

*These notes refer to the Marine Safety Act 2003  
(c.16) which received Royal Assent on 10 July 2003*

# **MARINE SAFETY ACT 2003**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Marine Safety Act 2003 which received Royal Assent on 10<sup>th</sup> July 2003. They have been prepared by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or part of a section does not seem to require any explanation or comment, none is given.
3. In addition to making new provision the Act consolidates and replaces certain sections of the Merchant Shipping Act 1995 (“the 1995 Act”).

### **SUMMARY**

4. The purpose of this Act is:  
  
First, to confer powers on the Secretary of State to give a direction to a person in charge of land next to, or accessible from, United Kingdom waters or to a person in charge of facilities used by ships such as berths, wharves and jetties.  
  
The direction can require the person in charge to allow persons to land and/or to make facilities under their control available, with the object of reducing or preventing risks to safety and risks of pollution; and  
  
Secondly, to allow fire authorities to make a charge for fire-fighting services at sea outside the area of every fire authority.

### **TERRITORIAL APPLICATION: WALES**

5. The whole Act applies to Wales. There is no effect on the National Assembly for Wales.

### **THE ACT**

#### *Commentary on sections*

#### *Section 1: Safety directions*

6. The section inserts a new section 108A of, and Schedule 3A to, the 1995 Act. Schedule 3A is set out in Schedule 1 to the Act. The section also provides that a direction given under Schedule 3A takes precedence over any other provision of the 1995 Act.

#### *Section 2: Fire authorities: power to charge*

7. The section amends section 3 of the Fire Services Act 1947 which is concerned with supplementary powers of fire authorities. Subsection (2) of the section amends section 3(1)(e) of the 1947 Act to put beyond doubt that a fire authority may use their

brigade for purposes other than fire-fighting in their area, in the area of another fire authority area or at sea. Subsection (3) amends that section to include a provision which gives fire authorities in England and Wales and the Isles of Scilly power to recover costs they incur in fighting fires at sea outside the area of any fire authority. The fire could be beyond the limits of the territorial sea and might be on a ship or an offshore installation (such as an oil rig) or on other structures, such as a pontoon.

### ***Section 3: amendments and repeals***

8. **Section 3** introduces Schedules 2 (minor and consequential amendments) and 3 (repeals).

### ***Schedule 1: Safety directions***

9. **Schedule 1** inserts Schedule 3A (safety directions) into the 1995 Act.

### ***Paragraph 1***

10. The power in section 137 of the 1995 Act to make directions for purposes relating to oil pollution is replaced by paragraph 1 and extended to allow directions to be given in cases in which there is a risk to safety (defined in paragraph 22(1) of Schedule 1 to mean a risk to the safety of persons, property or anything navigating in or using United Kingdom waters). While in almost all cases where the Secretary of State may want to exercise his powers of direction there is at least some pollution risk (e.g. from the fuel oil used to run the ship's engines - known as "bunker oil" or "bunkers"), the Secretary of State may wish to exercise his powers primarily for safety purposes, or to exercise them (particularly as respects the compulsory use of land and facilities) in ways which might not be necessary or appropriate solely for pollution prevention purposes.

### ***Paragraph 2***

11. This paragraph confers a power on the Secretary of State to give directions to landowners to make land or certain facilities used by ships (e.g. berths, wharves, jetties etc.) available in order to reduce or prevent risks of pollution and risks to safety. The power can be exercised where an accident to or in a ship has created a risk to the safety of persons, property or anything navigating in or using United Kingdom waters, or a risk of pollution by a hazardous substance.
12. Although the powers under sections 100C and 137 of the 1995 Act (which are replaced) enabled the Secretary of State to direct the action to be taken by a ship involving danger of pollution, or of harm to people and property, they did not give him power to require land or facilities such as berths, wharves and jetties to be made available in cases involving a safety or pollution risk. It may, for instance, be necessary or appropriate for a ship in danger to make use of facilities for berthing and repair, or for the landing of passengers or discharge of potentially polluting cargoes. Under the 1995 Act powers being replaced by this Act such use depended on the agreement of the harbour authority or landowner, and in at least one case where such facilities were urgently required that agreement was not forthcoming.
13. In his report on the Sea Empress disaster at Milford Haven, ("Review of Salvage and Intervention and their Command and Control", published in 1999<sup>1</sup>) Lord Donaldson recommended that the Secretary of State be given power to give directions to riparian owners and managers of facilities such as berths, wharves and jetties. In so far as these provisions relate to the prevention or reduction of pollution, the proposals set out below implement that recommendation.

