

## **The Consequences of Breaches of Merchant Shipping Regulations in the UK**

In this session we will review the Authorities' powers to detain vessels and prosecute owners and crew. We will consider typical offences for which vessels are detained and prosecuted and the penalties imposed and we will look at the procedures involved and consider how to respond if your client's vessel is investigated or detained.

Over the past three years over forty reported prosecutions have been brought by the MCA, of which nearly half involve foreign registered vessels or foreign seafarers. Typical offences include breaches of the Collision Regulations, pollution, conduct endangering ships or individuals, drunkenness (in breach of the Railway and Transport Safety Act, breach of prohibition notices, improper certification, forging certificates and cheating in exams). We will look at the offences and penalties in more detail later on.

Inspections and investigations of both British flagged and foreign flagged ships in UK ports are undertaken by surveyors from the Maritime and Coastguard Agency (MCA). These surveyors are appointed under the Merchant Shipping Act 1995 and have wide powers, including the right to board a United Kingdom ship wherever it may be in the world and any other ship (foreign flag) in United Kingdom waters if they have reason to believe that it is necessary for them to do so.

It is an offence under Section 260 of the MSA to intentionally obstruct an inspector in the exercise of his powers.

If an inspector is of the opinion that a person has contravened a regulation he may serve an improvement notice requiring the person on whom the notice is served to remedy the contravention of the regulation in question within a specified period.

If an inspector is of the opinion that activities have been carried out on board the ship or are likely to be carried out on board the ship which involve the risk of serious personal injury or serious pollution of any navigable waters the inspector may serve a prohibition notice. This will specify the matters which give rise to the risk (or contravention of the regulations) and will direct that the activities to which the notice relates shall not be carried out and/or that the ship shall not go to sea until the matters referred to in the notice have been remedied.

So the inspectors have fairly wide powers and these are used on a regular basis, both to undertake port state control inspections and to investigate possible breaches of statutory regulations.

Prosecutions can be brought by the MCA, the Crown Prosecution Service and the Police or by the relevant Harbour Authority where the offence occurs within the jurisdiction of that harbour. Following investigation by the MCA inspectors a report will be compiled and referred to the Secretary of State who will make a decision as to whether to drop the matter, issue a caution or to prosecute. A prosecution will be commenced by issuing a summons in the Magistrates Court. Unlike in civil proceedings, where there is a specialist Admiralty Court to deal with shipping matters, there is no such equivalent in the criminal court system and matters will be heard in a Magistrates Court along with run of the mill offences and be determined by lay magistrates (not legally qualified) who are not familiar with the Regulations or the offences concerned.

Many of the offences are such that can be determined by either the Magistrates Court or the Crown Court. In the Crown Court the matter is heard by a judge with a jury.

The maximum penalties for most offences arising under the Merchant Shipping Act and the Regulations made thereunder is £5,000 in the Magistrates Court. There is, however, no limit on the fine if the matter is dealt with by the Crown Court. In respect of pollution the maximum fine that can be imposed by the Magistrates Court is £250,000, again this is unlimited in the Crown Court. Certain offences also carry the possibility of imprisonment, for example a person guilty of an offence under Section 58 of the Merchant Shipping Act (Conduct Endangering Ships, Structures or Individuals) can receive imprisonment for a term not exceeding two years if the matter is dealt with in the Crown Court. The Magistrates Court has no power to imprison for this offence.

It would be rare for the maximum sentence to be imposed, particularly on a first time offender where there were genuine reasons for the breach of the regulations. A review of the reported prosecutions certainly supports this view.

Clearly it would be unwise to ignore a prohibition notice if one is issued by an inspector as this can lead to prosecution and a fine. However, it is possible to contest the issue of a prohibition or improvement notice by giving notice to the inspector who issued that notice, within 21 days of receiving the inspector's notice, referring the matter to an Arbitrator for determination. Referring the matter to an Arbitrator in this way suspends the operation of the improvement notice until the Arbitrator's decision is published. In the case of a prohibition notice the Arbitrator must be asked to rule whether the notice is suspended pending his decision. If the Arbitrator decides that there was no valid basis for the inspector's opinion or that it was unreasonable to issue a notice in those circumstances, he may cancel the notice or amend it as he thinks fit. Both parties may make representations to the Arbitrator before he makes his decision. If the Arbitrator decides that the prohibition or improvement notice was not validly issued the Arbitrator may award the person on whom the notice was served compensation in respect of any loss suffered by him in consequence of the service of the notice. Any compensation awarded under this section will be payable by the Secretary of State and where a vessel suffers unreasonable delay by reason of inspection and detention the owners or charterers may be entitled to claim damages and costs from the Secretary of State.

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