
STATUTORY INSTRUMENTS

1995 No. 3128

MERCHANT SHIPPING

The Merchant Shipping (Port State Control) Regulations 1995

Made - - - - *5th December 1995*
Laid before the House of
Commons - - - - *11th December 1995*
Coming into force - - *1st January 1996*

Whereas the Secretary of State is a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to safety of ships and the health and safety of persons on them;

And whereas, in so far as the following Regulations are made in the exercise of powers conferred by section 21 of the Merchant Shipping Act 1979⁽³⁾, the Secretary of State for Transport has in pursuance of subsection (2) of section 22 of that Act consulted persons he considers will be affected as mentioned in that subsection;

And whereas, so far as these Regulations are made under section 22(1)(c) of the said Act of 1979, they are made only for the purpose of applying to certain other ships certain provisions of the Safety of Life at Sea Convention 1974;

Now, therefore, the Secretary of State for Transport, in exercise of the powers conferred by:

- (a) the said section 2(2) of the European Communities Act 1972;
- (b) sections 21(1)(a), (b) and (c), (3), (4) and (6) and 22(1) and (3) of the Merchant Shipping Act 1979; and
- (c) the Merchant Shipping (Prevention of Oil Pollution) Order 1983⁽⁴⁾ and the Merchant Shipping (Prevention and Control of Pollution) Order 1987⁽⁵⁾,

and of all other powers enabling him in that behalf, hereby makes the following Regulations:

(1) S.I.1993/595.
(2) 1972 c. 68.
(3) 1979 c. 39; section 21(6) was amended by section 49(3) of the Criminal Justice Act 1982 (c. 48); sections 21 and 22 were applied to hovercraft by the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350).
(4) S.I. 1983/1106, amended by S.I. 1985/2002 and S.I. 1991/2885.
(5) S.I. 1987/470, amended by S.I. 1990/2595.

INTRODUCTION

Citation, commencement and effect

1. These Regulations may be cited as the Merchant Shipping (Port State Control) Regulations 1995 and shall come into force on 1st January 1996.

PART I

IMPLEMENTATION OF COUNCIL DIRECTIVE 95/21/EC

Interpretation of Part I

2.—(1) This Part of these Regulations implements in the United Kingdom Council Directive 95/21/EC(6) concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (in these Regulations referred to as the “Council Directive”).

(2) In these Regulations, unless the context otherwise requires:

“the Act” means the Merchant Shipping Act 1995(7);

“British ship” has the meaning given by section 1 of the Act;

“clear grounds” means evidence which in the professional judgement of an inspector warrants a more detailed inspection of a ship, its equipment or its crew, including in particular criteria listed in Annex III of M. 1639;

“Conventions” means:

the International Convention on Load Lines, 1966 (LL 66),

the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74),

the International Convention for the Prevention of Pollution from Ships, 1973, and the 1978 Protocol relating thereto (MARPOL 73/78),

the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78),

the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72),

the International Convention on Tonnage Measurement of Ships, 1969 and the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No 147),

together with the Protocols and amendments to these Conventions and related Codes of mandatory status, in force at 19 June 1995; and

a reference to a Convention is a reference to any of the Conventions;

“Convention enactments” means:

(a) the Act; and

(b) statutory instruments made, or treated as made, under the Act, (including statutory instruments made, or treated as made, under an Order under the Act) which implement the Conventions;

(6) OJ No. L 157, 7.7.95, p.1.

(7) 1995 c. 21.

- “expanded inspection” means an inspection as specified in regulation 7.
- “fishing vessel” means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;
- “flag administration” in relation to a ship means the administration of the State whose flag the ship is entitled to fly;
- “inspector” means a person duly authorised by the Secretary of State to carry out inspections required by these Regulations;
- “Marine Safety Agency” means the Marine Safety Agency, an executive agency of the Department of Transport;
- “Merchant Shipping Notice” means a Notice described as such, issued by the Marine Safety Agency, and reference to a specific Merchant Shipping Notice includes a reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;
- “more detailed inspection” means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected, in the circumstances specified in regulation 6(3), to an in-depth inspection covering the ship’s construction, equipment, manning, living and working conditions and compliance with on-board operational procedures;
- “MOU” means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, as it stands at 19 June 1995;
- “M. 1639” means Merchant Shipping Notice No. M. 1639;
- “offshore installation” means a fixed or floating platform operating in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964⁽⁸⁾;
- “owner” includes, in relation to a ship, any operator, manager, charterer or agent of the ship;
- “port authority” means a harbour authority within the meaning of the Harbours Act 1964⁽⁹⁾, or in Northern Ireland, of the Harbours Act (Northern Ireland) 1970⁽¹⁰⁾, or if there is no such authority, the person having control of the operation of the port;
- “ship” includes hovercraft;
- “stoppage of an operation” means a formal prohibition of a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous.

