

1979 No. 1452

MERCHANT SHIPPING

The Prevention of Oil Pollution Act 1971
(Hong Kong) Order 1979*Made* - - - 14th November 1979*Coming into Operation* 17th December 1979

At the Court at Buckingham Palace, the 14th day of November 1979

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 25(1) of the Prevention of Oil Pollution Act 1971(a) and all other powers enabling Her in that behalf is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Prevention of Oil Pollution Act 1971 (Hong Kong) Order 1979 and shall come into operation on 17th December 1979.

2. The provisions of sections 12 to 16, 20, 29, 32 and 34 of the Prevention of Oil Pollution Act 1971, subject to the exceptions and modifications as set out in the Schedule hereto, shall extend to Hong Kong.

N. E. Leigh,

Clerk of the Privy Council.

SCHEDULE

Article 2

PROVISIONS OF THE PREVENTION OF OIL POLLUTION ACT 1971
AS EXTENDED TO HONG KONG*Shipping casualties*

- 12.—(1) The powers conferred by this section shall be exercisable where—
- Shipping casualties.** (a) an accident has occurred to or in a ship; and
- (b) in the opinion of the Governor oil from the ship will or may cause pollution on a large scale in Hong Kong or in the waters in or adjacent to Hong Kong up to the seaward limits of territorial waters; and

(a) 1971 c. 60.

- (c) in the opinion of the Governor the use of the powers conferred by this section is urgently needed.
- (2) For the purpose of preventing or reducing oil pollution, or the risk of oil pollution, the Governor 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.
- (3) Directions under subsection (2) of this section 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 Governor the powers conferred by subsection (2) of this section are, or have proved to be, inadequate for the purpose, the Governor may, for the purpose of preventing or reducing oil pollution, or the risk of 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 Governor 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 Governor under subsection (4) of this section shall also be exercisable by such persons as may be authorised in that behalf by the Governor.
- (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 16 of this Act are without prejudice to any rights or powers of Her Majesty's Government in Hong Kong 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) of this section—
- (a) does not constitute contempt of court; and
 - (b) does not in any circumstances make the Government of Hong Kong 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; and
 “specified”, in relation to a direction under this section, means specified by the direction.

13.—(1) If any action duly taken by a person in pursuance of a direction given to him under section 12 of this Act, or any action taken under subsection (4) or (5) of that section—

- (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 Governor.

Right to recover in respect of unreasonable loss or damage.

(2) In considering whether subsection (1) of this section 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 Supreme Court of Hong Kong shall include jurisdiction to hear and determine any claim arising under this section.

14.—(1) If the person to whom a direction is duly given under section 12 of this Act contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.

Offences in relation to s. 12.

(2) If a person wilfully obstructs any person who is—

- (a) acting on behalf of the Governor in connection with the giving or service of a direction under section 12 of this Act;
 (b) acting in compliance with a direction under that section; or
 (c) acting under subsection (4) or (5) of that section;
 he shall be guilty of an offence.

(3) In proceedings for an offence under subsection (1) of this section, 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 on summary conviction to a fine not exceeding 500,000 Hong Kong dollars, or on conviction on indictment to a fine.

15.—(1) If the Governor is satisfied that a company or other body is not one to whom section 338 (service on company to which Part XI applies) or section 356 (service of documents on company) of the Companies Ordinance 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 12 of this Act—

Service of directions under s. 12

- (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 12 of this Act to or on any person on a ship, a person acting on behalf of the Governor shall have the right to go on board the ship.

Application of ss. 12 to 15 to certain foreign and other ships.

16.—(1) Her Majesty may by Order in Council provide that sections 12 to 15 of this Act, together with any other provisions of this Act, shall apply to a ship—

(a) which is not a ship registered in Hong Kong; and

(b) which is for the time being outside the territorial waters of Hong Kong; 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) of this section 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) of this section, no direction under section 12 of this Act shall apply to a ship which is not registered in Hong Kong and which is for the time being outside the territorial waters of Hong Kong, and no action shall be taken under subsection (4) or (5) of section 12 of this Act as respects any such ship.

(4) No direction under section 12 of this Act shall apply to any vessel of Her Majesty's navy or to any Government ship (within the meaning of section 80 of the Merchant Shipping Act 1906)(a) and no action shall be taken under subsection (4) or (5) of that section as respects any such vessel or ship.

Enforcement and application of fines.

20.—(1) Where a fine imposed by a court in proceedings against the owner or master of a ship for an offence under this Act is not paid at the time ordered by the court, the court shall, in addition to any other powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

Interpretation.

29.—(1) In this Act—

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

“outside the territorial waters of Hong Kong” means outside the seaward limits of those waters.

(3) Any reference in the provisions of this Act to the discharge of oil, or to its being discharged, from a vessel, place or thing, except where the reference is to its being discharged for a specified purpose, includes a reference to the escape of the oil, or (as the case may be) to its escaping, from that vessel, place or thing.

(6) Subject to the preceding subsections, expressions used in this Act and in the Merchant Shipping Act 1894(b), have the same meanings in this Act as in that Act.

(7) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment.

Provision for her restrictions, rights of action etc.

32. Subject to section 33 of the Interpretation Act 1889(c) (offence under two or more laws) nothing in this Act shall affect any restriction imposed by or under any other enactment, or shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Act.

Short title.

34.—(1) This Act may be cited as the Prevention of Oil Pollution Act 1971.

(a) 1906 c. 48.

(b) 1894 c. 60.

(c) 1889 c. 63.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order extends to Hong Kong those provisions of the Prevention of Oil Pollution Act 1971 that enable measures to be taken to prevent, mitigate or eliminate grave and imminent danger to the coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty. Such measures may include those permitted under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, opened for signature in Brussels on 29 November 1969 (Cmnd. 4403).

SI 1979/1452
ISBN 0-11-094452-6



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