



# Merchant Shipping Act 1995

## 1995 CHAPTER 21

### PART VI

#### PREVENTION OF POLLUTION

#### CHAPTER II

#### OIL POLLUTION

#### *Shipping casualties*

#### **137 Shipping casualties**

- (1) The powers conferred by this section shall be exercisable where—
- (a) an accident has occurred to or in a ship; and
  - (b) in the opinion of the Secretary of State oil from the ship will or may cause pollution on a large scale in the United Kingdom or in United Kingdom waters; and
  - (c) in the opinion of the Secretary of State the use of the powers conferred by this section is urgently needed;
- but those powers are subject to the limitations contained in subsections (6) and (7) below.
- (2) For the purpose of preventing or reducing oil pollution, or the risk of oil pollution, the Secretary of State may give directions as respects the ship or its cargo—
- (a) to the owner of the ship, or to any person in possession of the ship; or
  - (b) to the master of the ship; or
  - (c) to any salvor in possession of the ship, or to any person who is the servant or agent of any salvor in possession of the ship, and who is in charge of the salvage operation.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Directions under subsection (2) above may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the directions may require—
- (a) that the ship is to be, or is not to be, moved, or is to be moved to a specified place, or is to be removed from a specified area or locality; or
  - (b) that the ship is not to be moved to a specified place or area, or over a specified route; or
  - (c) that any oil or other cargo is to be, or is not to be, unloaded or discharged; or
  - (d) that specified salvage measures are to be, or are not to be, taken.
- (4) If in the opinion of the Secretary of State the powers conferred by subsection (2) above are, or have proved to be, inadequate for the purpose, the Secretary of State may, for the purpose of preventing or reducing oil pollution, or the risk of oil pollution, take, as respects the ship or its cargo, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the Secretary of State may—
- (a) take any such action as he has power to require to be taken by a direction under this section;
  - (b) undertake operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he can give directions;
  - (c) undertake operations which involve the taking over of control of the ship.
- (5) The powers of the Secretary of State under subsection (4) above shall also be exercisable by such persons as may be authorised for the purpose by the Secretary of State.
- (6) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.
- (7) The provisions of this section and of section 141 are without prejudice to any rights or powers of Her Majesty's Government in the United Kingdom exercisable apart from those sections whether under international law or otherwise.
- (8) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (4) or (5) above—
- (a) does not constitute contempt of court; and
  - (b) does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.
- (9) In this section, unless the context otherwise requires—
- “accident” includes the loss, stranding, abandonment of or damage to a ship;
- “owner”, in relation to the ship to or in which an accident has occurred, includes its owner at the time of the accident; and
- “specified” in relation to a direction under this section, means specified by the direction;
- and the reference in subsection (8) above to the Admiralty Marshal includes a reference to the Admiralty Marshal of the Supreme Court of Northern Ireland.

### **138 Right to recover in respect of unreasonable loss or damage**

- (1) If any action duly taken by a person in pursuance of a direction given to him under section 137, or any action taken under section 137(4) or (5)—
  - (a) was not reasonably necessary to prevent or reduce oil pollution, or risk of oil pollution; or
  - (b) was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered, as a result of the action,a person incurring expense or suffering damage as a result of, or by himself taking, the action shall be entitled to recover compensation from the Secretary of State.
- (2) In considering whether subsection (1) above applies, account shall be taken of—
  - (a) the extent and risk of oil pollution if the action had not been taken;
  - (b) the likelihood of the action being effective; and
  - (c) the extent of the damage which has been caused by the action.
- (3) Any reference in this section to the taking of any action includes a reference to a compliance with a direction not to take some specified action.
- (4) The Admiralty jurisdiction of the High Court and of the Court of Session shall include jurisdiction to hear and determine any claim arising under this section.

### **139 Offences in relation to section 137**

- (1) If the person to whom a direction is duly given under section 137 contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.
- (2) If a person intentionally obstructs any person who is—
  - (a) acting on behalf of the Secretary of State in connection with the giving or service of a direction under section 137;
  - (b) acting in compliance with a direction under that section; or
  - (c) acting under section 137(4) or (5);he shall be guilty of an offence.
- (3) In proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.
- (4) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding £50,000;
  - (b) on conviction on indictment, to a fine.

### **140 Service of directions under section 137**

- (1) If the Secretary of State is satisfied that a company or other body is not one to whom section 695 or section 725 of the Companies Act 1985 (service of notices) applies so as to authorise the service of a direction on that body under either of those sections, he may give a direction under section 137 of this Act—
  - (a) to that body, as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship; or

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- (b) to that body, as a salvor, by serving the direction on the person in charge of the salvage operations.
- (2) For the purpose of giving or serving a direction under section 137 to or on any person on a ship, a person acting on behalf of the Secretary of State shall have the right to go on board the ship.
- (3) In the application of subsection (1) above to Northern Ireland, for references to sections 695 and 725 of the Companies Act 1985 there shall be substituted references to Articles 645 and 673 of the Companies (Northern Ireland) Order 1986.

#### **141 Application of sections 137 to 140 to certain foreign and other ships**

- (1) Her Majesty may by Order in Council provide that sections 137 to 140, together with any other provisions of this Chapter, shall apply to a ship—
  - (a) which is not a United Kingdom ship; and
  - (b) which is for the time being outside United Kingdom waters;in such cases and circumstances as may be specified in the Order, and subject to such exceptions, adaptations and modifications, if any, as may be so specified.
- (2) An Order in Council under subsection (1) above may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient.
- (3) Except as provided by an Order in Council under subsection (1) above, no direction under section 137 shall apply to a ship which is not a United Kingdom ship and which is for the time being outside United Kingdom waters, and no action shall be taken under section 137(4) or (5) as respects any such ship.
- (4) No direction under section 137 shall apply to any ship of Her Majesty's navy or to any Government ship and no action shall be taken under section 137(4) or (5) as respects any such ship.