Application of Part I

- 3.—(1) Subject to paragraph (2) below, this Part applies to any seagoing ship:
- (a) in a port in the United Kingdom or at an offshore installation; or
 - (b) anchored off such a port or such an installation (except in waters which are neither United Kingdom waters nor designated waters),

and its crew.

- (2) This Part of these Regulations does not apply to—
- (a) a British ship,
 - (b) a fishing vessel,
 - (c) a ship of war,

⁽⁸⁾ 1964 c. 29.

⁽⁹⁾ 1964 c. 40.

⁽¹⁰⁾ 1970 c. 1 (N.I.).

- (d) a naval auxiliary,
- (e) a wooden ship of a primitive build,
- (f) a government ship used for non-commercial purposes, or
- (g) a pleasure yacht not engaged in trade.

(3) In the case of a ship below 500 gross tonnage to the extent to which a Convention does not apply, an inspector shall, without prejudice to any other powers under the Act or statutory instruments made under it, take such action as may be necessary to ensure that the ship is not clearly hazardous to safety, health or the environment. In his application of this paragraph, an inspector shall be guided by Annex 1 to the MOU.

(4) When inspecting a ship pursuant to regulations 5 to 8 below no more favourable treatment shall be given to a ship flying the flag of a State which is not a party to a Convention or to the crew of such a ship than that given to a ship flying the flag of a State which is a party to that Convention or to the crew of such a ship.

(5) A power of inspection or detention conferred by a Convention enactment is also exercisable in relation to a ship which—

- (a) is at an offshore installation, or
- (b) is anchored off an offshore installation or a port in the United Kingdom,

where the ship is one to which this Part of these Regulations applies.

(6) Where—

- (a) a ship to which this Part of these Regulations applies is detained under a Convention enactment, or
- (b) the master of such a ship is served with a detention notice under such an enactment,

section 284 of the Act (enforcing detention of a ship) shall apply in relation to the ship as if any reference to proceeding to sea were a reference to proceeding contrary to the detention notice and references to sending or taking to sea were construed accordingly.

(7) In this regulation:

- “designated waters” means areas of sea above any of the areas for the time being designated under section 1(7) of the Continental Shelf Act 1964; and
- “United Kingdom waters” has the meaning given by section 313(2)(a) of the Act.

Competent Authority

4.—(1) The Marine Safety Agency is designated the competent authority for the United Kingdom for the purpose of the Council Directive and Part I of these Regulations.

(2) In relation to any other member State the “competent authority” means the national maritime administration maintained by that State for the inspection of ships.

(3) In relation to a state other than a member State “competent authority” means any authority designated as such by that state.

Inspection commitments

5.—(1) The Marine Safety Agency shall carry out an annual total number of inspections corresponding to at least 25% of the number of individual ships to which this Part of these Regulations apply which entered its ports during a representative calendar year.

(2) In selecting ships for inspection the Marine Safety Agency shall give priority to the ships referred to in Annex I of M. 1639.

(3) The Marine Safety Agency shall refrain from inspecting a ship which has been inspected by the competent authority of any member State in accordance with the Council Directive within the previous six months, provided that:

- (a) the ship is not in a category listed in Annex I of M. 1639, and
- (b) no deficiencies have been reported, following a previous inspection, and
- (c) no clear grounds exist for carrying out an inspection.

(4) The provisions of paragraph (3) shall not apply to any of the operational controls specifically provided for in the Convention enactments.

Inspection procedure

6.—(1) In carrying out an inspection referred to in regulation 5, the inspector shall as a minimum:

- (a) check the certificates and documents listed in Annex II of M. 1639, to the extent applicable; and
- (b) satisfy himself of the overall condition of the ship, including the engine room and accommodation and including hygienic conditions.

(2) The inspector may examine all relevant certificates and documents, other than those listed in Annex II of M. 1639, which are required to be carried on board in accordance with the Convention enactments.

