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# Merchant Shipping Act 1995

## 1995 CHAPTER 21

### PART VI

#### PREVENTION OF POLLUTION

##### CHAPTER II

###### OIL POLLUTION

###### *General provisions for preventing pollution*

###### *Restrictions on transfer of oil at night.*

#### **131 Discharge of oil from ships into certain United Kingdom waters.**

- (1) If any oil or mixture containing oil is discharged as mentioned in the following paragraphs into United Kingdom national waters which are navigable by sea-going ships, then, subject to the following provisions of this Chapter, the following shall be guilty of an offence, that is to say—
- (a) if the discharge is from a ship, the owner or master of the ship, unless he proves that the discharge took place and was caused as mentioned in paragraph (b) below;
  - (b) if the discharge is from a ship but takes place in the course of a transfer of oil to or from another ship or a place on land and is caused by the act or omission of any person in charge of any apparatus in that other ship or that place, the owner or master of that other ship or, as the case may be, the occupier of that place.
- (2) Subsection (1) above does not apply to any discharge which—
- (a) is made into the sea; and
  - (b) is of a kind or is made in circumstances for the time being prescribed by regulations made by the Secretary of State.

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- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding [<sup>F1</sup>£250,000];
  - (b) on conviction on indictment, to a fine.
- (4) In this section “sea” includes any estuary or arm of the sea.
- (5) In this section “place on land” includes anything resting on the bed or shore of the sea, or of any other waters included in United Kingdom national waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed or shore of the sea or any such waters.
- (6) In this section “occupier”, in relation to any such thing as is mentioned in subsection (5) above, if it has no occupier, means the owner thereof.

#### Textual Amendments

**F1** Sum in s. 131(3)(a) substituted (17.7.1997) by 1997 c. 28, s. 7(1)(2) (with s. 7(5)); S.I. 1997/1539, art. 2, Sch.

#### Modifications etc. (not altering text)

**C1** S. 131(3) applied (28.2.1996) by S.I. 1996/282, art. 3  
 S. 131(3) applied (1.7.1998) by S.I. 1998/1377, reg. 14(2)

### 132 Defences of owner or master charged with offence under section 131.

- (1) Where a person is charged with an offence under section 131 as the owner or master of a ship, it shall be a defence to prove that the oil or mixture was discharged for the purpose of—
- (a) securing the safety of any ship;
  - (b) preventing damage to any ship or cargo, or
  - (c) saving life,
- unless the court is satisfied that the discharge of the oil or mixture was not necessary for that purpose or was not a reasonable step to take in the circumstances.
- (2) Where a person is charged with an offence under section 131 as the owner or master of a ship, it shall also be a defence to prove—
- (a) that the oil or mixture escaped in consequence of damage to the ship, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of the oil or mixture; or
  - (b) that the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

### 133 Defences of occupier charged with offence under section 131

Where a person is charged, in respect of the escape of any oil or mixture containing oil, with an offence under section 131 as the occupier of a place on land, it shall be a defence to prove that neither the escape nor any delay in discovering it was due to

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any want of reasonable care and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

### **134 Protection for acts done in exercise of certain powers of harbour authorities, etc.**

- (1) Where any oil, or mixture containing oil, is discharged in consequence of—
  - (a) the exercise of any power conferred by section 252 or 253; or
  - (b) the exercise, for the purpose of preventing obstruction or danger to navigation, of any power to dispose of sunk, stranded or abandoned ships which is exercisable by a harbour authority under any local enactment;and apart from this subsection the authority exercising the power, or a person employed by or acting on behalf of the authority, would be guilty of an offence under section 131 in respect of that discharge, the authority or person shall not be convicted unless it is shown that they or he failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping or reducing the discharge.
- (2) Subsection (1) above shall apply to the exercise of any power conferred by section 13 of the <sup>MI</sup>Dockyard Ports Regulation Act 1865 (removal of obstructions to dockyard ports) as it applies to the exercise of the powers under sections 252 and 253, and shall, as so applying, have effect as if references to the authority exercising the power were references to the Queen’s harbour master for the port in question.

