



Shipping and Trading Interests (Protection) Act 1995

1995 CHAPTER 22

Protection of shipping etc interests from foreign action

1 Power to regulate provision of shipping services, etc in event of foreign action

- (1) The Secretary of State may exercise the powers conferred by this section if he is satisfied that—
- (a) a foreign government, or
 - (b) persons purporting to exercise governing authority over any territory outside the United Kingdom, or
 - (c) any agency or authority of a foreign government or of such persons,
- have adopted, or propose to adopt, measures or practices concerning or affecting any shipping services which—
- (i) are damaging or threaten to damage the shipping or trading interests of the United Kingdom, or
 - (ii) are damaging or threaten to damage the shipping or trading interests of another State,
- and, in the latter case, the Secretary of State is satisfied that action under this section would be in fulfilment of the obligations of the United Kingdom to that other State or would be appropriate in view of any arrangements made between Her Majesty's Government and the government of that other State.
- (2) The Secretary of State may by order make provision for requiring persons in the United Kingdom carrying on any trade or business to provide the Secretary of State with all such information as he may require for the purpose of enabling him—
- (a) to determine what further action to take under this section, and
 - (b) to ensure compliance with any orders or directions made or given under this section.
- (3) The Secretary of State may by order (a “protective order”) provide for—

- (a) regulating the provision of any shipping services and the rates, fares or other amounts which may or must be charged for providing those services;
- (b) regulating—
 - (i) the admission and departure of ships to and from United Kingdom ports,
 - (ii) the nature of the shipping services they may be used to provide (whether by reference to the cargoes or passengers they may carry or otherwise), and
 - (iii) the loading or unloading of cargoes, the embarkation or disembarkation of passengers, or the doing of other things in connection with the provision of any shipping services;
- (c) regulating the making and implementation of agreements (including charterparties) whose subject matter relates directly or indirectly to the provision of any shipping services, and requiring such agreements to be subject to the Secretary of State's approval in such cases as he may specify;
- (d) imposing charges in respect of ships which enter United Kingdom ports in connection with the provision of any shipping services;
- (e) imposing, in pursuance of any Community obligation, such tax or duty payable by such persons and in such circumstances as the Secretary of State may specify;

and in this subsection "regulating", except in relation to the rates, fares or other amounts which may or must be charged as mentioned in paragraph (a) above, includes imposing a prohibition.

- (4) In a case falling within subsection (1)(i) above, a protective order shall specify the measures or practices which in the opinion of the Secretary of State are damaging or threaten to damage shipping or trading interests of the United Kingdom.
- (5) An order under this section may authorise the Secretary of State to give directions to any person for the purposes of the order.
- (6) Any order or direction made or given under this section—
 - (a) may be either general or special, and may be subject to such conditions or exceptions as the Secretary of State specifies (including conditions and exceptions operating by reference to the giving or withholding of his approval for any course of action);
 - (b) may be in terms that require compliance either generally or only in specified cases.
- (7) The power to make an order under this section shall be exercisable by statutory instrument.
- (8) Before the Secretary of State makes an order under this section he shall consult such representatives of the shipping or trading interests of the United Kingdom, and such other persons, as appear to him appropriate.
- (9) In this section—
 - (a) "foreign government" means the government of any State other than the United Kingdom;
 - (b) references to an agency or authority of a foreign government or of such persons as are mentioned in subsection (1)(b) above include references to any undertaking appearing to the Secretary of State to be, or to be acting on

- behalf of, an undertaking which is in effect owned or controlled (directly or indirectly) by a State other than, or by a territory outside, the United Kingdom;
- (c) “port” includes an offshore terminal, and references to entering or leaving a port include references to using or ceasing to use an offshore terminal;
 - (d) “shipping services” means services provided by means of ships, and includes the carriage of goods or passengers by sea, cable laying, dredging, and services provided by offshore support vessels; and
 - (e) references to ships are to ships of any registration.
- (10) A recital in an order under this section that the persons who have adopted, or propose to adopt, the measures or practices in question are—
- (a) a foreign government, or
 - (b) such persons as are mentioned in subsection (1)(b) above, or
 - (c) an agency or authority of a foreign government or of such persons,
- shall be conclusive.