(3) Whenever there are clear grounds for believing, after the inspection referred to in paragraph (1) and (2), that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention enactment, a more detailed inspection shall be carried out, including further checking of compliance with onboard operational requirements.

(4) The inspector shall also observe the relevant procedures and guidelines for the control of ships specified in Annex IV of M. 1639.

Expanded inspection of certain ships

7.—(1) Where there are clear grounds for a more detailed inspection of a ship belonging to the categories listed in Annex V of M. 1639, an expanded inspection shall be carried out taking into account the guidelines in Annex V, section B of M. 1639.

(2) A ship referred to in paragraph (1) above shall be subject to an expanded inspection by any of the competent authorities of the member States only once during a period of 12 months. However, the ship may be subject to the inspection provided for in regulation 6(1) and (2).

(3) Subject to paragraph (2) above, in the case of a passenger ship operating on a regular schedule in or out of a port in the United Kingdom, an expanded inspection of the ship shall be carried out before the ship starts operating on the schedule and every 12 months thereafter by the Marine Safety Agency subject to consultation with the competent authority of a member State, if the ship operates to ports in that member State.

Report of inspection to the master

8.—(1) On completion of an inspection, a more detailed inspection, or an expanded inspection, the master of the ship shall be provided by the inspector with a document in the form specified in Annex 3 to the MOU, giving the results of the inspection and details of any decisions taken by the inspector, and of corrective action to be taken by the master, owner or operator.

(2) In the case of deficiencies warranting the detention of a ship, the document to be given to the master in accordance with paragraph (1) shall include information about the future publication of information concerning the detention with regulation 16.

Rectification and detention

9.—(1) The owner shall satisfy the Marine Safety Agency that any deficiencies confirmed or revealed by an inspection referred to in regulation 6 or 7 are or will be rectified in accordance with the Conventions.

- (a) (2) (a) In case of deficiencies which are clearly hazardous to safety, health or the environment, the inspector shall detain the ship, or require the stoppage of the operation in the course of which the deficiencies have been revealed, using powers of detention in Convention enactments as appropriate, or issuing a prohibition notice under section 262 of the Act, as the case may be.
- (b) A detention notice may:
 - (i) include a direction that a ship shall remain in a particular place, or shall move to a particular anchorage or berth; and
 - (ii) specify circumstances when the master of the ship may move his ship from a specified place for reasons of safety or prevention of pollution.
- (c) The detention notice or stoppage of an operation shall not be lifted until the Marine Safety Agency establishes that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat to or harm to the marine environment.

(3) Without prejudice to any other requirement in the Convention enactments, when exercising his professional judgement as to whether or not a ship should be detained the inspector shall apply the criteria set out in Annex VI of M. 1639.

(4) In exceptional circumstances, where the overall condition of a ship is obviously substandard, the inspector may, in addition to detaining the ship, suspend the inspection of that ship until the responsible parties have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

(5) Without prejudice to any other requirement in the Convention enactments, in the event that an inspection referred to in regulation 6 or 7 gives rise to detention, the Marine Safety Agency shall immediately inform, in writing, the flag administration or the Consul or, in his absence,, the nearest diplomatic representative of the State of the flag administration, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognized organizations responsible for the issue of the ship's certificates shall also be notified where relevant.

(6) The provisions of these Regulations shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

(7) When carrying out inspections under these Regulations, the inspector shall make all possible efforts to avoid a ship being unduly detained or delayed.

Right of appeal and compensation

10.—(1) Regulations 11 and 12 apply in relation to the exercise of the power of detention in any Convention enactment which is contained in a statutory instrument, except the Merchant Shipping (Survey and Certification) Regulations 1995⁽¹¹⁾.

(2) Section 96 of the Act (references of detention notices to arbitration) shall apply in relation to a ship to which this Part of these Regulations applies as if, in subsection (2), the words from “unless” to the end were omitted.

(11) S.I. 1995/1210.

(3) Section 97 of the Act (compensation in connection with invalid detention of ship) shall apply in relation to a ship to which this Part of these Regulations applies as if, for subsection (1) there were substituted:

“(1) If on a reference under section 96 relating to a detention notice in relation to a ship, the owner of the ship shows to the satisfaction of the arbitrator that—

- (a) any matter did not constitute a valid basis for the relevant inspector’s opinion, and
- (b) there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may award the owner such compensation in respect of any loss suffered by him in consequence of the detention of the ship as the arbitrator thinks fit.”.