#### **Marginal Citations**

**MI** 1865 c. 125.

- 135** (1) No oil shall be transferred between sunset and sunrise to or from a ship in any harbour in the United Kingdom unless the requisite notice has been given in accordance with this section or the transfer is for the purposes of a fire brigade.
- (2) A general notice may be given to the harbour master of a harbour that transfers of oil between sunset and sunrise will be frequently carried out at a place in the harbour within such period, not ending later than twelve months after the date on which the notice is given, as is specified in the notice; and if such a notice is given it shall be the requisite notice for the purposes of this section as regards transfers of oil at that place within the period specified in the notice.
- (3) Subject to subsection (2) above, the requisite notice for the purposes of this section shall be a notice given to the harbour master not less than three hours nor more than 96 hours before the transfer of oil begins.
- (4) In the case of a harbour which has no harbour master, references in this section to the harbour master shall be construed as references to the harbour authority.
- (5) If any oil is transferred to or from a ship in contravention of this section, the master of the ship, and, if the oil is transferred from or to a place on land, the occupier of that place, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **136 Duty to report discharge of oil into waters of harbours.**

- (1) If any oil or mixture containing oil—

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- (a) is discharged from a ship into the waters of a harbour in the United Kingdom;  
or
  - (b) is found to be escaping or to have escaped from a ship into any such waters;
- the owner or master of the ship shall forthwith report the occurrence to the harbour master, or, if the harbour has no harbour master, to the harbour authority.
- (2) A report made under subsection (1) above shall state whether the occurrence falls within subsection (1)(a) or (b) above.
- (3) If a person fails to make a report as required by this section he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

VALID FROM 21/03/2000

### **[<sup>F2</sup>136A Discharges etc. authorised under other enactments.**

The provisions of sections 131(1) and 136(1) shall not apply to any discharge which is made under, and the provisions of section 136(1) shall not apply to any escape which is authorised by, an authorisation granted under Part I of the <sup>M2</sup>Environmental Protection Act 1990 or a permit granted under regulations under section 2 of the Pollution Prevention and Control Act 1999.]

#### **Textual Amendments**

**F2** S. 136A inserted (21.3.2000) (E.W.) and otherwise *prosp.* by 1999 c. 24, ss. 6(1), 7(3), **Sch. 2 para. 13**; S.I. 2000/800, **art. 2**

#### **Marginal Citations**

**M2** 1990 c. 43.

### *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 [<sup>F3</sup>cause significant pollution in the United Kingdom, United Kingdom waters or a part of the sea specified by virtue of section 129(2)(b)]; 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
  - [<sup>F4</sup>(bb) to any pilot of the ship, or]

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- (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 [F5 or
- F5(d) where the ship is in waters which are regulated or managed by a harbour authority—
  - (i) to the harbour master, or
  - (ii) to the harbour authority.]
- (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—

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[<sup>F6</sup>“accident” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;]

“owner”, in relation to the ship to or in which an accident has occurred, includes its owner at the time of the accident; and

[<sup>F7</sup>“pilot” means any person not belonging to a ship who has the conduct of the ship;]

“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.

#### Textual Amendments

- F3** Words in s. 137(1)(b) substituted (17.7.1997) by 1997 c. 28, s. 2(2) (with s. 2(6)); S.I. 1997/1539, art. 2, Sch.
- F4** S. 137(2)(bb) inserted (17.7.1997) by 1997 c. 28, s. 2(3)(a) (with s. 2(6)); S.I. 1997/1539, art. 2, Sch.
- F5** S. 137(2)(d) and the word “or” immediately preceding it inserted (17.7.1997) by 1997 c. 28, s. 2(3)(b) (with s. 2(6)); S.I. 1997/1539, art. 2, Sch.
- F6** Definition of “accident” in s. 137(9) substituted (17.7.1997) by 1997 c. 28, s. 2(4)(a) (with s. 2(6)); S.I. 1997/1539, art. 2, Sch.
- F7** Definition of “pilot” inserted (17.7.1997) by 1997 c. 28, s. 2(4)(b) (with s. 2(6)); S.I. 1997/1539, art. 2, Sch.

