
CHAPTER 275**MERCHANT SHIPPING (OIL POLLUTION)**

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CHAPTER 275

MERCHANT SHIPPING (OIL POLLUTION)

An Act to make provision concerning oil pollution of navigable waters by ships; to provide for the civil liability for oil pollution by merchant ships; to give effect to certain International Conventions relating to pollution of the sea; and for matters connected with and incidental to the foregoing.

17 of 1976
7 of 1989
15 of 1989
17 of 1989
S.I. 86/1990
S.I. 30/1992
S.I. 37/1992
17 of 1995
46 of 2000
11 of 2001
S.I. 83/2001
37 of 2009

[Assent 29th November, 1976]

[Commencement 1st September, 1989]

PART I PRELIMINARY

1. This Act may be cited as the Merchant Shipping (Oil Pollution) Act. Short title.

2. (1) In this Act, unless the context otherwise requires — Interpretation.

“Bahamian ship” means a ship for the time being registered under the Merchant Shipping Act; Ch. 268.

“Bahamian waters” means all areas of the sea subject to the jurisdiction of The Bahamas, and includes territorial waters, archipelagic waters and internal waters navigable by seagoing ships;

“barge” includes a lighter and any similar vessel;

“contravene”, in relation to any provision, includes a failure to comply with that provision;

“damage” includes loss;

“the Director” means the Director of Maritime Affairs appointed under The Bahamas Maritime Authority Act; Ch. 283.

“foreign” means —

(a) in relation to a ship, registered under a law of a country other than The Bahamas; and

- (b) in relation to a country or a court, a country other than The Bahamas, or court in such a country;

“Government” means the Government of The Bahamas;

“Government ship” means any warship and any other ship for the time being used by the Government of any State for other than commercial purposes;

“the Minister” means the Minister for the time being responsible for Maritime Affairs;

“mixture” means any mixture of oil (or as the case may be, of oil of a particular description referred to in the provision concerned) with water or with any other substance;

“occupier”, in relation to a place on land means the person in actual occupation of that place or, if there be no such person, the owner thereof;

15 of 1989, s. 2.

“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;

“owner”, in relation to a registered ship, means the person registered as its owner, except that in relation to a ship owned by a State and operated by a person registered as the operator of the ship, it means the person so registered;

“Part” means a Part of this Act;

“persistent oil” includes crude oil, heavy diesel oil, fuel oil, lubricating oil and whale oil;

“petroleum-spirit” means such petroleum as when tested in a manner approved by the Minister responsible for petroleum, gives off an inflammable vapour at a temperature of less than seventy-three degrees Fahrenheit;

“place on land” includes anything resting on the bed or shore of Bahamian waters, and anything afloat (other than a vessel) if it is anchored or attached to the bed or shore of Bahamian waters;

“port” means any area in The Bahamas constituted and defined as a port area under the Port Authorities Act, or constituted as a port or harbour under any other law;

“port authority”, in relation to a port, means a port authority appointed for the port under the Port Authorities Act or having control over the port under any other law; Ch. 269.

“sea” includes any estuary or arm of the sea;

“section” means a section of this Act;

“special drawing rights” means special drawing rights within the meaning of the Articles of Agreement of the International Monetary Fund, which was established by an agreement drawn up at the United Nations Conference held at Bretton Woods, New Hampshire, U.S.A., in July, 1944; *15 of 1989, s. 2.*

“the Shipping Act” means the Merchant Shipping Act; Ch. 268.

“terminal” means any installation or site for the storage of oil in bulk which is capable of receiving oil from sea-borne transportation, including any facility situated offshore and linked to any such site;

“ton” means a ton of 2,240 pounds;

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

(2) In this Act, except where the context otherwise requires or another meaning is specified, “gross tonnage”, “inspector”, “master”, “registrar”, “ship”, “surveyor” and “vessel” have the meanings assigned to them in the Shipping Act.

(3) Any reference in this Act, other than in section 11, to the discharge of oil or any mixture, 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 mixture, or (as the case may be) to its escaping, from that vessel, place or thing.

(4) References in this Act to the area of any country includes, in relation to The Bahamas, Bahamian waters, and in relation to any other country, the territorial waters of that country.

