

Number 18 of 1999
SEA POLLUTION (AMENDMENT) ACT, 1999

ARRANGEMENT OF SECTIONS

Section

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Acts Referred to

Continental Shelf Act, 1968 1968, No. 14

Energy (Miscellaneous Provisions) Act, 1995 1995, No. 35

Fishery Harbour Centres Act, 1968 1968, No. 18

Foreshore Act, 1933 1933, No. 12

Harbours Act, 1946 1946, No. 9

Harbours Act, 1996 1996, No. 11

Local Government Act, 1941 1941, No. 23

Maritime Jurisdiction Acts, 1959 to 1988

Mercantile Marine Act, 1955 1955, No. 29

Oil Pollution of the Sea (Civil Liability and Compensation)

(Amendment) Act, 1998 1998, No. 13

Sea Pollution Act, 1991 1991, No. 27

Sea Pollution Acts, 1991 and 1995

Sea Pollution Acts, 1991 and 1996

AN ACT TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION, 1990, DONE AT LONDON ON THE 30TH DAY OF NOVEMBER 1990, TO AMEND THE SEA POLLUTION ACT, 1991, AND TO PROVIDE FOR RELATED MATTERS.

[30th June, 1999]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.-(1) In this Act-

"authorised officer" means a person appointed by the Minister under section 4, or section 11 of the Energy (Miscellaneous Provisions) Act, 1995;

"the Convention" means the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, done at London on the 30th day of November 1990;

"designated area" means an area for the time being designated under section 2 of the Continental Shelf Act, 1968;

"functions" includes powers and duties and references to the performance of functions include references to the exercise of powers and the carrying out of duties;

"harbour authority" means-

(a) in the case of a harbour to which the Harbours Act, 1946, applies, a harbour authority within the meaning of

that
Act;

(b) in the case of a harbour under the control of a company established pursuant to section 7 of the Harbours Act, 1996, the company concerned;

(c) in the case of a fishery harbour centre to which the Fishery Harbour Centres Act, 1968, applies, the Minister;

(d) in the case of a harbour under the control of a local authority, the local authority concerned; or

(e) in the case of a harbour under the management of Iarnród Éireann - Irish Rail, Iarnród Éireann - Irish Rail;

"Irish ship" means an Irish ship within the meaning of section 9 of the Mercantile Marine Act, 1955;

"local authority" means a local authority for the purposes of the Local Government Act, 1941;

"maritime administration" means a person in a state other than the State performing functions the same as or similar to those performed by the Minister under this Act;

"the Minister" means the Minister for the Marine and Natural Resources;

"offshore unit" means any fixed or floating offshore installation or structure, in the State or a designated area, engaged in gas or oil exploration, exploitation or production activities, or the loading or unloading of oil;

"oil handling facility" means a facility in the State or a designated area that presents an oil pollution risk and includes oil terminals, pipelines and other similar facilities;

"oil pollution emergency plan", in relation to a harbour, offshore unit, oil handling facility or an area of seashore in whole or in part within the functional area, or contiguous to the functional area, of a local authority, means a plan approved by the Minister under section 2;

"oil pollution incident" means any occurrence or series of occurrences involving a discharge of oil, or giving rise to circumstances from which it is reasonable to infer that there is likely to be a discharge of oil, from a ship, offshore unit or oil handling facility, and which poses a threat or gives rise to circumstances from which it is reasonable to infer that there is likely to be a threat to the marine environment in the State, a designated area or a prescribed area;

"the Principal Act" means the Sea Pollution Act, 1991;

"seashore" has the same meaning as it has in the Foreshore Act, 1933.

(2) A reference in this Act to the State includes a reference to-

(a) the inland waters of the State, (b) the territorial seas of the State, and the seabed and subsoil beneath those seas, and (c) any area lying within a line, every point of which is 200 nautical miles from the baselines for the purposes of the Maritime Jurisdiction Acts, 1959 to 1988, and the waters above it, provided that this paragraph shall not be construed as constituting a claim by the State to any area that-

(i) is under the jurisdiction of a state other than the State, and

(ii) the State recognises as being under such jurisdiction.

(3) A reference in this Act to a section is a reference to a section of this Act unless it is indicated that a reference to some other enactment is intended.

(4) A reference in this Act to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended.

(5) A reference in this Act to an enactment shall be construed as a reference to that enactment as amended, adapted or extended, whether before or after the commencement of this section, by or under any subsequent enactment.

2.-(1) A harbour authority shall, as soon as may be after the commencement of this section, prepare and submit to the Minister a plan for the prevention and minimisation of damage arising out of an oil pollution incident occurring in a harbour under its control.