### 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)—
- was not reasonably necessary to prevent or reduce oil pollution, or risk of oil pollution; or
  - 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—
- the extent and risk of oil pollution if the action had not been taken;
  - the likelihood of the action being effective; and
  - 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.

### [138A <sup>F8</sup> Application of sections 137 and 138 to pollution by substances other than oil.

- (1) In sections 137 and 138, any reference to oil pollution includes a reference to pollution by any other substance which—

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- (a) is prescribed by the Secretary of State by order for the purposes of this section, or
  - (b) although not so prescribed, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.
- (2) Accordingly, any reference in those sections to oil includes a reference to any substance falling within subsection (1)(a) or (b) above.]

#### Textual Amendments

**F8** S. 138A inserted (17.7.1997) by 1997 c. 28, s. 3(1) (with s. 3(2)); S.I. 1997/1539, art. 2, Sch.

### 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 <sup>M3</sup>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
  - (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 <sup>M4</sup>Companies Act 1985 there shall be substituted references to Articles 645 and 673 of the Companies (Northern Ireland) Order 1986.

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#### Marginal Citations

**M3** 1985 c. 6.

**M4** S.I. 1986/1032 (NI 6).

### 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 [<sup>F9</sup>neither within United Kingdom waters nor within a part of the sea specified by virtue of section 129(2)(b)];
 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 [<sup>F9</sup>neither within United Kingdom waters nor within a part of the sea specified by virtue of section 129(2)(b)], 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.

#### Textual Amendments

**F9** Words in s. 141(1)(b)(3) substituted (17.7.1997) by 1997 c. 28, s. 2(5) (with s. 2(6)); S.I. 1997/1539, art. 2, Sch.

### *Enforcement*

### 142 Oil records.

- (1) The Secretary of State may make regulations requiring oil record books to be carried in United Kingdom ships and requiring the master of any such ship to record in the oil record book carried by it—
  - (a) the carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed relating to—
    - (i) the loading of oil cargo,
    - (ii) the transfer of oil cargo during a voyage,
    - (iii) the discharge of oil cargo,
    - (iv) the ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and cleaning of, such tanks,
    - (v) the separation of oil from water, or from other substances, in any mixture containing oil,



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- (vi) the disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in (i) to (v) above, or
  - (vii) the disposal of any other oil residues;
- (b) any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any ship, or of preventing damage to any ship or cargo, or of saving life;
  - (c) any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage.
- (2) The Secretary of State may make regulations requiring the keeping of records relating to the transfer of oil to and from ships while they are within United Kingdom waters; and the requirements of any regulations made under this subsection shall be in addition to the requirements of any regulations made under subsection (1) above.
  - (3) Any records required to be kept by regulations made under subsection (2) above shall, unless the ship is a barge, be kept by the master of the ship, and shall, if the ship is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.
  - (4) Regulations under this section requiring the carrying of oil record books or the keeping of records may—
    - (a) prescribe the form of the oil record books or records and the nature of the entries to be made in them;
    - (b) require the person providing or keeping the books or records to retain them for a prescribed period;
    - (c) require that person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations;
    - (d) provide for the custody or disposal of the books or records after their transmission to such a place or person.
  - (5) Regulations under this section may—
    - (a) be made with respect to all or with respect to any one or more of the classes of ship or other matters to which this section relates;
    - (b) make different provision for different classes of ship or otherwise for different classes of case or different circumstances.
  - (6) If any ship fails to carry such an oil record book as it is required to carry under this section the owner or master shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
  - (7) If any person fails to comply with any requirements imposed on him by or under this section, he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
  - (8) If any person makes an entry in any oil record book carried or record kept under this section which is to his knowledge false or misleading in any material particular, he shall be liable—
    - (a) on summary conviction, to a fine not exceeding the statutory maximum, or imprisonment for a term not exceeding six months, or both;
    - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.