(4) In the operation of sections 264 and 265 of the Act, as applied by regulation 25 of the Merchant Shipping (Survey and Certification) Regulations 1995, as those sections apply in relation to a detention notice or order served on the master of a ship which is not a British ship:

- (i) the giving of a notice under the said section 264 (as applied by the said Regulations) shall not operate to suspend the operation of the detention notice or order; and
- (ii) on a reference under the said section 264 (as applied by the said Regulations) the burden of satisfying the arbitrator as to the matters specified in paragraphs (a) and (b) of the subsection (1) of the said section 265 shall lie with the owner.

11.—(1) Any question as to whether any of the matters specified in relation to a ship in a detention notice in pursuance of a power of detention to which this regulation applies in connection with any opinion formed by the 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 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 paragraph (1) above, the giving of the notice shall not suspend the operation of the detention notice.

(3) The arbitrator shall have regard, in coming to his decision, to any other matters not specified in the detention notice which appears to him to be relevant as to whether the ship was or was not liable to be detained.

(4) Where on a reference under this regulation 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.

(6) A person shall not be qualified for appointment as an arbitrator under this regulation 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 paragraph (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 paragraph (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 Courts and Legal Services Act 1990⁽¹²⁾);
- (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 regulation an arbitrator shall have the powers conferred on an inspector by section 259 of the Act.

(9) In the application of this regulation to Scotland any reference to an arbitrator shall be construed as a reference to an arbiter, and the reference in paragraph (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.

(10) The Arbitration Act (Northern Ireland) 1937⁽¹³⁾ shall apply in relation to an arbitration in pursuance of this regulation as if this regulation related to a matter in respect of which the Parliament of Northern Ireland had powers to make laws.

12.—(1) If on a reference under regulation 11 relating to a detention notice:

- (a) the arbitrator decides that the owner has proved that any matter did not constitute a valid basis for the inspector's opinion; and
- (b) it appears to him that the owner has proved that there were no reasonable grounds for the inspector to form that opinion;

the arbitrator shall award the owner of the ship such compensation in respect of any loss suffered in consequence of the detention of the ship as the arbitrator thinks fit.

(2) Any compensation awarded under this regulation shall be payable by the Secretary of State.

(3) In the application of this regulation to Scotland any reference to an arbitrator shall be construed as a reference to an arbiter.

Follow-up to inspections and detention

13.—(1) Where deficiencies referred to in regulation 9(2) cannot be rectified in the port of inspection, the Marine Safety Agency may allow the ship to proceed to the nearest appropriate repair yard available, as chosen by the master and the responsible parties, provided that the conditions determined by the competent authority of the flag administration and agreed by the Marine Safety Agency are complied with. Such conditions shall ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

(2) In the circumstances referred to in paragraph (1), the Marine Safety Agency shall notify the competent authority of the State where the repair yard is situated, the parties referred to in regulation 9(5) and any other authority as appropriate of all the conditions for the voyage.

(3) The notification of the parties referred to in paragraph (2) shall be in accordance with Annex 2 to the MOU.

(4) Where the Marine Safety Agency receives notification from the competent authority of another member State in respect of a ship which that authority ("the notifying authority") has, pursuant to Article 11.1 of the Council Directive as having effect in that State, allowed to proceed to a repair yard in the United Kingdom, the Marine Safety Agency shall inform the notifying authority of the action it has taken.

⁽¹²⁾ 1990 c. 41.

⁽¹³⁾ 1937 c. 8 (N.I.).

- (a) (5) (a) A ship to which this paragraph applies which proceeds to sea from any port in any member State:
- (i) without complying with the conditions determined by the competent authority of the member State in the port of inspection; or
 - (ii) which fails to, comply with the applicable requirements of the Conventions by not calling into the indicated repair yard;

shall not enter any port within the United Kingdom, until the owner has provided evidence to the satisfaction of the competent authority of the member State where the ship was found defective that the ship fully complies with all applicable requirements of the Conventions.

- (b) This paragraph applies to a ship, detained in a port in a member State after inspection has revealed deficiencies which are clearly hazardous to safety, health or the environment, which has been allowed by the competent authority to proceed to the nearest appropriate repair yard.

(6) If a ship proceeds to sea from a port in the United Kingdom without complying with the conditions determined by the Marine Safety Agency in accordance with paragraph (1), the Marine Safety Agency shall immediately alert the competent authorities of all the other member States.