(2) The operator of an offshore unit or oil handling facility shall, as soon as may be after the commencement of this section, prepare and submit to the Minister a plan for the prevention and minimisation of damage arising out of an oil pollution incident occurring on the offshore unit or oil handling facility concerned.

(3) The Minister may require a local authority, within such period as is specified by the Minister, to prepare and submit to him or her a plan for the prevention and minimisation of damage, arising out of an oil pollution incident, to any area of seashore that is in whole or in part within its functional area or contiguous thereto.

(4) The Minister may approve a plan to which this section applies.

(5) A plan to which this section applies shall include such provisions and provide for the adoption of such measures and procedures by the harbour authority, operator or local authority concerned as the Minister may direct.

(6) A person who fails to comply with a requirement or direction of a Minister under this section shall be guilty of an offence.

3.-(1) Each harbour authority shall, in relation to the harbour concerned, have in place an oil pollution emergency plan.

(2) Each operator of an offshore unit or oil handling facility shall, in relation to the offshore unit or oil handling facility concerned, have in place an oil pollution emergency plan.

(3) Each local authority of which a requirement is made under subsection (3) of section 2 shall, in relation to the area of seashore to which the requirement relates, have in place an oil pollution emergency plan.

(4) A harbour authority, local authority, or operator of an offshore unit or oil handling facility who contravenes this section shall be guilty of an offence.

4.-(1) The Minister may appoint such persons or classes of persons as he or she considers appropriate to be authorised officers for the purposes of this Act.

(2) A person appointed under subsection (1) shall, on his or her appointment, be furnished by the Minister with a warrant of his or her appointment and when exercising a power conferred by this Act shall, if requested by any person thereby affected, produce such warrant to that person for inspection.

(3) An authorised officer may-

(a) enter at any time a harbour or any part thereof, or an offshore unit or oil handling facility, for the purpose of exercising any powers conferred on him or her by this section,

(b) make inspections and carry out such tests as he or she thinks fit in relation to the carrying on of any activities in a harbour or in or on an offshore unit or oil handling facility including the monitoring and assessment of the effects on the marine environment of such activities,

(c) make such inspections and carry out such tests in a harbour or in or on an offshore unit or oil handling facility as he or she thinks fit for the purposes of monitoring and assessing the effects on the marine environment of any oil pollution incident, (d) require any person in a harbour or in or on an offshore unit or oil handling facility to produce to him or her such documents, records or materials as are in that person's possession or control relating to the oil pollution emergency plan in respect of the harbour, offshore unit or oil handling facility concerned and to give to him or her such information as he or she may reasonably require in respect of such documents, records or materials, or

(e) require any person holding any position of authority or responsibility in relation to the implementation of an oil pollution emergency plan in a harbour or in or on an offshore unit or oil handling facility to give to him or her such information as he or she may reasonably require in relation to the procedures employed or steps taken to ensure the carrying out of and compliance with such oil pollution emergency plan.

(4) Any person who-

(a) obstructs or impedes an authorised officer in the exercise of his or her powers under this section,

(b) without reasonable excuse, refuses or fails to comply with a requirement made of him or her under subsection (3), or (c) makes a statement or furnishes information to an authorised officer, pursuant to a requirement made of him or her under subsection (3) by such officer, that is false or misleading in a material respect, knowing it to be false or misleading or being reckless as to whether it is so false or misleading, shall be guilty of an offence.

5.-Section 25 of the Principal Act is hereby amended by-

(a) the insertion in subsection (1) of the following paragraph:

"(aa) take samples of oil, oily mixtures, noxious liquid substances, harmful substances, sewage or garbage from the ship concerned";

and

(b) the insertion of the following subsection after subsection

(1): "(1A) A harbour-master may enter any oil handling facility within the harbour in respect of which he is harbourmaster and there make inspections and carry out such tests as he thinks fit-

(a) in relation to the carrying on of any activities in such facility, including the monitoring and assessment of the effects on the marine environment of such activities, or

(b) for the purposes of monitoring and assessing the effects on the marine environment of any oil pollution incident."

6.-(1) The Minister may-

(a) give a direction in writing to a harbour authority requiring it to make such modifications or alterations to an oil pollution emergency plan approved by him or her in respect of a harbour under its control as he or she deems appropriate, or

(b) in relation to a harbour, give a direction (in writing or otherwise) to the harbour authority concerned to do or refrain from doing anything, the doing or refraining from doing of which is, in the opinion of the Minister, necessary or expedient for the purposes of responding to an oil pollution incident in that harbour.