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- (9) In any proceedings under this Chapter—
- (a) any oil record book carried or record kept in pursuance of regulations made under this section shall be admissible as evidence, and in Scotland shall be sufficient evidence, of the facts stated in it;
  - (b) any copy of an entry in such an oil record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a true copy of the entry shall be admissible as evidence, and in Scotland shall be sufficient evidence, of the facts stated in the entry;
  - (c) any document purporting to be an oil record book carried or record kept in pursuance of regulations made under this section, or purporting to be such a certified copy as is mentioned in paragraph (b) above, shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.
- (10) In this section “barge” includes a lighter and any similar vessel.

### **143 Prosecutions and enforcement of fines.**

- (1) Proceedings for an offence under this Chapter may, in England and Wales be brought only—
  - (a) by or with the consent of the Attorney General, or
  - (b) if the offence is one to which subsection (4) below applies, by the harbour authority, or
  - (c) unless the offence is one mentioned in subsection (4)(b) or (c) below, by the Secretary of State or a person authorised by any general or special direction of the Secretary of State.
- (2) Subject to subsection (3) below, proceedings for an offence under this Chapter may, in Northern Ireland, be brought only—
  - (a) by or with the consent of the Attorney General for Northern Ireland,
  - (b) if the offence is one to which subsection (4) below applies, by a harbour authority, or
  - (c) unless the offence is one mentioned in subsection (4)(b) or (c) below, by the Secretary of State or a person authorised by any general or special direction of the Secretary of State.
- (3) Subsection (2) above shall have effect in relation to proceedings for an offence under section 131 relating to the discharge of oil or a mixture containing oil from a ship in a harbour in Northern Ireland as if the references in paragraph (c) to the Secretary of State were references to the Secretary of State or the Department of the Environment for Northern Ireland.
- (4) This subsection applies to the following offences—
  - (a) any offence under section 131 which is alleged to have been committed by the discharge of oil, or a mixture containing oil, into the waters of a harbour in the United Kingdom;
  - (b) any offence in relation to a harbour in the United Kingdom under section 135 or 136; and
  - (c) any offence under section 142 relating to the keeping of records of the transfer of oil within such a harbour.

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- (5) The preceding provisions of this section shall apply in relation to any part of a dockyard port within the meaning of the <sup>M5</sup>Dockyard Ports Regulation Act 1865 as follows—
- (a) if that part is comprised in a harbour in the United Kingdom, the reference to the harbour authority shall be construed as including a reference to the Queen’s harbour master for the port;
  - (b) if that part is not comprised in a harbour in the United Kingdom, the references to such a harbour shall be construed as references to such a dockyard port and the reference to the harbour authority as a reference to the Queen’s harbour master for the port.
- (6) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under section 131 alleged to have been committed by the company as the owner of the ship shall be treated as duly served on that company if the document is served on the master of the ship.

In this subsection “foreign company” means a company or body which is not one to which any of sections 695 and 725 of the <sup>M6</sup>Companies Act 1985 and Articles 645 and 673 of the <sup>M7</sup>Companies (Northern Ireland) Order 1986 applies so as to authorise the service of the document in question under any of those provisions.

- (7) Any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Chapter shall, for that purpose, have the right to go on board the ship in question.