(7) If a ship to which paragraph (5) applies is to proceed to a repair yard in the United Kingdom, but fails to call into the indicated repair yard, the Marine Safety Agency shall immediately alert the competent authorities of all the other member States.

(8) Notwithstanding the provisions of paragraph (5), access to a specific port may be permitted by the Secretary of State in the event of force majeure or overriding safety considerations, or to reduce or minimize the risk of pollution or to have deficiencies rectified, provided adequate measures to the satisfaction of the Marine Safety Agency have been implemented by the owner or the master of the ship to ensure safe entry.

Professional Profile of Inspectors

14.—(1) Inspections under these Regulations shall be carried out only by inspectors who fulfil the criteria specified in Annex VII of M. 1639.

(2) When the required professional expertise cannot be provided by the Marine Safety Agency, the inspector of the Marine Safety Agency may be assisted by any person with the required professional expertise.

(3) An inspector and any person assisting him shall have no commercial interest either in the port of inspection or in the ships inspected, nor shall an inspector be employed by or undertake work on behalf of non-governmental organisations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships.

(4) An inspector shall carry a personal document in the form of an identity card issued by the Marine Safety Agency indicating that the inspector is authorised to carry out inspections.

Reports from pilots and port authorities

15.—(1) A United Kingdom pilot, engaged in the berthing or unberthing of a ship to which this Part of these Regulations applies in the United Kingdom, or engaged on such a ship bound for a port within a member State, shall immediately inform;

- (a) in the case of an authorised pilot, the port authority authorising the pilot, who shall immediately inform The Coastguard Agency for onward transmission to the Marine Safety Agency, or;
- (b) in the case of other pilots;
 - (i) The Coastguard Agency for onward transmission to the Marine Safety Agency; or

(ii) the competent authority of another member State,

as appropriate, whenever they learn in the course of their normal duties that there are deficiencies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment.

(2) In paragraph (1), “United Kingdom pilot” means a pilot authorised pursuant to the Pilotage Act 1987⁽¹⁴⁾ and any pilot boarding a ship in United Kingdom waters (as defined in section 313(2) (a) of the Act.)

(3) If a port authority, when exercising its normal duties, learns that such a ship within its port has deficiencies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, that authority shall immediately inform the Marine Safety Agency.

Publication of detentions

16.—(1) The Marine Safety Agency shall, as a minimum, publish quarterly information concerning ships to which this Part of the Regulations applies detained during the previous 3-month period and which have been detained more than once during the past 24 months. The information published shall include the following:

name of the ship;

name of the shipowner or the operator of the ship

IMO number;

flag state;

the classification society, where relevant, and, if applicable, any other Party which has issued certificates to such ship in accordance with the Conventions on behalf of the flag State;

reason for detention; and

port and date of detention.

Reimbursement of costs

17.—(1) The Merchant Shipping (Fees) Regulations 1995⁽¹⁵⁾ shall be amended by adding the following sub-paragraph to paragraph 3 of Part I of the Schedule:

“(g) any inspection which results in the detention of a ship to which Part I of the Merchant Shipping (Port State Control) Regulations 1995 applies, and, without prejudice to sub-paragraph (c) above, any subsequent inspection relating to the deficiencies which led to the detention”.

(2) All costs relating to any inspection carried out by the Marine Safety Agency for the purposes of, or in connection with regulation 13(5) shall be charged to the owner or his representative in the United Kingdom.

(3) Any detention made pursuant to these Regulations shall not be lifted until any fees payable under the Merchant Shipping (Fees) Regulations 1995 in respect of any inspection leading to it or arising from it have been paid, or the Secretary of State has been provided with sufficient security for the fees.

Offences

18.—(1) If there is any contravention of a direction made pursuant to regulation 9(2), in respect of a ship, the owner and master of the ship shall each be guilty of an offence, and liable on

⁽¹⁴⁾ 1987 c. 21.

⁽¹⁵⁾ S.I. 1995/1893.

summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment not exceeding two years, or a fine or both.

(2) Where a ship:

(a) fails to proceed to the yard specified in regulation 13(1); or

(b) enters a port in contravention of regulation 13(5);

the owner and master shall each be guilty of an offence, and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment not exceeding two years, or a fine, or both.

(3) If a person obstructs an inspector or any person assisting the inspector he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) Any pilot who contravenes regulation 15(1) or any port authority which contravenes regulation 15(1) or 15(3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) It shall be a defence for a person charged under this regulation to prove that the person charged took all reasonable steps to avoid committing the offence.

