to human life.

[^{F2}(1A) For the purposes of those sections a ship at sea is “dangerously unsafe” if, having regard to the nature of the service for which it is being used or is intended, the ship is, by reason of the matters mentioned in subsection (2) below, either—

- (a) unfit to remain at sea without serious danger to human life, or
- (b) unfit to go on a voyage without serious danger to human life.]

(2) Those matters are—

- (a) the condition, or the unsuitability for its purpose, of—
 - (i) the ship or its machinery or equipment, or
 - (ii) any part of the ship or its machinery or equipment;
- (b) undermanning;
- (c) overloading or unsafe or improper loading;
- (d) any other matter relevant to the safety of the ship;

and are referred to in those sections, in relation to any ship, as “the matters relevant to its safety”.

(3) Any reference in those sections to “going to sea” shall, in a case where the service for which the ship is intended consists of going on voyages or excursions that do

Status: Point in time view as at 15/07/2003.

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not involve going to sea, be construed as a reference to going on such a voyage or excursion.

Textual Amendments

- F1** Words in s. 94(1) inserted (23.3.1997) by 1997 c. 28, s. 9, **Sch. 1 para. 1(2)**; S.I. 1997/1082, art. 2, **Sch.**
- F2** S. 94(1A) inserted (23.3.1997) by 1997 c. 28, s. 9, **Sch. 1 para. 1(3)**; S.I. 1997/1082, art. 2, **Sch.**

95 Power to detain dangerously unsafe ship.

[^{F3}(1) Where a ship which is—

- (a) in a port in the United Kingdom, or
- (b) at sea in United Kingdom waters,

appears to a relevant inspector to be a dangerously unsafe ship, the ship may be detained.]

(2) [^{F4}Subject to subsection (2A) below]the power of detention conferred by subsection (1) above is exercisable in relation to foreign ships as well as United Kingdom ships.

[^{F4}(2A) The power of detention conferred by subsection (1)(b) is not exercisable in relation to a qualifying foreign ship while the ship is exercising—

- (a) the right of innocent passage, or
- (b) the right of transit passage through straits used for international navigation.]

(3) The officer detaining the ship shall serve on the master of the ship a detention notice which shall—

- (a) state that the relevant inspector is of the opinion that the ship is a dangerously unsafe ship;
- (b) specify the matters which, in the relevant inspector’s opinion, make the ship a dangerously unsafe ship; and
- (c) [^{F5}require the ship to comply with the terms of the notice] until it is released by a competent authority.

(4) In the case of a ship which is not a British ship the officer detaining the ship shall cause a copy of the detention notice to be sent as soon as practicable to the nearest consular officer for the country to which the ship belongs.

(5) In this section—

“competent authority” means any officer mentioned in section 284(1); and
“relevant inspector” means any person mentioned in paragraph (a), (b) or (c) of section 258(1).

Textual Amendments

- F3** S. 95(1) substituted (23.3.1997) by 1997 c. 28, s. 9, **Sch. 1 para. 2(2)**; S.I. 1997/1082, art. 2, **Sch.**
- F4** S. 95(2A) and words in s. 95(2) inserted (23.3.1997) by 1997 c. 28, s. 9, **Sch. 1 para. 2(3)**; S.I. 1997/1082, art. 2, **Sch.**
- F5** Words in s. 95(3)(c) substituted (23.3.1997) by 1997 c. 28, s. 9, **Sch. 1 para. 2(4)**; S.I. 1997/1082, art. 2, **Sch.**

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96 References of detention notices to arbitration.