(2) The Minister may-

(a) give a direction in writing to the operator of an offshore unit or oil handling facility requiring the operator concerned to make such modifications or alterations to an oil pollution emergency plan approved by the Minister in respect of an offshore unit or oil handling facility, as the case may be, under his or her control, as he or she deems appropriate, or

(b) in relation to an offshore unit or oil handling facility, give a direction (in writing or otherwise) to the operator concerned to do or refrain from doing anything, the doing or refraining from doing of which is, in the opinion of the Minister, necessary or expedient for the purposes of responding to an oil pollution incident in or on the offshore unit or oil handling facility concerned.

(3) The Minister may-

(a) give a direction in writing to a local authority requiring it to make such modifications or alterations to an oil pollution emergency plan approved by him or her in respect of an area of seashore within or contiguous to the functional area of the local authority concerned, or

(b) in relation to such area of seashore as he or she deems appropriate, give a direction (in writing or otherwise) to a local authority to do or refrain from doing anything, the doing or refraining from doing of which is, in the opinion of the Minister, necessary or expedient for the purposes of responding to an oil pollution incident.

(4) A person who fails to comply with a direction under this section shall be guilty of an offence.

7.-The Principal Act is hereby amended by-

(a) the substitution of the following section for section 13: "13.-(1) Whenever there is an incident, whether on board or outside a ship-

(a) resulting in a discharge, in the State or a prescribed area, of a pollutant or quantity of a pollutant in excess of that permitted under section 10, from a ship, or

(b) giving rise to circumstances from which it is reasonable to infer that there is likely to be a discharge, in the State or a prescribed area, of a pollutant or quantity of a pollutant in excess of that permitted under section 10, from a ship, the master of the ship concerned or of any other ship involved in such incident or from which such incident was observed shall forthwith report the matter to the Minister or, where the incident or discharge occurs in a harbour, to the harbour-master of such harbour or person for the time being performing the functions of harbour-master in relation to such harbour.

(2) Where the presence of oil in the sea is observed from a ship in the State or a prescribed area the master of such ship shall forthwith report the matter to the Minister, or where the presence of oil is observed from a ship in a harbour, to the harbour authority concerned.

(3) A harbour-master or person performing, for the time being, the functions of harbour-master in relation to a harbour shall-

(a) on receipt of a report under subsection (1) or (2),

(b) on being informed of an incident resulting in a discharge in the harbour concerned, of a pollutant or quantity of a pollutant in excess of that permitted under section 10, or the existence of circumstances from which it is reasonable to infer that there is likely to be a discharge of a pollutant or quantity of a pollutant in excess of that permitted under section 10 in the harbour, or

(c) on observing an incident referred to in paragraph (b), or a pollutant or quantity of a pollutant in excess of that permitted under section 10 in the sea, within the harbour, report the matter to the Minister.

(4) A report under this section shall comply with such requirements (if any) as the Minister may prescribe.

(5) A person who contravenes this section or a requirement prescribed under subsection (4) shall be guilty of an offence.

(6) In this section 'pollutant' means oil, an oily mixture, noxious liquid substance, harmful substance, sewage or garbage.", and

(b) the insertion of the following sections after section 13: "13A.-(1) Whenever there is an incident whether on board or outside an Irish ship-

(a) resulting in a discharge, outside the State or a prescribed area, of oil from a ship, or

(b) giving rise to circumstances from which it is reasonable to infer that there is likely to be a discharge, outside the State or a prescribed area, of oil from a ship, the master of any Irish ship involved in such incident or of any Irish ship from which such incident was observed, shall forthwith report the matter to the maritime administration, in the state closest to the place where the incident occurred, or to the person performing, in relation to the port closest to the said place, functions the same as or similar to the functions performed by a harbour-master in relation to a harbour, as may be appropriate.

(2) Where the presence of oil in the sea is observed from an Irish ship outside the State or a prescribed area the master of such ship shall forthwith report the matter to the maritime administration, in the state closest to the place where such presence was observed, or to the person performing, in relation to the port closest to the said place, functions the same as or similar to the functions performed by a harbour-master in relation to a harbour, as may be appropriate.

(3) A person who contravenes this section shall be guilty of an offence.

13B.-(1) Whenever an incident occurs on an offshore unit or an oil handling facility resulting in a discharge of oil, in the State or a designated area, or giving rise to circumstances from which it is reasonable to infer that there is likely to be a discharge of oil in the State or a designated area the person for the time being in charge of the offshore unit or oil handling facility concerned shall forthwith report the matter to-

(a) the Minister, or

(b) in the case of an oil handling facility in a harbour, to the harbour-master, or person performing, for the time being, the functions of harbourmaster in relation to that harbour.

