
STATUTORY INSTRUMENTS

2023 No. 1216

**The Merchant Shipping (Small Workboats
and Pilot Boats) Regulations 2023**

PART 3

Change of circumstances and offences

Responsibilities of the owner and master

18.—(1) This regulation applies where a vessel has been certified in accordance with regulation 12(6) (issue of a relevant certificate).

(2) The owner and master of each vessel to which this regulation applies must ensure that—

- (a) the vessel and its equipment is maintained so that the vessel in all respects remains fit to operate without danger to the vessel or persons on board;
- (b) any change of circumstances of a type mentioned in regulation 15(1)(a) to (e), (g) and (i) (validity of a certificate) must be reported to the Certifying Authority which issued the certificate at the earliest opportunity and in any event before the vessel undertakes any further voyage;
- (c) any incident of a type referred to under regulation 19(3) concerning the vessel is reported in accordance with regulation 19 (incident reporting).

(3) Where paragraph (2)(b) applies the Certifying Authority must—

- (a) give written approval for the vessel to continue operating under the certificate, or
- (b) advise the owner and master of the vessel in writing about any corrective action that must be taken before the vessel undertakes any further voyage.

(4) Any corrective action undertaken in respect of the vessel must be in accordance with the advice provided by the Certifying Authority.

Incident reporting

19.—(1) Where an owner or master of a vessel, in respect of which a certificate has been issued under these Regulations, becomes aware that the vessel has been involved in an incident, the owner or master must report that incident to the Certifying Authority which issued the certificate at the earliest opportunity and in any event before the vessel undertakes any further voyage.

(2) Where a report has been made under paragraph (1), the Certifying Authority must—

- (a) determine whether an emergency survey is necessary, and, if so, require one to be carried out at the earliest opportunity in accordance with regulation 8(6), and
- (b) notify the owner and master of its decision in writing.

(3) In this regulation, “incident” means—

- (a) any collision,

- (b) any grounding except where this occurs as a part of the vessel's intended operation,
- (c) any fire,
- (d) an event or sequence of events other than those listed in sub-paragraphs (a) to (c) which has occurred directly in connection with the operation of a ship that endangered, or if not corrected would endanger the safety of a ship, its occupants or any other person or the environment involving—
 - (i) the hull,
 - (ii) the keel or keel attachments,
 - (iii) the rudder,
 - (iv) any other fitting that is below the waterline,
 - (v) the propulsion system,
 - (vi) any steering equipment,
 - (vii) any machinery, or
 - (viii) the failure of any other part which makes it unsafe to operate the vessel or compromises the safety of—
 - (aa) persons on board,
 - (bb) other vessels, or
 - (cc) the marine environment.

Deficient vessels

20.—(1) A vessel is deficient where a surveyor determines following a survey required under regulation 8 (survey requirements) or an emergency survey under regulation 19(2)(a) (survey requirement following an incident) or following any corrective action notified as having been completed for the purposes of paragraph (3) that the condition of that vessel does not correspond substantially with—

- (a) the particulars on the certificate issued in respect of that vessel under these Regulations, or
- (b) the vessel is not fit to undertake a voyage without danger to the vessel or to a person on board.

(2) Where a surveyor determines that a vessel is deficient, the surveyor must—

- (a) advise the owner and master of the corrective action which, in the opinion of the surveyor, is required and specify a period within which such corrective action must be completed and approved by the surveyor, and
- (b) notify the Certifying Authority.

(3) The owner and master must notify the surveyor and the Certifying Authority once corrective action required under paragraph (2)(a) has been completed.

(4) If the surveyor approves the corrective action undertaken for the purposes of paragraph (2)(a), the surveyor must provide confirmation of such approval to—

- (a) the owner or master of the vessel, and
- (b) the Certifying Authority.

(5) If corrective action is not completed within such reasonable period as the surveyor may specify, the Certifying Authority may suspend the relevant certificate.

