
STATUTORY INSTRUMENTS

2020 No. 620

**The Merchant Shipping (Prevention of Pollution
by Sewage from Ships) Regulations 2020**

PART 5

Enforcement

Inspection of ships

25.—(1) Insofar as sections 258(1) (powers to inspect ships and their equipment etc.) and 259 (powers of inspectors in relation to premises and ships) of the 1995 Act 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 power to inspect a ship and its equipment, any part of the ship, any articles on board and any document carried in the ship, is limited to—

- (a) verifying whether sewage has been discharged from the ship in violation of these Regulations;
- (b) 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 sewage;
- (c) verifying whether a Sewage Certificate has been issued in respect of the ship and is still valid; or
- (d) verifying whether appropriate documentation has been issued in respect of the ship and is still valid;

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 Sewage Certificate or other appropriate documentation referred to in sub-paragraph (c) or (d).

(3) The power in those sections to go on board a ship may only be exercised if the ship is—

- (a) in a port in the United Kingdom;
- (b) at an offshore terminal in United Kingdom waters or controlled waters;
- (c) a fixed platform in United Kingdom waters or controlled waters; or
- (d) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.

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

(1) 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 (c. 9), Schedule 2, Part 1 paragraph 2 and Schedule 10, Part 2.

- (a) a diplomatic representative of the ship's flag State or the appropriate maritime authorities of that State; and
- (b) any other party to the Convention who requested the inspection.

General provisions on detention

26.—(1) Where—

- (a) a determination is made of the kind mentioned in regulation 22(1) (procedure to be adopted when a ship is deficient) in relation to a ship; or
- (b) a surveyor of ships has clear grounds for believing that—
 - (i) a Sewage Certificate is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
 - (ii) 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;
 - (iii) the condition of a ship or its equipment does not correspond substantially with the particulars of that Certificate or other appropriate documentation;
 - (iv) the master or crew of a ship are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage; or
 - (v) an offence under regulation 30(1) (offences) is being committed in respect of a ship,

the ship is liable to be detained until a surveyor of ships is satisfied that it can proceed to sea without presenting an 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 paragraph (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) Where a surveyor of ships has clear grounds for believing that an offence under regulation 30(1)(d) or (e) (offences) 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 is—

- (a) in a port in the United Kingdom;
- (b) at an offshore terminal in United Kingdom waters or controlled waters;
- (c) a fixed platform in United Kingdom waters or controlled waters; or
- (d) a floating platform in United Kingdom waters or controlled waters, other than a floating platform which is in transit.

(5) Section 284 of the 1995 Act⁽²⁾ (enforcing detention of a ship) applies where a ship is liable to be detained under the preceding provisions of this regulation as if—

- (a) references to detention of a ship under the 1995 Act were references to detention of the ship in question under the preceding provisions of this regulation; and
- (b) subsection (7) were omitted.

(6) Where a ship is liable to be detained under the preceding provisions of this regulation, the person 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 any person mentioned in section 284(1) of the 1995 Act.

(2) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1, paragraph 5, and S.I. 2015/664, Schedule 4, Part 1, paragraph 27(1) and (15).

(7) Where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately inform a diplomatic representative of the ship's flag State 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 under regulation 30(1)(d) or (e) (offences) are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under regulation 30(1)(d) or (e) (offences), 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 an offence under regulation 30(1)(d) or (e) (offences), 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 UNCLOS, 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—

- (a) if no proceedings for an offence under regulation 30(1)(d) or (e) (offences) are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for that 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 under regulation 30(1)(d) or (e) (offences), 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⁽³⁾ (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 (discharge of oil from ships into certain United Kingdom waters) were references to an offence under regulation 30(1)(d) or (e) (offences).

(3) 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 a harbour master to detain a ship

27.—(1) Where the harbour master of a harbour in the United Kingdom has clear grounds for believing that an offence has been committed under regulation 30(1)(d) or (e) (offences) by the discharge from a ship of sewage into the waters of the harbour, the harbour master may detain the ship.

(2) Section 144(2) and (3) of the 1995 Act (harbour master's power of detention of ships for certain offences) apply to a detention under paragraph (1) as they apply 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 this regulation, the harbour master must immediately release the ship—

- (a) if no proceedings for an offence under regulation 30(1)(d) or (e) (offences) are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under regulation 30(1)(d) or (e) (offences), 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 master, is satisfactory and is for an amount not less than £30,000 is given to the harbour authority;
- (d) where the owner, manager, demise charterer or master is convicted of an offence under regulation 30(1)(d) or (e) (offences), 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 UNCLOS and any bond or other financial security ordered by such 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 under regulation 30(1)(d) or (e) (offences) are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for an offence under regulation 30(1)(d) or (e) (offences), 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 under regulation 30(1)(d) or (e) (offences), the sum so paid for 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 an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were references to an offence under regulation 30(1)(d) or (e) (offences).

