
STATUTORY INSTRUMENTS

2019 No. 42

**The Merchant Shipping (Prevention
of Oil Pollution) Regulations 2019**

PART 9

Enforcement

Inspection of ships

36.—(1) In so far as sections 258 (powers to inspect ships and their equipment, etc.) and 259 (powers of inspectors in relation to premises and ships) of the 1995 Act^{M1} apply in relation to a ship to which these Regulations apply, for the purpose of checking compliance with these Regulations those sections have effect subject to the following modifications.

(2) The powers referred to in paragraph (1) to inspect a ship and its equipment, any part of the ship, any articles on board and any documentation carried in the ship is limited to—

- (a) verifying that there is on board a valid—
 - (i) IOPP certificate in the form prescribed in Appendix II to Annex I; or
 - (ii) UKOPP certificate in the form prescribed in regulation 13(3);
- (b) verifying whether documentation referred to in regulation 19, where applicable, has been issued in respect of the ship and is still valid;
- (c) investigating any operation regulated by these Regulations, if there are clear grounds for believing that the master or the crew are not familiar with essential shipboard procedures for preventing pollution by oil;
- (d) verifying whether oil, oily mixture or oil residue (sludge) has been discharged from the ship in violation of these Regulations;
- (e) inspecting the Oil Record Book; and
- (f) inspecting the Shipboard Oil Pollution Emergency Plan,

except where there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the appropriate certificate or other documentation referred to in sub-paragraphs (a), (b), (e) and (f).

(3) The powers referred to in paragraph (1) to go on board a ship may only be exercised if the ship in question is—

- (a) in a port in the United Kingdom; or
- (b) at an offshore installation in United Kingdom waters or controlled waters.

(4) Where a ship which is not a United Kingdom ship is inspected for the purpose of paragraph (2) (d), the person exercising the powers of inspection must ensure that the report of that inspection is sent to—

- (a) the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State; and

Status: Point in time view as at 01/03/2019.

Changes to legislation: There are currently no known outstanding effects for the The Merchant Shipping (Prevention of Oil Pollution) Regulations 2019, PART 9. (See end of Document for details)

- (b) any other Party to the Convention that requested the inspection.
- (5) Where Oil Record Book entries are inspected under paragraph (2)(e) the person exercising the power of inspection may—
 - (a) make a copy of any entry in that book; and
 - (b) require the master of the ship to certify that the copy is a true copy of the original.
- (6) Any copy certified in accordance with paragraph (5) is admissible in any judicial proceeding as evidence of the facts stated in it.
- (7) In this regulation “oil residue (sludge)” has the meaning given in regulation 1 of Annex I.

Commencement Information

I1 [Reg. 36](#) in force at 1.3.2019, see [reg. 1\(1\)](#)

Marginal Citations

M1 [Section 258](#) is amended by the [Merchant Shipping and Maritime Security Act 1997 \(c. 28\)](#), [Schedule 1, paragraph 4](#), and [Schedule 7, Part 1](#), and the [Protection of Freedoms Act 2012 \(2012 c. 9\)](#), [Schedule 2, Part 1 paragraph 2](#) and [Schedule 10, Part 2](#).

Investigation of alleged violations by United Kingdom ships

- 37.** Upon receiving evidence that a substance has been discharged from a United Kingdom ship in violation of these Regulations the Secretary of State must—
- (a) cause the matter to be investigated;
 - (b) inform the IMO of the action taken; and
 - (c) where another State has reported the violation, inform that State of the action taken.

Commencement Information

I2 [Reg. 37](#) in force at 1.3.2019, see [reg. 1\(1\)](#)

General provisions on detention

- 38.—(1)** Where a determination is made of the kind mentioned in regulation 16(1) in relation to a ship, or a surveyor of ships has clear grounds for believing that—
- (a) an IOPP or UKOPP certificate is required to have been issued in respect of a ship but has not been issued, or has been issued and is not valid;
 - (b) documentation referred to in regulation 19 (“appropriate documentation”) is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
 - (c) the condition of a ship or its equipment does not correspond substantially with the particulars of that certificate or other appropriate documentation;
 - (d) the master or crew of a ship are not familiar with essential shipboard procedures relating to the prevention of pollution by oil; or
 - (e) an offence under regulation 42 is being committed in respect of the ship,
- the ship is liable to be detained until a surveyor of ships is satisfied that it can proceed to sea without presenting any unreasonable threat of harm to the marine environment.