2 Special provision for orders under section 1 imposing taxation etc

- (1) This section applies in relation to protective orders made under subsection (3)(d) or (e) of section 1 (such an order being referred to below as a “charging order”).
- (2) No charging order shall authorise the Secretary of State to give directions to any person for the purpose of recovering any charge, tax or duty.
- (3) Without prejudice to subsection (6) of that section, a charging order—
 - (a) may apply to ships of any description specified in the order, and may apply in particular to ships registered in a specified country, or to ships carrying goods or cargoes of a specified description or providing any other specified shipping services;
 - (b) may contain such provisions as appear to the Secretary of State expedient to enable the Commissioners of Customs and Excise to collect any charge, tax or duty imposed by the order; and
 - (c) may apply, subject to any modifications or exceptions specified in the order, any of the enactments for the time being in force relating to duties (whether of customs or excise) chargeable on goods imported into the United Kingdom.
- (4) Any charge, tax or duty imposed by a charging order—
 - (a) may be a fixed amount, or an amount depending on the tonnage of the ship;
 - (b) shall be payable to the Secretary of State.
- (5) A charging order shall not be made except with the consent of the Treasury.
- (6) Any sum received by the Secretary of State shall be paid into the Consolidated Fund.

3 Enforcement of section 1

- (1) An order made under section 1 with the consent of the Commissioners of Customs and Excise may provide for the enforcement and execution of any order or direction under that section by officers of customs and excise.
- (2) Officers of customs and excise acting under any provision made under subsection (1) above shall have power to enter any premises or ship.

- (3) Section 65 of the Customs and Excise Management Act 1979 (power to refuse or cancel clearance of ship or aircraft) shall apply as if sections 1 and 2 and this section were contained in that Act.
- (4) If a person discloses any information which has been furnished to or obtained by him under section 1 or 2, or in connection with the execution of section 1 or 2, he shall, unless the disclosure is made—
- (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the execution of section 1 or 2, or
 - (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings, or
 - (d) in pursuance of a Community obligation to a Community institution,
- be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (5) A person who—
- (a) refuses or intentionally neglects to furnish any information which he is required to furnish under section 1 or 2, or
 - (b) in furnishing any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,
- shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale in the case of an offence under paragraph (a) above and not exceeding level 5 on the standard scale in the case of an offence under paragraph (b) above.
- (6) A person who intentionally contravenes or fails to comply with any provision of an order or direction made or given pursuant to section 1 or 2, other than a provision requiring him to give any information, shall be liable—
- (a) on summary conviction, to a fine of not more than £5,000;
 - (b) on conviction on indictment, to a fine;
- and where the order or direction requires anything to be done, or not to be done, by, to or on a ship, and the requirement is not complied with, the owner and master of the ship are each to be regarded as intentionally failing to comply, without prejudice to the liability of anyone else.
- (7) A person shall not be guilty of an offence against any provision contained in or having effect under section 1 or 2 by reason only of something done by that person wholly outside the territory of the United Kingdom unless that person is a Commonwealth citizen under the British Nationality Act 1981 or a company incorporated under the law of any part of the United Kingdom.

4 Parliamentary control of orders under section 1

- (1) Subject to subsection (3) below, no protective order shall be made unless—
- (a) a draft has been approved by resolution of each House of Parliament, or
 - (b) it is declared in the order that it appears to the Secretary of State that by reason of urgency it is necessary to make the order without a draft having been so approved.
- (2) Subject to subsection (3) below, a protective order made without a draft having been approved by resolution of each House of Parliament shall cease to have effect at the expiration of a period of 28 days beginning with the date on which it was made unless

before the expiration of that period it has been approved by resolution of each House of Parliament, but without prejudice to anything previously done, or to the making of a new order.

In reckoning for the purposes of this subsection any period of 28 days, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

- (3) Subsections (1) and (2) above do not apply to a protective order which is made for the purpose only of implementing any Community obligation.
- (4) An order under section 1 which is not a protective order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) If an order under that section recites that it is made as mentioned in subsection (3) above, or that it is not a protective order, the recital shall be conclusive.

