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STATUTORY INSTRUMENTS

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**1999 No. 1957**

**The Merchant Shipping (Marine Equipment) Regulations 1999**

**PART IV: ENFORCEMENT**

**Withdrawal of approval of quality system**

**19.**—(1) If it appears to a notified body, in relation to any quality assurance system approved by it pursuant to these Regulations, that—

- (a) an undertaking given under regulation 14(1)(d) has not been complied with; or
- (b) regulation 14(12)(b) or (c) (including those provisions as applied by regulation 17(3)) has not been complied with, it may, after giving the manufacturer the opportunity of making representations to it as to why its approval should not be withdrawn, by notice given to the manufacturer withdraw approval for the quality system concerned.

(2) The notice given under paragraph (1) above shall—

- (a) be in writing;
- (b) specify the date on which it is to take effect; and
- (c) specify the grounds for the decision.

(3) The notified body shall send to the Secretary of State a copy of any notice given under paragraph (1) above.

**Unauthorised use of mark of conformity**

**20.**—(1) Subject to paragraph (2) below, any person who, in respect of any item of equipment—

- (a) save as provided under regulations 13 to 17 above, affixes to it the mark of conformity or identification number or symbol referred to in the said regulations;
- (b) affixes a mark of conformity in contravention of regulation 18 above;
- (c) forges or counterfeits or in any other manner alters or defaces any mark of conformity or identification number or symbol affixed in accordance with these Regulations;
- (d) removes any mark of conformity or identification number or symbol affixed in accordance with these Regulations; or
- (e) makes any alteration to the equipment after a mark of conformity or identification number or symbol has been affixed to it in accordance with these Regulations so that the equipment no longer complies with the applicable international standards,

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under paragraph (1) above by reason solely of the alteration, defacement or removal of a mark of conformity or identification symbol or number in the course of the adjustment or repair of any item of equipment by, or by the duly authorised agent of, a person who is a manufacturer of such equipment or is regularly engaged in the business of the repair of such equipment.

(3) Any person who places on the market, supplies, or exposes or offers for supply, an item of equipment which to his knowledge—

- (a) bears a mark of conformity or identification number or symbol which is a forgery or counterfeit, or which has been transferred from another item of equipment, or which has been altered or defaced otherwise than in accordance with these Regulations; or
- (b) does not comply with the applicable international standards by reason of any alteration made to it after any mark of conformity or identification number or symbol was affixed to it in accordance with these Regulations,

shall be guilty of an offence.

(4) Any equipment in respect of which an offence under this regulation has been committed shall be liable to be forfeited.

(5) References in this regulation to other provisions of these Regulations include references to corresponding provisions under the laws of a member State other than the United Kingdom.

### **Sample checks on equipment**

**21.**—(1) Notwithstanding that equipment bears the mark of conformity, the Secretary of State may carry out, or have carried out, sample checks on such equipment placed on the market, supplied for use or exposed or offered for supply in the United Kingdom but not yet placed on board a ship to ensure that the equipment complies with the requirements of these Regulations.

(2) Subject to paragraph (3), notwithstanding that equipment placed on board a UK ship bears the mark of conformity, the Secretary of State may, if the applicable international instruments require that operational performance tests be performed for safety or pollution prevention purposes, carry out, or have carried out, such tests.

(3) The Secretary of State shall not carry out or have carried out any test referred to in paragraph (2) above if such test duplicates the EC conformity-assessment procedure with which the equipment complies under the Directive.

(4) If the Secretary of State carried out or has carried out any test referred to in paragraph (2) above on an item of equipment he may require that the manufacturer, his authorised representative established within the Community or the person responsible for marketing the equipment within the Community provide an inspection or testing report on the equipment.

### **Defective equipment**

**22.**—(1) If the Secretary of State is satisfied, after carrying out, or having carried out, sample checks or performance tests on the equipment, or otherwise, that equipment which bears the mark of conformity, when correctly installed on board a ship, maintained and used for its intended purpose, may compromise the health or safety of the ship's crew, passengers, or other persons or adversely affect the marine environment, he may—

- (a) direct that the equipment be withdrawn from the market;
- (b) prohibit the equipment being placed on the market, or restrict the extent to which it can be so placed; or
- (c) prohibit the equipment being used on board ships for which he issues safety certificates in accordance with the relevant international conventions, or restrict the extent to which it may be so used.

(2) Before issuing any direction, prohibition or restriction under paragraph (1) above in respect of equipment, the Secretary of State shall serve a written notice of his intention to do so on the manufacturer of the equipment, or his authorised representative in the Community, and shall provide

the manufacturer or his authorised representative (as appropriate) with an opportunity to make representations to him on the proposed direction, prohibition or restriction.

(3) Any direction, prohibition or restriction issued by the Secretary of State under paragraph (1) above in respect of equipment shall be given in writing to the manufacturer of the equipment, or his authorised representative in the Community.

(4) The Secretary of State may withdraw or vary any direction, prohibition or restriction issued under paragraph (1) above if he is satisfied that the equipment in relation to which the direction, prohibition or restriction was issued, when correctly installed on board a ship, maintained and used for its intended purpose, no longer compromises the health or safety of the ship's crew, passengers, or other persons or adversely affects the marine environment.

(5) A manufacturer who fails to comply with a direction, prohibition or restriction given to him under paragraph (1) above shall be guilty of an offence.

### **Offences and penalties**

**23.**—(1) If equipment is carried on a ship otherwise than in compliance with regulation 6(1) above, the owner and master of the ship shall each be guilty of an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

(2) If equipment which the Secretary of State has allowed to be placed on board a ship under regulation 7 or 8 above, or in respect of which he has issued a certificate under regulation 9(3) above, is being used otherwise than in compliance with any restriction or condition imposed under regulation 7(3)(b), 8(2)(b) or 9(3)(b) (as appropriate) the owner and master of the ship shall each be guilty of an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

(3) A manufacturer guilty of an offence under regulation 19(4) or 22(5) above shall be punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

(4) Any person guilty of an offence under regulation 20(1) or (3) shall be punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

### **Defence to offences**

**24.** In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove that he took all reasonable steps to avoid the commission of the offence.

### **Power to detain**

**25.** In any case where equipment on board a ship does not comply with the requirements of these Regulations, or the owner of a ship has not complied with a direction under regulation 9(2) to replace equipment on board the ship, the ship shall be liable to be detained and section 284(1) to (6) and (8) of the Merchant Shipping Act 1995(1) (which relates to the detention of a ship) shall have effect in relation to the ship as if for the words "the Act" wherever they appear there were substituted the words "the Merchant Shipping (Marine Equipment) Regulations 1999".