(2) Notwithstanding paragraph (1) a person having powers to detain a ship may permit a ship which is liable to be detained under that paragraph to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.

(3) Where a surveyor of ships has clear grounds for believing that an offence comprising a contravention of any of regulation 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27, 28, 29(1) to (3), 30(1) to (3), (5) and (6), 31 or 32 has been committed in respect of a ship, the ship is liable to be detained.

(4) The power under this regulation to detain a ship may only be exercised if the ship in question is—

- (a) in a port in the United Kingdom; or
- (b) at an offshore installation in United Kingdom waters or controlled waters.

(5) Section 284 of the 1995 Act^{M2} (enforcing detention of a ship) applies where a ship is liable to be detained under paragraph (1) or (3) as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under paragraph (1) or (3); and
- (b) subsection (7) were omitted.

(6) Where a ship is liable to be detained under paragraph (1) or (3), the person detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds of the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the 1995 Act.

(7) Where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

(8) Where a ship is detained under paragraph (3), a person having power to detain the ship must, at the request of the owner, manager, demise charterer or master, immediately release the ship—

- (a) if no proceedings for an offence comprising a contravention of any of regulation 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27, 28, 29(1) to (3), 30(1) to (3), (5) and (6), 31 or 32 are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for any such offence having been instituted within that period are concluded without the owner, manager, demise charterer or master being convicted;
- (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security; or
 - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,by or on behalf of the owner, manager, demise charterer or master;
- (d) where the owner, manager, demise charterer or master is convicted of any such offence, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea, and any bond or other financial security ordered by such court or tribunal is posted.

(9) The Secretary of State must repay any sum paid in pursuance of paragraph (8)(c) or release any security so given—

Status: Point in time view as at 01/03/2019.

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- (a) if no proceedings for an offence comprising a contravention of any of regulation 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27, 28, 29(1) to (3), 30(1) to (3), (5) and (6), 31 or 32 are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for any such offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.

(10) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (8)(c) and the owner, manager, demise charterer or master is convicted of an offence comprising a contravention of any of regulations 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27, 28, 29(1) to (3), 30(1) to (3), (5) and (6), 31 or 32, the sum so paid or the amount made available under the security must be applied as follows—

- (a) first, in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
 - (b) next, in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.

(11) Section 145 of the 1995 Act ^{M3} (interpretation of section 144) applies for the purposes of paragraphs (8) to (10) as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
- (b) references to an offence under section 131 were references to an offence comprising a contravention of any of regulation 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27 or 28.

Commencement Information

I3 Reg. 38 in force at 1.3.2019, see **reg. 1(1)**

Marginal Citations

M2 Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), **Schedule 1**, paragraph 5, and S.I. 2015/664.

M3 Section 145 was amended by the Criminal Justice Act 2003 (c. 44), **Schedule 36**, Part 2, paragraph 13, and by the Criminal Justice and Courts Act 2015 (c. 2), **Schedule 11**, paragraph 16.

Power for harbour master to detain

39.—(1) Where the harbour master of a harbour in the United Kingdom has clear grounds for believing that an offence comprising a contravention of any of regulation 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27, 28, 29(1) to (3), 30(1) to (3), (5) and (6), 31 or 32 has been committed the harbour master may detain that ship.

(2) Section 144(2) and (3) of the 1995 Act (harbour master's power to detain ships for certain offences) applies to a detention under paragraph (1) as it applies to a detention under section 144(1) of the 1995 Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by the harbour authority.

(4) Where a ship is detained under paragraph (1), the harbour master must immediately release the ship—