**Modifications etc. (not altering text)**

**C2** S. 143(6) applied (with modifications) (1.7.1998) by S.I. 1998/1377, reg. 15(1)

**Marginal Citations**

**M5** 1865 c. 125.

**M6** 1985 c. 6.

**M7** S.I. 1986/1032 (NI 6).

**144 Power to detain ships for section 131 offences.**

- (1) Where a harbour master has reason to believe that the master or owner of a ship has committed an offence under section 131 by the discharge from the ship of oil, or a mixture containing oil, into the waters of the harbour, the harbour master may detain the ship.
- (2) Section 284, in its application to the detention of a ship under this section, shall have effect with the omission of subsections (1), (6) and (7) and as if—
  - (a) in subsection (2), the reference to competent authority were a reference to the harbour authority; and
  - (b) in subsection (4), the persons in relation to whom that subsection applies were the harbour master or any person acting on his behalf.
- (3) Where a harbour master detains a ship other than a United Kingdom ship under this section he shall immediately notify the Secretary of State, who shall then inform the

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consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

In this subsection “United Kingdom ship” has the same meaning as in section 85.

- (4) A harbour master who detains a ship under this section shall immediately release the ship—
- (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the ship is detained;
  - (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted;
  - (c) if either—
    - (i) the sum of [<sup>F10</sup>£255,000] is paid to the harbour authority by way of security, or
    - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than [<sup>F10</sup>£255,000] is given to the harbour authority,
 by or on behalf of the master or owner; or
  - (d) where the master or owner is convicted of the offence, if any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid.
- (5) The harbour authority shall repay any sum paid in pursuance of subsection (4)(c) above or release any security so given—
- (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the sum is paid; or
  - (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted.
- (6) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (4)(c) above and the master or owner is convicted of the offence, the sum so paid or the amount made available under the security shall be applied as follows—
- (a) first in payment of any costs or expenses ordered by the court to be paid by the master or owner; and
  - (b) next in payment of any fine imposed by the court;
- and any balance shall be repaid to the first-mentioned person.
- (7) Any reference in this section to a harbour master or a harbour authority shall, where the harbour in question consists of or includes the whole or any part of a dockyard port within the meaning of the <sup>M8</sup>Dockyard Ports Regulation Act 1865, be construed as including a reference to the Queen’s harbour master for the port.
- (8) This section does not apply in relation to a ship of Her Majesty’s navy or any Government ship.

#### Textual Amendments

**F10** Sums in s. 144(4)(c)(i)(ii) substituted (17.7.1997) by 1997 c. 28, s. 7(3)(4) (with s. 7(5)); S.I. 1997/1539, art. 2, Sch.

#### Marginal Citations

**M8** 1865 c. 125.

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## 145 Interpretation of section 144

- (1) This section has effect for the interpretation of the references in section 144 to the institution of proceedings or their conclusion without the master or owner of a ship being convicted of an offence under section 131.
- (2) For the purposes of section 144 in its application to England and Wales—
  - (a) proceedings for an offence under section 131 are instituted—
    - (i) when a justice of the peace issues a summons or warrant under section 1 of the <sup>M9</sup>Magistrates' Courts Act 1980 in respect of the offence;
    - (ii) when a person is charged with the offence after being taken into custody without a warrant;
    - (iii) when a bill of indictment is preferred under section 2(2)(b) of the <sup>M10</sup>Administration of Justice (Miscellaneous Provisions) Act 1933; and
  - (b) proceedings for the offence are concluded without the master or owner being convicted on the occurrence of one of the following events—
    - (i) the discontinuance of the proceedings;
    - (ii) the acquittal of the master or owner;
    - (iii) the quashing of the master's or owner's conviction of the offence;
    - (iv) the grant of Her Majesty's pardon in respect of the master's or owner's conviction of the offence.
- (3) For the purposes of section 144 in its application to Northern Ireland—
  - (a) proceedings for an offence under section 131 are instituted—
    - (i) when a justice of the peace issues a summons or warrant under Article 20 of the <sup>M11</sup>Magistrates' Courts (Northern Ireland) Order 1981;
    - (ii) when a person is charged with the offence after being taken into custody without a warrant;
    - (iii) when an indictment is presented under section 2(2)(c), (e) or (f) of the <sup>M12</sup>Grand Jury (Abolition) Act (Northern Ireland) 1969; and
  - (b) proceedings for an offence under section 131 are concluded without the master or owner being convicted on the occurrence of one of the following events—
    - (i) the discontinuance of the proceedings;
    - (ii) the acquittal of the master or owner;
    - (iii) the quashing of the master's or owner's conviction of the offence;
    - (iv) the grant of Her Majesty's pardon in respect of the master's or owner's conviction of the offence.
- (4) Where the application of subsection (2)(a) or (3)(a) above would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- (5) For the purposes of section 144 in its application to Scotland—
  - (a) proceedings for an offence under section 131 are instituted—
    - (i) on the granting by the sheriff of a warrant in respect of the offence on presentation of a petition under section 12 of the <sup>M13</sup>Criminal Procedure (Scotland) Act 1975;
    - (ii) when, in the absence of a warrant or citation, the master or owner is first brought before a court competent to deal with the case;