- (1) Any question as to whether any of the matters specified in relation to a ship in a detention notice in pursuance of section 95(3)(b) in connection with any opinion formed by the relevant inspector constituted a valid basis for that opinion shall, if the master or owner of the ship so requires by a notice given to the relevant inspector within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.
- (2) Where a notice is given by the master or owner of the ship in accordance with subsection (1) above, the giving of the notice shall not suspend the operation of the detention notice unless, on the application of the person requiring the reference, the arbitrator so directs.
- (3) The arbitrator shall have regard, in coming to his decision, to any other matters not specified in the detention notice which appear to him to be relevant to whether the ship was or was not a dangerously unsafe ship.
- (4) Where on a reference under this section the arbitrator decides as respects any matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion he shall either cancel the detention notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.
- (5) The arbitrator shall include in his decision a finding whether there was or was not a valid basis for the detention of the ship as a dangerously unsafe ship.
- (6) A person shall not be qualified for appointment as an arbitrator under this section unless he is—
 - (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
 - (b) a naval architect;
 - (c) a person falling within subsection (7); or
 - (d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.
- (7) For the purposes of subsection (6)(c) a person falls within this subsection if—
 - (a) he has a 10 year general qualification (within the meaning of section 71 of the ^{M1}Courts and Legal Services Act 1990);
 - (b) he is an advocate or solicitor in Scotland of at least 10 years' standing; or
 - (c) he is a member of the bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing.
- (8) In connection with his functions under this section an arbitrator shall have the powers conferred on an inspector by section 259.
- (9) In the application of this section to Scotland any reference to an arbitrator shall be construed as a reference to an arbiter and the reference in subsection (1) above to a single arbitrator appointed by agreement between the parties shall be construed as a reference to a single arbiter so appointed or, in default of agreement, appointed by the sheriff.

^{F6}(10)

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(11) In this section “relevant inspector” has the same meaning as in section 95.

Textual Amendments

F6 S. 96(10) repealed (31.1.1997) by 1996 c. 23, s. 107(2), **Sch. 4**; S.I. 1996/3146, **art. 3** (with art. 4, Sch. 2)

Modifications etc. (not altering text)

C1 S. 96 applied (with modifications) (1.1.1996) by S.I. 1995/3128, **reg. 10(2)**
 S. 96 applied (31.3.1998) by S.I. 1997/2962, **reg. 30**
 S. 96 applied (30.10.1998) by S.I. 1998/2411, **reg. 16**
 S. 96 applied (31.12.1998) by S.I. 1998/2857, **reg. 13**
 S. 96 applied (25.10.1999) by S.I. 1999/2205, **reg. 17**
 S. 96 applied (with modifications) (1.11.2001) by S.I. 2001/3209, **reg. 9(8)**
 S. 96 applied (with modifications) (15.2.2002) by S.I. 2001/3444, **reg. 13**
 S. 96 applied (with modifications) (23.11.2002) by S.I. 2002/2201, **reg. 12**
 S. 96 applied (with modifications) (1.9.2002) by S.I. 2002/2055, **reg. 16**
 S. 96 applied (with modifications) (7.9.2002) by S.I. 2002/2125, **reg. 18(1)(2)**

C2 S. 96 applied (with modifications) (15.7.2003) by The Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 (S.I. 2003/1809), regs. 1(1), **23** (with reg. 3)

Marginal Citations

M1 1990 c. 41.

97 Compensation in connection with invalid detention of ship.

- (1) If on a reference under section 96 relating to a detention notice in relation to a ship—
- (a) the arbitrator decides that any matter did not constitute a valid basis for the relevant inspector’s opinion, and
 - (b) it appears to him that there were no reasonable grounds for the inspector to form that opinion,
- the arbitrator may award the owner of the ship such compensation in respect of any loss suffered by him in consequence of the detention of the ship as the arbitrator thinks fit.
- (2) Any compensation awarded under this section shall be payable by the Secretary of State.
- (3) In the application of this section to Scotland any reference to an arbitrator shall be construed as a reference to an arbiter.
- (4) In this section “relevant inspector” has the same meaning as in section 95.