- (a) if no proceedings for an offence comprising a contravention of any of regulation 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27, 28, 29(1) to (3), 30(1) to (3), (5) and (6), 31 or 32 are instituted within the period of seven days beginning with the day on which the ship is detained;
 - (b) if proceedings for any such offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
 - (c) if either—
 - (i) the sum of £30,000 is paid to the harbour authority by way of security; or
 - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than £30,000 is given to the harbour authority,by or on behalf of the owner, manager, demise charterer or master;
 - (d) where the owner, manager, demise charterer or master is convicted of any such offence, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
 - (e) if the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such a court or tribunal is posted.
- (5) The harbour authority must repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—
- (a) if no proceedings for an offence comprising a contravention of any of regulation 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27, 28, 29(1) to (3), 30(1) to (3), (5) and (6), 31 or 32 are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if proceedings for any such offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the owner, manager, demise charterer or master is convicted of an offence comprising a contravention of any of regulation 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27, 28, 29(1) to (3), 30(1) to (3), (5) to (6), 31 or 32, the sum so paid or the amount made available under the security must be applied as follows—
- (a) first, in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
 - (b) next, in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.
- (7) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if—
- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
 - (b) references to any offence under section 131 were references to an offence comprising a contravention of any of regulation 25(1) to (3), 25(6) and (7), 26(1) to (3), 26(8), 27 or 28.

Commencement Information

I4 [Reg. 39](#) in force at 1.3.2019, see [reg. 1\(1\)](#)

Status: Point in time view as at 01/03/2019.

Changes to legislation: There are currently no known outstanding effects for the The Merchant Shipping (Prevention of Oil Pollution) Regulations 2019, PART 9. (See end of Document for details)

Duty of harbour master to report deficient ships

40. If the harbour master of a harbour in the United Kingdom has reason to believe that a ship is about to enter or leave the harbour and does not comply with the requirements of these Regulations, the harbour master must immediately report the matter to the Secretary of State.

Commencement Information

I5 Reg. 40 in force at 1.3.2019, see **reg. 1(1)**

Right of appeal and compensation

41.—(1) Regulations 15 and 16 of the Merchant Shipping (Port State Control) Regulations 2011^{M4} (arbitration and compensation) apply in relation to the exercise of the powers of detention under these Regulations as they apply in relation to the exercise of those powers under Part 1 of those Regulations, subject to the modifications in paragraph (2).

(2) The modifications are—

- (a) references to “inspector” are to be read as references to the authority detaining the ship or the harbour master, as the case may be;
- (b) references to—
 - (i) “issue of a refusal of access notice” (regulation 16(1));
 - (ii) “refusal of access” (regulation 15(2));
 - (iii) “refusal of access notice” (regulations 15 and 16);
 - (iv) “served with a refusal of access notice” (regulation 15(4)); and
 - (v) “service of a refusal of access notice” (regulation 15(7)),
 are omitted; and
- (c) in regulation 16(2) after the word “State”, insert “, except where the ship is detained by a harbour master, in which case any compensation awarded under this section is payable by the harbour authority.”.

Commencement Information

I6 Reg. 41 in force at 1.3.2019, see **reg. 1(1)**

Marginal Citations

M4 S.I. 2011/2601. Regulation 15 is amended prospectively by S.I. 2018/1122. There are other amending instruments but none is relevant.

Offences

42.—(1) Any contravention of—

- (a) regulation 6, 11(1) to (4), 16(2) or (4), 19, 34(6) or 35 is an offence by the owner and by the master of the ship in question;
 - (b) regulation 15(4), 20, 25, 26, 27(3), 28, 29, 30, 31, 32, 33 or 34(1) to (3) is an offence by the owner, manager, demise charterer and master of the ship in question;
 - (c) regulation 16(3) is an offence by the person in question.
- (2) Any failure by a master to comply with a requirement under regulation 36(5)(b) is an offence.

- (3) An offence under paragraph (1) or (2) is punishable—
- (a) on summary conviction—
 - (i) in England and Wales, by a fine; or
 - (ii) in Scotland and Northern Ireland by a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment by a fine.

Commencement Information

I7 [Reg. 42](#) in force at 1.3.2019, see [reg. 1\(1\)](#)

Service of documents on foreign companies

43. Section 143(6) of the 1995 Act ^{M5} (service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 131 of the 1995 Act) applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under section 131 as if—

- (a) the reference to section 131 was a reference to these Regulations;
- (b) in the case of an offence in respect of a ship other than an offshore installation, the reference to the owner was a reference to the owner, manager or demise charterer; and
- (c) in the case of an offence in respect of an offshore installation the reference to—
 - (i) the owner of the ship was a reference to the owner of the offshore installation; and
 - (ii) the master of the ship was a reference to the manager of the offshore installation.