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- (iii) when, in a case where he is liberated upon a written undertaking in terms of section 18(2)(a), 294(2)(a) or 295(1)(a) of the Criminal Procedure (Scotland) Act 1975, the master or owner appears at the specified time;
- (iv) when, in a case mentioned in (iii) above where the master or owner fails to appear at the specified court at the specified time, the court grants warrant for his apprehension;
- (v) when summary proceedings are commenced in terms of section 331(3) of the Criminal Procedure (Scotland) Act 1975;
- (b) proceedings for an offence under section 131 are concluded without the master or owner being convicted on the occurrence of one of the following events—
  - (i) the court makes a finding of not guilty or not proven against the master or owner in respect of the offence;
  - (ii) the proceedings are expressly abandoned (other than *pro loco et tempore*) by the prosecutor or are deserted simpliciter;
  - (iii) the conviction is quashed;
  - (iv) the accused receives Her Majesty's pardon in respect of the conviction.

#### Marginal Citations

- M9 1980 c. 43.
- M10 1933 c. 36.
- M11 S.I. 1981/1675 (NI 26).
- M12 1969 c. 15 (N.I.).
- M13 1975 c. 21.

## 146 Enforcement and application of fines.

- (1) Where a fine imposed by a court in proceedings against the owner or master of a ship for an offence under this Chapter is not paid, or any costs or expenses ordered to be paid by him are not paid, at the time ordered by the court, the court shall, in addition to any other powers of enforcing payment, have power—
  - (a) except in Scotland, to direct the amount remaining unpaid to be levied by distress,
  - (b) in Scotland, to grant warrant authorising the arrestment and sale, of the ship and its equipment.
- (2) Where a person is convicted of an offence under section 131, and the court imposes a fine in respect of the offence, then, if it appears to the court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

#### Modifications etc. (not altering text)

- C3 S. 146 applied (with modifications) (1.7.1998) by S.I. 1998/1377, reg. 15(2)

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#### **147 Enforcement of Conventions relating to oil pollution.**

- (1) Her Majesty may by Order in Council empower such persons as may be designated by or under the Order to go on board any Convention ship while the ship is within a harbour in the United Kingdom, and to require production of any oil record book required to be carried in accordance with the Convention.
- (2) An Order in Council under this section may, for the purposes of the Order, and with any necessary modifications, apply any of the provisions of this Chapter relating to the production and inspection of oil record books and the taking of copies of entries therein, and to the admissibility in evidence of such oil record books and copies, including any penal provisions of this Chapter in so far as they relate to those matters, and may also apply section 259.
- (3) Her Majesty, if satisfied that the government of any country has accepted, or denounced, the Convention, or that the Convention extends, or has ceased to extend, to any territory, may by Order in Council make a declaration to that effect.
- (4) In this section—
  - “the Convention” means any Convention accepted by Her Majesty’s Government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil; and
  - “Convention ship” means a ship registered in—
    - (a) a country the government of which has been declared by an Order in Council under subsection (3) above to have accepted the Convention, and has not been so declared to have denounced it; or
    - (b) a territory to which it has been so declared that the Convention extends, not being a territory to which it has been so declared that the Convention has ceased to extend.