(2) Whenever a person on an offshore unit or oil handling facility observes an incident involving a discharge of oil in the State or a designated area, or an incident from which, having regard to all the circumstances observed, it would be reasonable to infer that a discharge of oil in the State or a designated area is likely to occur, or observes the presence of oil in the sea, he shall report the matter to the person, for the time being in charge of the offshore unit or oil handling facility concerned.

(3) A person for the time being in charge of an offshore unit or oil handling facility shall on receipt of a report under subsection (2) forthwith report the matter to the Minister.

(4) A harbour-master or person performing for the time being the functions of harbour-master in relation to a harbour shall on receipt of a report under subsection (1) forthwith report the matter to the Minister.

(5) A report under this section shall comply with such requirements (if any) as the Minister may prescribe.

(6) A person who contravenes this section or a requirement prescribed under subsection (5) shall be guilty of an offence."

8.-(1) The Minister shall prepare a plan specifying the measures to be taken to prevent and minimise damage in the State resulting from discharges of oil from ships, offshore units and oil handling facilities (hereafter in this section referred to as "the plan").

(2) Without prejudice to the generality of subsection (1), the plan shall provide for-

(a) the placing, at such places in the State as may be specified therein, of such equipment and materials to be used in connection with the removal, degrading or disposal of discharges of oil into the sea or onto land as may be specified in the said plan, (b) the training of such persons or classes of persons as may be specified in the plan in the use of equipment and materials to which paragraph (a) applies, and generally in the carrying out of operations to prevent and minimise damage in the State resulting from discharges of oil from ships, offshore units or oil handling facilities, (c) the conducting of exercises by such persons or classes of persons and at such intervals as are specified in the plan to ensure the greater effectiveness of measures taken to prevent or minimise damage in the State resulting from discharges of oil from ships, offshore units or oil handling facilities, (d) the maintenance and improvement of co-operation and communication between persons required to comply with such provisions of the plan as are specified in a direction of the Minister under subsection (3), and

(e) the co-ordination of the activities of persons to which paragraph

(d) applies, when carrying out operations to prevent and minimise damage in the State resulting from a discharge of oil from a ship, offshore unit or oil handling facility.

(3) The Minister may, by direction in writing, require such persons as he or she considers appropriate to comply with such provisions of the plan as are specified in the direction.

(4) The plan shall be published in such manner as the Minister considers appropriate.

(5) A person who fails to comply with a direction of the Minister under this section shall be guilty of an offence.

9.-The Minister may, alone or jointly with a foreign maritime administration, arrange for the provision, on such terms as he or she considers appropriate, whether by purchasing, leasing, hiring or otherwise, of such equipment and materials as he or she considers necessary or expedient for the carrying out of operations for the prevention or minimising of damage in the State resulting from discharges of oil from ships, offshore units or oil handling

facilities, or for the training of persons in the carrying out of such operations.

10.-Where the maritime administration of a party to the Convention provides, pursuant to a request of the Minister, assistance in preventing or minimising damage in the State resulting from a discharge of oil from a ship, offshore unit or oil handling facility, the Minister may, on such terms and conditions as he or she considers appropriate, reimburse such foreign maritime administration for the expenses incurred by it in so providing assistance.

11.-(1) The Minister may, pursuant to a request from a party to the Convention or the maritime administration thereof, provide assistance in preventing or minimising damage outside the State resulting from a discharge of oil from a ship, offshore unit or oil handling facility, including the provision of equipment, materials or technical advice, or the carrying out of operations to prevent or minimise such damage.

(2) Assistance under subsection (1) shall be provided on such terms as the Minister considers appropriate.

12.-(1) The master of a ship at anchor at a place in the State other than a harbour shall immediately notify the Minister of the fact and of the place at which it is at anchor.

(2) A person shall not transfer or cause to be transferred ship's stores, cargo or oil to or from a ship in a place in the State (not being a harbour) other than in accordance with a permit granted by the Minister under subsection (3).

(3) The Minister may, upon an application being made by the owner, charterer, hirer or master of a ship, grant a permit to the applicant allowing the transfer to or from the ship concerned of ship's stores, cargo or oil outside a harbour.

(4) An application for a permit under subsection (3) shall comply with such requirements (if any) as the Minister may prescribe.

(5) A permit under subsection (3) shall be in such form as the Minister may prescribe.

(6) The Minister may attach such conditions as he or she considers appropriate to a permit under subsection (3).

(7) A person who contravenes subsection (1) or (2) or a condition attached to a permit under subsection (3) shall be guilty of an offence.

