



Merchant Shipping Act 1995

1995 CHAPTER 21

PART VI

PREVENTION OF POLLUTION

CHAPTER I

POLLUTION GENERALLY

128 Prevention of pollution from ships etc.

- (1) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of any of the following which have been ratified by the United Kingdom—
- (a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2nd November 1973;
 - (b) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil which constitutes attachment 2 to the final act aforesaid;
 - (c) the Protocol relating to the said Convention which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th February 1978;
 - (d) the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (including the Final Act of the Conference and the attached resolutions) signed in London on 30th November 1990;
 - (e) any international agreement not mentioned in paragraphs (a) to (d) above which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships;

Status: Point in time view as at 17/07/1997.

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and in paragraph (e) above the reference to an agreement includes an agreement which provides for the modification of another agreement, including the modification of an agreement mentioned in paragraphs (a) to (c) above.

- (2) The powers conferred by subsection (1) above to make provision for the purpose of giving effect to an agreement include power to provide for the provision to come into force although the agreement has not come into force.
- (3) Without prejudice to the generality of subsection (1) above, an Order under that subsection may in particular include provision—
- (a) for applying for the purpose mentioned in that subsection any enactment or instrument relating to the pollution of the sea or other waters and also any of sections 87, 268, 269 and 270;
 - (b) with respect to the carrying out of surveys and inspections for the purpose aforesaid and the issue, duration and recognition of certificates for that purpose;
 - (c) for repealing the provisions of any enactment or instrument so far as it appears to Her Majesty that those provisions are not required having regard to any provision made or proposed to be made by virtue of this section;
 - (d) with respect to the application of the Order to the Crown and the extra-territorial operation of any provision made by or under the Order;
 - (e) for the extension of any provisions of the Order, with or without modifications, to any relevant British possession;
 - (f) that a contravention of a provision made by or under the Order shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years and a fine;
 - (g) that any such contravention shall be an offence punishable only on summary conviction by a maximum fine of an amount not exceeding level 5 on the standard scale or such less amount as is prescribed by the Order;
 - (h) in connection with offences created by or under the Order, corresponding to that made in connection with offences under section 131 by [^{F1}sections 143(6), 144]and 146 (whether by applying, or making provision for the application of, any of those sections, subject to such modifications as may be specified by or under the Order, or otherwise);
 - (i) for detaining any ship in respect of which such a contravention is suspected to have occurred and, in relation to such a ship, for applying section 284 with such modifications, if any, as are prescribed by the Order;

and nothing in any of the preceding provisions of this subsection shall be construed as prejudicing the generality of any other of those provisions and in particular neither paragraph (f) nor (g) above shall prejudice paragraph (a) above.

[^{F2}(3A) An order under subsection (1) above in pursuance of paragraph (d) of that subsection may include provision imposing on local authorities responsibilities in relation to the preparation, review and implementation of any plans required by the agreement mentioned in that paragraph.]

- (4) An Order under subsection (1) above may—
- (a) make different provision for different circumstances;
 - (b) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time;
 - (c) provide for exemptions from any provisions of the Order;

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- (d) provide for the delegation of functions exercisable by virtue of the Order;
 - (e) include such incidental, supplemental and transitional provisions as appear to Her Majesty to be expedient for the purposes of the Order;
 - (f) authorise the making of regulations and other instruments for any of the purposes of this section (except the purposes of subsection (3)(a) and (c) above) ^{F3} . . . ; and
 - (g) provide that any enactment or instrument applied by the Order shall have effect as so applied subject to such modifications as may be specified in the Order.
- (5) Where an Order in Council under subsection (1) above authorises the making of regulations for the purpose of giving effect to an agreement mentioned in paragraphs (a) to (d) or falling within paragraph (e) of that subsection the Order also authorises the making of regulations for the purpose of giving effect to an agreement which provides for the modification of such an agreement.

This subsection applies in relation to Orders in Council and international agreements whenever made.