Commencement Information

I8 [Reg. 43](#) in force at 1.3.2019, see [reg. 1\(1\)](#)

Marginal Citations

M5 [Section 143\(6\)](#) is amended by [S.I. 2009/1941](#).

Enforcement and application of fines

44. Section 146 of the 1995 Act (enforcement and application of fines) applies to any fine for an offence comprising a contravention of any of regulations 25 to 35 as if—

- (a) in subsection (1) of that section the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 of the 1995 Act were a reference to proceedings against the owner, manager, demise charterer or master for an offence comprising a contravention of any of regulations 25 to 35; and
- (b) in subsection (2) of that section, the reference to an offence under section 131 were a reference to an offence comprising a contravention of any of regulations 25 to 28.

Commencement Information

I9 [Reg. 44](#) in force at 1.3.2019, see [reg. 1\(1\)](#)

Status: Point in time view as at 01/03/2019.

Changes to legislation: There are currently no known outstanding effects for the The Merchant Shipping (Prevention of Oil Pollution) Regulations 2019, PART 9. (See end of Document for details)

Restriction on jurisdiction over offences outside United Kingdom limits

45.—(1) In the case of a contravention of any of regulations 25 to 28 in respect of a ship which is not a United Kingdom ship in the internal waters, territorial sea or exclusive economic zone of a foreign State, proceedings in respect of that offence must not be instituted in the United Kingdom unless—

- (a) that foreign State, the flag State of the ship in question or a State polluted or threatened with pollution as a result of the offence requests that proceedings be taken; or
- (b) the offence has caused or is likely to cause oil pollution in controlled waters or United Kingdom waters.

(2) Where proceedings have been instituted but not concluded, they must be suspended upon the request of the foreign State in question and the Secretary of State must send all the evidence, court records and documents relating to the case, together with any sum paid or security given, to the foreign State.

(3) In this regulation—

“exclusive economic zone”, in relation to a foreign state, means the area beyond and adjacent to the territorial sea of that State, but not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured; and

“foreign State” means a State other than the United Kingdom.

Commencement Information

I10 [Reg. 45](#) in force at 1.3.2019, see [reg. 1\(1\)](#)

Suspension of proceedings at flag State request

46.—(1) This regulation applies to proceedings instituted but not concluded in the United Kingdom in respect of a contravention of any of regulations 25 to 28 committed outside United Kingdom waters by a ship which is not a United Kingdom ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the court is satisfied that the flag State in question has instituted proceedings corresponding to the proceedings in the United Kingdom in respect of the contravention of that provision within six months of the institution of the proceedings by the United Kingdom.

(3) Paragraph (2) does not apply—

- (a) where the contravention of any of regulations 25 to 28 resulted in serious pollution to the United Kingdom; or
- (b) if the Secretary of State certifies that the flag State in question has repeatedly disregarded its obligation to enforce effectively the requirements of the Convention in respect of its ships.

(4) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings must be terminated.

Commencement Information

I11 [Reg. 46](#) in force at 1.3.2019, see [reg. 1\(1\)](#)

Defences

47.—(1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that person took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings for an offence comprising a contravention of any of regulations 25 to 28 it is a defence for the person charged to prove that—

- (a) the ship was not a United Kingdom ship;
- (b) the discharge took place in waters that were neither controlled waters nor United Kingdom waters; and
- (c) the ship was in a port in the United Kingdom at the time of the institution of the proceedings by reason only of stress of weather or any other reason beyond the control of the master or owner or any charterer or manager.

Commencement Information

I12 Reg. 47 in force at 1.3.2019, see [reg. 1\(1\)](#)

Review

48.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provisions contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 1st March 2024.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015 ^{M6} requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under Annex I are implemented in other countries which are subject to the obligations.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provisions referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Commencement Information

I13 Reg. 48 in force at 1.3.2019, see [reg. 1\(1\)](#)

Marginal Citations

M6 2015 c. 26. Section 30(3) was amended by the [Enterprise Act 2016 \(c. 12\)](#), [section 19](#) and the [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), [Schedule 8](#), Part 2, paragraph 36.

Status:

Point in time view as at 01/03/2019.

Changes to legislation:

There are currently no known outstanding effects for the The Merchant Shipping (Prevention of Oil Pollution) Regulations 2019, PART 9.