13.-Section 3 of the Principal Act is hereby amended by-

(a) in subsection (1)-

(i) the insertion in the definition of "maritime casualty" of "pollution," after the words "resulting in", and

(ii) the insertion of the following definition:

" 'prescribed area' means an area outside the State prescribed by the Minister for the purposes of this Act;"

(b) the insertion of the following subsection after subsection (2): "(2A) A reference in this Act to the State includes a reference to-

(a) the inland waters of the State,

(b) the territorial seas of the State, and the seabed and subsoil beneath those seas, and

(c) any area lying within a line, every point of which is 200 nautical miles from the baselines for the purposes of the Maritime Jurisdiction Acts, 1959 to 1988, and the waters above it, provided that this paragraph shall not be construed as constituting a claim by the State to any area that-

(i) is under the jurisdiction of a state other than the State, and

(ii) the State recognises as being under such jurisdiction.", and

(c) the substitution of the following subsection for subsection (3):

"(3) A reference in this Act to a country other than the State includes a reference to the territorial seas and inland waters of that country."

14.-The Principal Act is hereby amended by-

(a) the substitution in section 22 of the following subsection for subsection (2):

"(2) Without prejudice to any other power conferred on an inspector under this Act, an inspector to whom this section applies may, if he is satisfied that a ship (or any fitting or equipment thereon) does not comply with a certificate referred to in subsection (1) or is so defective that the ship is not fit to put to sea without presenting a serious threat to living marine resources, detain a ship, or take a ship to such place in the State as he considers appropriate, and there detain it until such time as any directions given by him under this section in relation to the ship have been complied with.",

(b) the substitution in section 24 of the following subsection for subsection (1):

"(1) Whenever an inspector or a harbour-master has reasonable cause to believe that a ship has caused or may cause pollution and the ship is in the State, he may stop and detain the ship, or take it to such place in the State as he considers appropriate and there detain it.",

(c) the substitution of the following section for section 39: "39.-(1) Where an inspector or harbour-master has, in the exercise of the powers conferred on him by section

22(2) or 24 detained a ship and the persons on board the ship at a port or other place in the State, any inspector, or the harbour-master concerned, who suspects that a person on board the ship has committed an offence under this Act shall (unless he is proceeding under section 39A), as soon as may be, apply to a judge of the District Court for an order authorising the continued detention of the ship and those persons, and the said judge may grant an order authorising such detention for a period of 48 hours if he is satisfied that the applicant inspector or harbour-master has such a suspicion as aforementioned.

(2) Upon the expiration of the period of 48 hours-

(a) the ship shall be released unless an order providing for its further detention is made under section 39A before the expiration of the said period of 48 hours, and

(b) each person on board the ship shall be released unless an order providing for his further detention is made under the said section before the expiration of the said period.", and

(d) the insertion of the following section after section 39:

"39A.-Where an inspector or harbour-master has, in the exercise of the powers conferred on him by section 22(2) or 24, detained a ship and the persons on board the ship at a port or other place in the State, any inspector or the harbour-master concerned shall, as soon as may be, bring the master of the ship and any other persons on board the ship, against whom proceedings for an offence under this Act have been or are about to be instituted, before a judge of the District Court and thereupon the said judge shall, if he is satisfied that such proceedings have been or are about to be instituted against the master and those other persons or any one or more of them, by order directed to an inspector or the harbour-master concerned, require such inspector or harbour-master to detain at a specified place in the State the ship and each person (including the master) aforesaid in respect of whom he is so satisfied, until such proceedings have been adjudicated upon by a court in exercise of its criminal jurisdiction."

15.-The Principal Act is hereby amended by-

(a) the substitution in section 29(a) of "£1,500" for "£1,000", and

(b) the substitution of the following section for section 31: "31.-Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of such body corporate or a person who was purporting to act in any such capacity, that officer or person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence."

16.-A person who commits an offence under this Act shall be liable-

(a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding £10,000,000, or to imprisonment for a term not exceeding 5 years, or to both.

17.-Sections 30 (other than subsection (2)), 31, 32 and 33 of the Principal Act shall apply to this Act as they apply to the Principal Act, subject to the necessary modifications.

18.-Subsections (1), (2), (3) and (4) of section 2 of the Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 1998, are hereby repealed.

19.-(1) This Act may be cited as the Sea Pollution (Amendment) Act, 1999.

(2) The Sea Pollution Acts, 1991 and 1995, the Sea Pollution Acts, 1991 and 1996, and this Act may be cited as the Sea Pollution Acts, 1991 to 1999, and shall be construed together as one Act.

(3) This Act shall come into operation on such day or days as the Minister may appoint, by order or orders, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.