
STATUTORY INSTRUMENTS

1995 No. 3128

The Merchant Shipping (Port State Control) Regulations 1995

PART I

IMPLEMENTATION OF COUNCIL DIRECTIVE 95/21/EC

Right of appeal and compensation

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⁽¹⁾);
- (b) he is an advocate or solicitor in Scotland of at least 10 years' standing; or

(1) 1990 c. 41.

(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⁽²⁾ 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.

(2) 1937 c. 8 (N.I.).