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<sup>1</sup> Cm. 4193.

### **Paragraph 3**

14. This paragraph enables the Secretary of State to give directions requiring that a ship is moved or not moved from or to a specified place, or over a specified route, or that it is removed from United Kingdom waters.

### **Paragraph 4**

15. This paragraph confers a power on the Secretary of State to take such action as he thinks necessary or expedient instead of giving a direction (for example, authorising entry onto land or the use of facilities).

### **Paragraphs 5-9**

16. These paragraphs deal with enforcement of directions. Failure to comply with a direction is a criminal offence. Proceedings cannot be brought without the consent of the Attorney General or Secretary of State.

### **Paragraph 10**

17. The Secretary of State can vary or cancel (revoke) a direction and is obliged to do so, as soon as reasonably practicable, once a direction or part of a direction is no longer necessary for the purpose for which it was given. The person to whom the direction is given has the opportunity to make representations about varying or revoking the direction, which the Secretary of State will then consider.

### **Paragraphs 11 and 12**

18. Where provisions in the Companies Act 1985 about service of documents on companies do not apply a direction can be served on a company by the Secretary of State in the manner he thinks most suitable. For that purpose, a person acting on behalf of the Secretary of State can board a ship or enter land or premises.

### **Paragraph 13**

19. In cases in which it is reasonably practicable the Secretary of State is required to give a person in control of land, to whom he proposes to give a direction under paragraph 2, the opportunity to make representations. The Secretary of State will consider the representations before deciding whether or not to give the direction.

### **Paragraph 14**

20. This paragraph provides for the payment of compensation by the Secretary of State to any person who has suffered unreasonable loss or damage as a result of any remedial action taken in accordance with a direction.

### **Paragraph 15**

21. The purpose behind this provision on cost recovery is to ensure that the person in charge of land and premises to which directions under paragraph 2 relate, or in relation to which action is taken by the Secretary of State under paragraph 4, will be properly compensated. It is necessary to provide compensation in order to comply with the requirements of Article 1 of Protocol 1 of the European Convention on Human Rights. The owner of the ship is liable to the person in charge of the land or premises in respect of the costs of complying with the direction (where there has been a direction under paragraph 2), or the costs incurred by the person in charge as a result of action taken by the Secretary of State (where action is taken under paragraph 4).
22. The Secretary of State is given power to make payments on account of sums recoverable from the owner of the ship to persons who have been given directions or where action has been taken under paragraph 4.

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23. The opportunity is also being taken to ensure that the Secretary of State is in a better position to recover costs as respects any action he takes in relation to a direction (sub-paragraphs (5) and (6)).

#### ***Paragraph 16***

24. This paragraph deals with the jurisdiction of the courts to hear and determine claims for unreasonable loss or damage and the recovery of expenses.

#### ***Paragraphs 17-21***

25. These paragraphs specify the ships in respect of which directions may be given in relation to a risk of pollution or a risk to safety.

#### ***Paragraph 22***

26. This paragraph sets out the definitions of various terms used in the Schedule.

#### ***Schedule 2: Minor and consequential amendments***

#### ***Paragraph 1***

27. The paragraph amends the Dangerous Vessels Act 1985 to provide that directions under Schedule 3A of the 1995 Act as inserted by this Act will take precedence over a direction given by a harbour master to a dangerous vessel under section 1 of that Act.

#### ***Paragraph 2***

28. The paragraph repeals provisions in the 1995 Act which are re-enacted in this Act.

#### **COMMENCEMENT**

29. The Act comes into force two months after Royal Assent (section 4).

#### **HANSARD REFERENCES**

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<b><i>House of Commons</i></b>		
Introduction	11 December 2002	Vol 396 Col 288
Second Reading	28 February 2003	Vol 400 Col 544
Money and Ways and Means Resolutions	13 March 2003	Vol 401 Col 12
Committee (SCE)	29 April 2003	Hansard Standing Committee E
Remaining Stages (Report and Third Reading)	16 May 2003	Vol 405 Col 640
<b><i>House of Lords</i></b>		
Introduction	19 May 2003	Vol 648 Col 497
Second reading	13 June 2003	Vol 649 Col 493
Committee (Discharged)	1 July 2003	Vol 650 Col 737

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<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
Report	No report stage as committee was discharged	
Third reading	7 July 2003	Vol 651 Col 12
<b>Royal Assent</b> – 10 July 2003		House of Lords Hansard Vol 408 Col 1429
		House of Commons Hansard Vol 651 Col 469