#### *Miscellaneous and supplementary*

#### **148 Power of Secretary of State to grant exemptions.**

The Secretary of State may exempt from any of the provisions of this Chapter or of any regulations made thereunder, either absolutely or subject to such conditions as he thinks fit—

- (a) any ship or classes of ships;
- (b) any discharge of, or of a mixture containing, oil.

#### **149 Application to Government ships.**

- (1) This Chapter does not apply to ships of Her Majesty’s navy, nor to Government ships in the service of the Secretary of State while employed for the purposes of Her Majesty’s navy.
- (2) Subject to subsection (1) above and to section 141(4) and section 144(8)—
  - (a) provisions of this Chapter which are expressed to apply only to United Kingdom ships apply to Government ships registered in the United Kingdom and also to Government ships not so registered but held for the purposes of Her Majesty’s Government in the United Kingdom;

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- (b) provisions of this Chapter which are expressed to apply to ships generally apply to Government ships.

## 150 Annual Report.

- (1) The Secretary of State shall, as soon as possible after the end of each calendar year, make a report on the exercise and performance of his functions under this Chapter during that year.
- (2) Every such report shall include such observations as he may think fit to make on the operation during that year of this Chapter and of any Convention accepted by Her Majesty's Government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil.
- (3) The Secretary of State shall lay a copy of every such report before each House of Parliament.

## 151 Interpretation.

- (1) In this Chapter—

“harbour authority” means a person or body of persons empowered by an enactment to make charges in respect of ships entering a harbour in the United Kingdom or using facilities therein;

“harbour in the United Kingdom” means a port, estuary, haven, dock or other place the waters of which are within United Kingdom national waters and in respect of entry into or the use of which by ships a person or body of persons is empowered by an enactment (including a local enactment) to make any charges other than charges in respect of navigational aids or pilotage;

“harbour master” includes a dock master or pier master, and any person specially appointed by a harbour authority for the purpose of enforcing the provisions of this Chapter in relation to the harbour;

“local enactment” means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special Parliamentary procedure;

“oil” means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;

“oil residues” means any waste consisting of, or arising from, oil or a mixture containing oil;

“place on land” has the meaning given in section 131;

“transfer”, in relation to oil, means transfer in bulk.

- (2) For the purposes of the definition of “harbour in the United Kingdom” “charges in respect of navigational aids” means general light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons.
- (3) Any reference in any provision of this Chapter to a mixture containing oil shall be construed as a reference to any mixture of oil (or, as the case may be, of oil of a description referred to in that provision) with water or with any other substance.
- (4) Any reference in this Chapter, other than in section 136, to the discharge of oil or a mixture containing oil, or to its being discharged, from a ship, place or thing, except where the reference is to its being discharged for a specific purpose, includes a



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reference to the escape of oil or mixture, or (as the case may be) to its escaping, from that ship, place or thing.

- (5) For the purposes of any provision of this Chapter relating to the discharge of oil or a mixture containing oil from a ship, any floating craft (other than a ship) which is attached to a ship shall be treated as part of the ship.
- (6) Any power conferred by section 259 in its application to this Chapter to test any equipment on board a ship shall be construed as including a power to require persons on board the ship to carry out such work as may be requisite for the purpose of testing the equipment; and any provision of that section as to submitting equipment for testing shall be construed accordingly.
- (7) Subject to section 18 of the <sup>M14</sup>Interpretation Act 1978 (offence under two or more laws) nothing in this Chapter shall—
  - (a) affect any restriction imposed by or under any other enactment, whether contained in a public general Act or a local or private Act; or
  - (b) derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

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**Marginal Citations**

**M14** 1978 c. 30.

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