Modifications etc. (not altering text)

C3 S. 97 applied (31.3.1998) by S.I. 1997/2962, **reg. 30**
 S. 97 applied (30.10.1998) by S.I. 1998/2411, **reg. 16**
 S. 97 applied (31.12.1998) by S.I. 1998/2857, **reg. 13**
 S. 97 applied (25.10.1999) by S.I. 1999/2205, **reg. 17**
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| C4 | S. 97 applied (with modifications) (15.7.2003) by The Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 (S.I. 2003/1809), regs. 1(1), 23 (with reg. 3) |
| C5 | S. 97(1) applied (with modifications) (1.1.1996) by S.I. 1995/3128, reg. 10(3) |

98 Owner and master liable in respect of dangerously unsafe ship.

- (1) If a ship which—
- (a) is in a port in the United Kingdom, or
 - (b) is a United Kingdom ship and is in any other port,
- is dangerously unsafe, then, subject to subsections (4) and (5) below, the master and the owner of the ship shall each be guilty of an offence.
- (2) Where, at the time when a ship is dangerously unsafe, any responsibilities of the owner with respect to the matters relevant to its safety have been assumed (whether wholly or in part) by any person or persons other than the owner, and have been so assumed by that person or (as the case may be) by each of those persons either—
- (a) directly, under the terms of a charter-party or management agreement made with the owner, or
 - (b) indirectly, under the terms of a series of charter-parties or management agreements,
- the reference to the owner in subsection (1) above shall be construed as a reference to that other person or (as the case may be) to each of those other persons.
- (3) 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 imprisonment for a term not exceeding two years or a fine, or both.
- (4) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence—
- (a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters relevant to its safety which are specified in the charge (or, in Scotland, which are libelled in the complaint, petition or indictment); or
 - (b) it was reasonable for such arrangements not to have been made.
- (5) It shall also be a defence in proceedings for an offence under this section to prove—
- (a) that, under the terms of one or more charter-parties or management agreements entered into by the accused, the relevant responsibilities, namely—
 - (i) where the accused is the owner, his responsibilities with respect to the matters relevant to the ship's safety, or
 - (ii) where the accused is liable to proceedings under this section by virtue of subsection (2) above, so much of those responsibilities as had been assumed by him as mentioned in that subsection,had at the time of the alleged offence been wholly assumed by some other person or persons party thereto; and
 - (b) that in all the circumstances of the case the accused had taken such steps as it was reasonable for him to take, and exercised such diligence as it was

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reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in paragraph (a) above;

and, in determining whether the accused had done so, regard shall be had in particular to the matters mentioned in subsection (6) below.

(6) Those matters are—

- (a) whether prior to the time of the alleged offence the accused was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and
- (b) the extent to which the accused was or was not able, under the terms of any such charter-party or management agreement as is mentioned in subsection (5) (a) above—

(i) to terminate it, or

(ii) to intervene in the management of the ship,

in the event of any such deficiency, and whether it was reasonable for the accused to place himself in that position.

(7) No proceedings for an offence under this section shall be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(8) In this section—

“management agreement”, in relation to a ship, means any agreement (other than a charter-party or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person); and

“relevant responsibilities” shall be construed in accordance with subsection (5) above.

(9) References in this section to responsibilities being assumed by a person under the terms of a charter-party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

99 Use of unsafe lighters, etc.

(1) If any person uses or causes or permits to be used in navigation any lighter, barge or like vessel when, because of—

- (a) the defective condition of its hull or equipment,
- (b) overloading or improper loading, or
- (c) undermanning,

it is so unsafe that human life is thereby endangered, he shall be liable—

- (i) on summary conviction, to a fine not exceeding the statutory maximum;
- (ii) on conviction on indictment, to a fine.

(2) Proceedings for an offence under this section shall not be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State;
- or

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- (b) in Northern Ireland, except by or with the consent of the Secretary of State.
- (3) This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel.

100 Owner liable for unsafe operation of ship.

- (1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.
- (2) This section applies to—
 - (a) any United Kingdom ship; and
 - (b) any ship which—
 - (i) is registered under the law of any country outside the United Kingdom, and
 - (ii) is within United Kingdom waters while proceeding to or from a port in the United Kingdom,unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.
- (3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1) above, 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.
- (4) Where any such 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 within the meaning of section 98,any reference to the owner of the ship in subsection (1) or (3) above 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,and accordingly the reference in subsection (1) above to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.
- (5) No proceedings for an offence under this section shall be instituted—
 - (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

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