Protection of coastal shipping services

5 Power to prohibit provision of coastal shipping services which are not British-based

- (1) The Secretary of State may by order provide for the provision of shipping services to which this section applies to be prohibited except where such services are provided from one or more permanent places of business maintained in the British Islands.
- (2) This section applies to the following shipping services—
 - (a) the carriage of goods or passengers by sea—
 - (i) between ports in the United Kingdom, or
 - (ii) between a port in the United Kingdom and an offshore installation in United Kingdom controlled waters, or
 - (iii) between offshore installations in United Kingdom controlled waters;
 - (b) the carriage of passengers by sea on voyages or excursions beginning and ending at the same port in the United Kingdom, other than voyages or excursions which involve calling at any port or ports outside the British Islands (whether passengers disembark there or not); and
 - (c) shipping services (other than the carriage of goods or passengers by sea) which are—
 - (i) provided by means of ships operating out of ports in the United Kingdom (whether so provided within United Kingdom controlled waters or not), or
 - (ii) provided within United Kingdom controlled waters by means of ships operating out of ports outside the United Kingdom.
- (3) An order under this section may make provision—
 - (a) with respect to the circumstances in which shipping services are to be regarded for the purposes of the order as being provided from one or more permanent places of business maintained in the British Islands;
 - (b) authorising the Secretary of State to issue licences sanctioning the provision of shipping services to which this section applies, notwithstanding that they are not provided as mentioned in paragraph (a) above, in cases where he

is satisfied that there is no-one willing and able to provide the services in question as mentioned in that paragraph;

- (c) requiring the payment, in connection with applications for such licences, of fees determined with the approval of the Treasury;
- (d) exempting any prescribed class or description of shipping services from any prohibition imposed by virtue of subsection (1) above;
- (e) authorising the Secretary of State, or a person appointed by him for the purpose, to serve notices requiring the production or furnishing of documents or information appearing to the Secretary of State or any such person to be necessary to enable him to determine such matters as may be prescribed;
- (f) with respect to the manner of service of notices in pursuance of paragraph (e) above.

(4) An order under this section may—

- (a) make different provision for different circumstances;
- (b) make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient.

(5) The provisions of an order under this section shall not discriminate between shipping services provided by different persons on the basis of the place of registration of the ships by means of which the services are provided.

(6) Section 256(1) of the Merchant Shipping Act 1995 (appointment of inspectors) shall have effect in relation to—

- (a) any order under this section, or
- (b) any licence issued by virtue of subsection (3)(b) above,

as it has effect in relation to any such regulations or licence as is referred to in subsection (1)(b) and (9) of that section; but section 259 of that Act shall have effect in relation to any inspector appointed by virtue of this subsection with the omission of paragraphs (f) to (h) of subsection (2) of that section.

(7) The power to make an order under this section shall be exercisable by statutory instrument, but no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(8) In this section—

“offshore installation” has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971;

“prescribed” means prescribed by an order under this section;

“shipping services” means—

- (a) the carriage of goods or passengers by sea;
- (b) services provided by offshore support vessels, and
- (c) such other services provided by means of ships as the Secretary of State may specify in an order under this section;

“United Kingdom controlled waters” means waters within the seaward limits of the territorial sea of the United Kingdom and waters in any area designated under section 1(7) of the Continental Shelf Act 1964.

6 Enforcement of section 5

(1) Where—

- (a) any ship is used in the course of the provision of any shipping services to which section 5 applies, or
- (b) anything is done on board a ship with a view to its being used to provide 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) below), 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) above 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—

- (a) in connection with an application for such a licence as is mentioned in section 5(3)(b), or
- (b) in purported compliance with the requirements of any notice served on him by virtue of section 5(3)(e),

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 section 5(3)(e),

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 under subsection (1) above against the master of a ship to prove—

- (a) that he 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 section 5(1), or
- (b) that he had reasonable grounds for believing that the provision of those services was sanctioned by a licence issued by virtue of section 5(3)(b).

(7) It shall be a defence in proceedings brought under subsection (1) above 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) above apply to offences falling within those subsections wherever committed.
- (9) 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).

Supplementary

7 **Supplementary**

- (1) Part XII of the Merchant Shipping Act 1995 (which makes provision in relation to legal proceedings and related matters) shall apply for the purposes of this Act as it applies for the purposes of that Act.
- (2) Proceedings for an offence under section 6 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.
- (3) Without prejudice to section 291 of the Merchant Shipping Act 1995 in its application to this Act, any document required or authorised by or under any enactment to be served for the purpose of the institution of, or otherwise in connection with, proceedings for an offence under section 6(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) of that section,
- 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.

8 **Repeals**

The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

9 **Short title, interpretation, citation, commencement and extent**

- (1) This Act may be cited as the Shipping and Trading Interests (Protection) Act 1995.

- (2) In this Act “protective order” has the meaning given by section 1(3) and, subject to this Act, other expressions used in this Act and in the Merchant Shipping Act 1995 shall have the same meaning in this Act as in that Act.
- (3) Any power to give directions conferred by this Act includes power to vary or revoke directions so given.
- (4) This Act shall come into force on 1st January 1996.
- (5) This Act extends to Northern Ireland.