(6) A certificate suspended by a Certifying Authority may be—

- (a) reinstated if the Certifying Authority is notified by a surveyor of the vessel that corrective action has been taken, or

- (b) cancelled by the Certifying Authority if a notification is not received from a surveyor of the vessel within a period of 3 months following the date of the suspension that corrective action has been taken.

(7) The period provided for in paragraph (6)(b) may be extended by the Certifying Authority if the Certifying Authority believes that the owner or master of the vessel is taking reasonable steps to bring the vessel into compliance.

(8) The Secretary of State may give written notice to a Certifying Authority requiring the suspension or cancellation of a certificate it has issued if the Secretary of State has reasonable grounds to believe that the vessel to which the certificate relates does not satisfy the requirements of these Regulations or the Workboat Code Edition 3.

(9) The Certifying Authority must give notice in writing of any suspension, an extension of any suspension or cancellation or a reinstatement of a certificate to—

- (a) the owner and master of the vessel,
- (b) the surveyor of that vessel,
- (c) the competent harbour authority in the case of a pilot boat or workboat with a pilot boat endorsement, and
- (d) the Secretary of State where the Certifying Authority is not the Secretary of State.

Control

21. A surveyor may go on board a United Kingdom vessel, a non-United Kingdom vessel in United Kingdom waters, or enter a remote operation centre for the purposes of verifying that—

- (a) the vessel or remote operation centre has a valid certificate required under these Regulations,
- (b) the condition of the vessel and its equipment correspond substantially with the particulars shown on the certificate, and
- (c) where applicable, the provisions of regulation 18 (responsibilities of the owner and master) are being complied with.

Detention of vessels

22.—(1) Where a vessel does not comply with the requirements of these Regulations, that vessel is liable to be detained.

(2) Section 284(1) of the 1995 Act (enforcing detention of ship) applies where a vessel is liable to be detained under this regulation as if—

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

(3) Where a vessel is liable to be detained under this regulation the person detaining the vessel must serve on the master 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 vessel is released by any person mentioned in section 284(1) of the 1995 Act.

(1) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 9 and Schedule 1 and by S.I. 2015/664.

(4) Subject to paragraph (5), section 96(2) and section 97 of the 1995 Act (references of detention notices to arbitration and compensation in connection with invalid detention of a ship) apply in relation to a detention notice issued pursuant to this regulation as they apply in relation to detention notices issued pursuant to section 95(3) of that Act (power to detain dangerously unsafe ship).

(5) For the purposes of paragraph (4)—

(a) section 96 of the 1995 Act applies as if—

(i) subsection (3) were omitted,

(ii) the words “as a dangerously unsafe ship” in subsection (5) were omitted,

(iii) subsection (11) were omitted, and

(b) sections 96 and 97 of the 1995 Act apply as if “the relevant inspector” means the person issuing the detention notice pursuant to this regulation.

Review application

23.—(1) If an applicant for a certificate under these Regulations is dissatisfied with the outcome of a survey carried out for those purposes, the applicant may request a review of that outcome to be carried out by the Certifying Authority.

(2) Any application seeking a review under paragraph (1)—

(a) must—

(i) be made in writing within a period of 21 days beginning with the date on which the outcome of the survey was notified,

(ii) state the reasons for requesting the review, and

(b) may be accompanied by such further evidence as the applicant believes supports those reasons.

(3) Before carrying out a review, the Certifying Authority—

(a) may request further evidence in support of the application,

(b) must notify the applicant and the surveyor who carried out the survey for which a review has been requested, and

(c) must advise the applicant—

(i) that they may request a representative or professional adviser to give evidence on their behalf, and

(ii) that evidence may be given in writing, or in person by agreement with the Certifying Authority.

(4) Any decision made by the Certifying Authority following its review must be notified in writing to the persons mentioned in paragraph 3(b).

Arbitration

24.—(1) If an applicant is dissatisfied for any reason with the outcome of a review carried out by the Certifying Authority under regulation 23 (review application), the applicant may serve a written notice on the Certifying Authority within 21 days beginning with the date of receiving notification of the review decision—

(2) Section 96(7) was amended by the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 50(6) and Schedule 10, paragraph 26 and by the Constitutional Reform Act 2005 (c. 4), section 59(5) and Schedule 11, paragraph 5. Section 96(10) was repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4.