PART II

RIGHTS OF APPEAL AND COMPENSATION IN RESPECT OF DETAINED SHIPS

19.—(1) Subject to paragraph (2) below, regulations 11 and 12 above apply in relation to the exercise of the power of detention contained in any regulations made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983(**16**) or the Merchant Shipping (Prevention and Control of Pollution) Order 1987(**17**), or in safety regulations made or treated as made under section 85, of the Act, as they apply in relation to the exercise of a power of detention in accordance with Part I of these Regulations.

(2) Paragraph (1) above does not apply in relation to a ship which is not a United Kingdom ship in relation to the Merchant Shipping (Certification and Watchkeeping) Regulations 1982(**18**) and the Merchant Shipping (Ro-Ro Passenger Ship Survivability) (No. 2) Regulations 1994(**19**) (being regulations a draft of which would be required by section 85(6) of the 1995 Act to be approved by resolution of each House of Parliament.)

PART III

INSPECTION OF FAMILIARITY OF CREW WITH OPERATIONAL PROCEDURES

20.—(1) Ships when in ports in the United Kingdom, and also in the case of United Kingdom ships when elsewhere, shall be subject to inspection for the purpose of checking that the master and crew are familiar with essential procedures and operations relating to the safety of the ship.

(2) Section 258 of the Act (powers to inspect ships and their equipment, etc.) shall apply in relation to a ship in a port in the United Kingdom as if, in subsection (1), after “articles on board” there

(16) S.I. 1983/1106.

(17) S.I. 1987/470.

(18) S.I. 1982/1699.

(19) S.I. 1994/1383.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

were inserted “the familiarity of the crew with essential procedures and operations relating to the safety of the ship,”.

Signed by authority of the Secretary of State for Transport

5th December 1995

Goschen
Parliamentary Under-Secretary of State,
Department of Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the Council Directive 95/21/EC concerning the enforcement, in respect of shipping using community ports and sailing in the waters under the jurisdiction of the member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control). The Regulations also contain, in Parts II and III, related provisions, not in implementation of the Directive, giving rights of appeal and compensation in respect of detained ships, and allowing inspection of operational requirements.

Part 1 applies to ships which are not British ships calling at, or anchored off, UK ports and offshore installations (regulation 3). It provides for the Marine Safety Agency to inspect at least 25% of such ships entering its ports in a year, to check the certificates required by a number of Conventions concerning ship safety and marine pollution (regulations 5 and 6.)

Where there are clear grounds, by reason of non-compliance with the Conventions or the nature or type of ship, a more detailed inspection is to be carried out. In the case of passenger ships operating on a regular service to or from the United Kingdom, an expanded inspection is to be carried out annually by the Marine Safety Agency, subject to consultation with the Administration of other port states on the service (regulation 7.) Other specified types of ship are also subject to expanded inspections.

Powers of inspection and detention in the Merchant Shipping Act 1995 and statutory instruments under it, can be used in the circumstances required by the Directive (regulations 3(5) and (6) and 9.)

Rights of appeal and compensation in connection with such detentions are provided (regulation 10 to 12.)

There are provisions for follow up to inspections and detentions, qualifications of inspectors, duties of pilots and port authorities to make reports, publication of the detention information, fees and offences (regulations 13—18.)

In Part II, rights of appeal and compensation in respect of detained ships in Part I are applied in respect of detention of any ship (including a British ship) which is detained by virtue of powers in Merchant Shipping legislation. This, for ships to which the Safety of Life at Sea Convention 1974 (SOLAS) applies, implements regulation 19(f) of Chapter I of the Annex to the Convention.

Part III implements the new Chapter XI of SOLAS adopted by the Conference of Contracting Governments to SOLAS 74 by Resolution 1 on 24 May 1994. This allows inspection of the familiarity of the crew with essential procedures and operations relating to the safety of the ship (as an addition to existing powers to inspect ships, their equipment and documents.)

Merchant Shipping Notices referred to in the Regulations may be obtained from the Marine Safety Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

The Safety of Life at Sea Convention 1974, and amendments, and other Conventions referred to in regulation 2(1) can be obtained from the International Maritime Organization, 4 Albert Embankment, London SE1, except the Merchant Shipping (Minimum Standards) Convention (ILO No. 147) (Cmnd. 7163).