Duty of a harbour master to report deficient ships

28. The harbour master of a harbour in the United Kingdom must immediately notify the Secretary of State if the harbour master has reason to believe that a ship is about to—

- (a) enter the harbour; or
- (b) leave the harbour,

and does not comply with the requirements of these Regulations.

Right of appeal and compensation

29.—(1) Regulations 15 (arbitration) and 16 (compensation) of the Merchant Shipping (Port State Control) Regulations 2011(4) apply in relation to the exercise of the power of detention under these Regulations as they apply in relation to the exercise of those powers under Part 1 (implementation of Directive 2009/16/EC(5)) of those Regulations, subject to the modifications referred to in paragraph (2).

(2) The modifications are—

- (a) references to “inspector” are to be taken 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”;
 - (ii) “refusal of access”;
 - (iii) “refusal of access notice”;
 - (iv) “served with a refusal of access notice”; and
 - (v) “service of a refusal of access notice”,are omitted; and
- (c) in regulation 16(2) after “State” there is added “, except where the ship is detained by a harbour master, in which case any compensation awarded under this section must be paid by the harbour authority.”.

Offences

30.—(1) Any contravention of—

- (a) regulation 11 (prohibition on United Kingdom ships proceeding to sea without a Sewage Certificate), 12(1), (2) or (3) (prohibition on non-United Kingdom ships proceeding to sea without a Sewage Certificate or appropriate documentation), 18(2) (extensions of periods of validity of Sewage Certificates by a Certifying Authority), 20(1), (2) or (3) (responsibilities of the owner and master of a United Kingdom ship), 21(2) (additional surveys of United Kingdom ships) or 24(5) (duration and validity of Sewage Certificates) is an offence by the owner and master of the ship;

(4) S.I. 2011/2601, to which there are amendments not relevant to the Regulations.

(5) OJ No. L 131, 28.05.2009, p. 57.

- (b) regulation 8(1) or (2) (sewage systems), 9 (discharge connections) or 22(5) (procedure to be adopted when a ship is deficient) is an offence by the owner of the ship;
 - (c) regulation 24(4) (duration and validity of Sewage Certificates) is an offence by the person in question;
 - (d) regulation 7 (prohibition on the discharge of sewage) in the case of a fixed or floating platform, is an offence by the owner and manager of the platform; or
 - (e) regulation 7 (prohibition on the discharge of sewage) in the case of a ship other than a fixed or floating platform, is an offence by the owner, manager, demise charterer and master of the ship.
- (2) Subject to paragraph (3), an offence under paragraph (1) is punishable—
- (a) on summary conviction—
 - (i) in England and Wales by a fine; or
 - (ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment by a fine.

(3) A contravention referred to in paragraph (1)(d) or (e) is specified for the purpose of article 6 of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006 (which applies section 131(3) of the 1995 Act (penalties for certain pollution offences) subject to a modification).

Defences

31.—(1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that they 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 under regulation 30(1)(d) or (e) (offences) 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 not United Kingdom waters or controlled 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 owner, manager, charterer or master of the ship.

Restriction on jurisdiction over offences outside United Kingdom limits

32.—(1) Where there has been an offence under regulation 30(1)(d) or (e) (offences) 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 or a foreign State polluted or threatened with pollution as a result of the offence requests that such proceedings be taken; or
- (b) the offence has caused or is likely to cause pollution in United Kingdom waters or controlled 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—

- (a) “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
- (b) “foreign State” means a State other than the United Kingdom.

Suspension of proceedings at flag State request

33.—(1) This regulation applies to proceedings instituted but not concluded in the United Kingdom in respect of a contravention of a provision in Part 2 (discharge of sewage) committed outside United Kingdom waters by a ship that is not a United Kingdom ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the court is satisfied that the ship’s flag State has instituted proceedings corresponding to the proceedings in paragraph (1) within six months of the institution of the proceedings in the United Kingdom.

(3) Paragraph (2) does not apply—

- (a) where the contravention of these Regulations resulted in serious pollution of the United Kingdom; or
- (b) if the Secretary of State certifies that the ship’s flag State has repeatedly disregarded its obligations to enforce effectively the requirements of the Convention in respect of its ships.

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

Service of documents on foreign companies

34. Section 143(6) of the 1995 Act⁽⁶⁾ (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 (discharge of oil from ships into certain United Kingdom waters) of the 1995 Act, as if—

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

Enforcement and application of fines

35. Section 146 of the 1995 Act (enforcement and application of fines) applies to any fine for an offence under regulation 30(1)(d) or (e) (offences) 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 were a reference to proceedings against the owner, manager, demise charterer or master for an offence under regulation 30(1)(d) or (e) (offences); and
- (b) in subsection (2) of that section, the reference to an offence under section 131 (discharge of oil from ships into certain United Kingdom waters) were a reference to an offence under regulation 30(1)(d) or (e) (offences).

⁽⁶⁾ Section 143(6) is amended by [S.I. 2009/1941](#), Schedule 1, paragraph 152(1) and (2).

Status: *This is the original version (as it was originally made).*