- (6) Regulations made by virtue of paragraph (f) of subsection (4) above may make provision corresponding to the provision authorised for an Order by paragraphs (a) to (e) of subsection (4) above.
- (7) An Order in Council in pursuance of subsection (1)(b) or (e) above may apply to areas of land or sea or other United Kingdom waters notwithstanding that the agreement in question does not relate to those areas.
- (8) A draft of an Order in Council proposed to be made by virtue of subsection (1) above shall not be submitted to Her Majesty in Council unless—
- (a) the draft has been approved by a resolution of each House of Parliament;
 - (b) the Order is to contain a statement that it is made only for any of the purposes specified in subsection (9) below; or
 - (c) the Order extends only to a possession mentioned in subsection (3)(e) above.
- (9) The purposes referred to in subsection (8)(b) above are—
- (a) giving effect to an agreement mentioned in subsection (1)(a) to (d) above;
 - (b) providing as authorised by subsection (2) above in relation to such an agreement and the purposes of subsection (5) above;

and a statutory instrument containing an Order which contains a statement that it is made only for any of those purposes shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F1** Words in s. 128(3)(h) substituted (17.7.1997) by 1997 c. 28, s. 29(1), **Sch. 6 para. 3(2)**; S.I. 1997/1539, art. 2, **Sch.**
- F2** S. 128(3A) inserted (19.3.1997) by 1997 c. 28, **ss. 12, 31(4)**
- F3** Words in s. 128(4)(f) repealed (17.7.1997) by 1997 c. 28, s. 29(1)(2), **Sch. 6 para. 3(3)**, **Sch. 7 Pt. I**; S.I. 1997/1539, art. 2, **Sch.**

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129 Further provision for prevention of pollution from ships.

- (1) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) for the protection and preservation of the marine environment from pollution by matter from ships.
- (2) Without prejudice to the generality of subsection (1) above, an Order under that subsection may in particular include provision—
 - (a) corresponding to any provision that is authorised for the purposes of section 128 by subsections (3) and (4) of that section; and
 - (b) specifying areas of sea above any of the areas for the time being designated under section 1(7) of the ^{M1}Continental Shelf Act 1964 as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of that Convention for the protection and preservation of the marine environment;

and provision authorising the making of regulations authorises the amendment or revocation of regulations made by virtue of paragraph (f) of the said subsection (4).
- (3) A draft of an Order in Council proposed to be made by virtue of subsection (1) above shall not be submitted to Her Majesty in Council unless the draft has been approved by resolution of each House of Parliament.

Marginal Citations

M1 1964 c. 29.

130 Regulation of transfers between ships in territorial waters.

- (1) The Secretary of State may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within United Kingdom waters, such provision as he considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.
- (2) Regulations under this section may, in particular, do any of the following things—
 - (a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;
 - (b) make provision about—
 - (i) the design of, and standards to be met by, ships and equipment,
 - (ii) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board, and
 - (iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary thereto;
 - (c) provide for proposed transfers to be notified to and approved by persons appointed by the Secretary of State or another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
 - (d) provide—

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- (i) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations, and
 - (ii) for references in the regulations to any document so specified to operate as references to that document as revised or re-issued from time to time;
 - (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
 - (f) provide for the granting by the Secretary of State or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the Secretary of State or that other person may specify, and for altering or cancelling exemptions;
 - (g) limit any provision of the regulations to specified cases or kinds of case.
- (3) Regulations under this section may provide—
- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding £25,000 and on conviction on indictment by imprisonment for a term not exceeding two years or a fine or both;
 - (b) that any such contravention shall be an offence punishable only on summary conviction by a fine not exceeding £25,000 or such lower amount as is prescribed by the regulations;
 - (c) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (a) or (b) above.
- (4) Regulations under this section may—
- (a) make different provision for different classes or descriptions of ships and for different circumstances; and
 - (b) make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient.

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