(3) Section 95 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 9 and Schedule 1, paragraph 2.

- (a) stating that there is a dispute in relation to the survey and the review decision, and
 - (b) requesting that the dispute be referred to a single arbitrator.
- (2) Subject to paragraphs (3), (4) and (6), an arbitrator referred to in paragraph (1) must be appointed by agreement between the applicant and the Certifying Authority.
- (3) Except in relation to Scotland, if the applicant and the Certifying Authority are unable to agree an arbitrator—
- (a) the arbitrator is such a person as may be appointed by an independent arbitration organisation nominated for that purpose by agreement between the applicant and the Certifying Authority, and
 - (b) where there is no agreement under paragraphs (2) and (3)(a), the arbitrator is such a person as may be appointed by the High Court following a request made by—
 - (i) one party, after giving written notice to the other party, or
 - (ii) the parties jointly.
- (4) No person is to be an arbitrator under this regulation unless that person is—
- (a) a person who holds a certificate of competency as a Class 1 Deck Officer or Class 1 Marine Engineer Officer, or a certificate of competency which is equivalent to such a certificate,
 - (b) a naval architect,
 - (c) a qualified person,
 - (d) a person with special experience of shipping matters or of activities carried on in ports, or
 - (e) a member of the Chartered Institute of Arbitrators.
- (5) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 259 of the 1995 Act (powers of inspectors).
- (6) In the application of this regulation to Scotland—
- (a) any reference to an arbitrator is to be construed as a reference to an arbiter, and
 - (b) the reference in paragraph (1) to a single arbitrator appointed by agreement between the applicant and the responsible person is to be construed as a reference to a single arbiter so appointed, or in default of agreement, appointed by a sheriff.
- (7) The rules for arbitration set out in Merchant Shipping Notice No. M.1613(4) apply unless alternative procedures are agreed between the applicant and the Secretary of State before the commencement of arbitration proceedings.
- (8) In this regulation—
- “applicant” means a person who makes an application for a certificate required by these Regulations;
 - “the parties” means the applicant and the Certifying Authority, and “party” is to be construed accordingly;
 - “qualified person” means—
 - (i) a person who satisfies the judicial appointment eligibility condition on a seven-year basis within the meaning of section 50 of the Tribunals, Courts and Enforcement Act 2007(5) (period over which a person is qualified),
 - (ii) a person who is an advocate or solicitor in Scotland of at least seven years’ standing, or

(4) Merchant Shipping Notice No. M.1613 is available from the following address: <https://assets.publishing.service.gov.uk/media/5a74bc7f40f0b619c865a03f/msn1613.pdf>.

(5) 2007 c. 15.

- (iii) a person who is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing.

Offences, penalties and defences

25.—(1) Any contravention of regulations 8(2) to (6) (survey requirements), 9 (requirement for a certificate), 17 (prohibited acts in relation to a certificate), 18(2) or (4) (reporting changes of circumstances and corrective action to be taken) or 19(1) (requirement to report incidents) is an offence in respect of each case of non-compliance.

(2) Subject to paragraph (3), any offence under paragraph (1) is an offence by the master and the owner of the vessel and is punishable—

(a) on summary conviction—

(i) in England and Wales by a fine;

(ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum;

(b) on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both.

(3) Any offence under paragraph (1) in relation to a pilot boat is an offence by the competent harbour authority, the owner and the master of the boat in respect of each case of non-compliance and is punishable on a summary conviction by—

(a) a fine not exceeding level 3 on the standard scale, in relation to an offence under regulation 9(b) and (e);

(b) a fine not exceeding level 4 on the standard scale in all other cases.

(4) In any proceedings for an offence under these Regulations, it is a defence for a person charged to prove that the person charged took all reasonable steps to avoid commission of the offence.