(5) In relation to any damage or cost resulting from the discharge of oil carried in a ship, references in this Act to the owner of the ship are references to the owner at the time of the occurrence, or first of the occurrences, resulting in the discharge.

PART II PREVENTION OF OIL POLLUTION

Interpretation of Part II.

3. (1) In this Part “harbour master” includes a dock master or pier master and any person specially appointed by a port authority for the purpose of enforcing the provisions of this Part in relation to the port.

(2) For the purposes of this Part relating to the discharge of oil or a mixture from a vessel, any floating craft (other than a vessel) which is attached to a vessel shall be treated as part of that vessel.

Annexes I, II, III and V of MARPOL 73/78 shall have the force of law in The Bahamas.

4. (1) The provisions of Protocol I to and Annex I, Annex II, Annex III and Annex V of the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto, together with amendments thereto in force on 1st January 2000 (in this Part and in the First Schedule referred to as “MARPOL 73/78”) shall have the force of law.

(2) The First Schedule shall have effect in connection with MARPOL 73/78, and subsection (1) shall have effect subject to the provisions of that Schedule.

(3) The Minister may make such regulations as he considers appropriate to give effect to MARPOL 73/78.

(4) If it appears to the Minister that the Government of The Bahamas has agreed to any revision of the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto he may —

(a) by Order —

(i) make such modifications to this section;

(ii) make such modifications to the First Schedule;

(b) make such regulations,

as he considers appropriate in consequence of the revision.

(5) Nothing in any modification made by virtue of subsection (4) shall affect any rights or liabilities arising before the day on which the modification comes into force.

5. (1) If any oil or mixture is discharged as mentioned in the following paragraphs into Bahamian waters, then, subject to the provisions of this Part and the First Schedule, the following shall be guilty of an offence, that is to say —

Discharge of oil into Bahamian waters.
46 of 2000, s. 4.

- (a) if the discharge is from a vessel, the owner or master of the vessel, unless he proves that the discharge took place and was caused as mentioned in paragraph (b) of this subsection;
- (b) if the discharge is from a vessel but takes place in the course of a transfer of oil to or from another vessel or a place on land and is caused by the act or omission of any person in charge of any apparatus in that other vessel or that place, the owner or master of that other vessel or, as the case may be, the occupier of that place;
- (c) if the discharge is from a place on land, the occupier of that place, unless he proves that the discharge was caused as mentioned in paragraph (d) of this subsection;
- (d) if the discharge is from a place on land and is caused by the act of a person who is in that place without the permission (express or implied) of the occupier, that person;
- (e) if the discharge takes place otherwise than as mentioned in the preceding paragraphs and is the result of any operations for the exploration of the sea-bed and subsoil or the exploitation of their natural resources, the person carrying on the operations.

(2) A person guilty of an offence under this section shall be liable on conviction on information to a fine not exceeding one hundred and twenty thousand dollars.

6. (1) If any oil, or any mixture thereof, is discharged into any part of the sea —

- (a) from a pipe-line; or
- (b) (otherwise than from a ship) as the result of any operation for the exploration of the sea-bed and subsoil or the exploitation of their natural resources in a designated area,

Discharge of certain oils from pipe-lines and exploration, etc., areas.
46 of 2000, s. 5.

then, subject to the following provisions of this Part, the owner of the pipe-line or, as the case may be, the person carrying on the operations, shall be guilty of an offence unless the discharge was from a place in his occupation and he proves that it was due to the act of a person who was there without his permission (express or implied).

(2) In this section, “designated area” means any area of the sea-bed and subsoil thereof in which a person is authorised by the Government to carry on any operation relating to the exploration for, or exploitation of, natural gas or oil.

(3) Any person guilty of an offence under this section shall be liable on conviction on information to a fine not exceeding one hundred and twenty thousand dollars.

Defences of
persons charged
under s. 4 or s. 5.

7. (1) Where a person is charged with an offence under section 4, or is charged with an offence under section 5 as the owner or master of a vessel, it shall be a defence to prove that the oil or mixture was discharged for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, or of 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 as mentioned in subsection (1) of this section, it shall also be a defence to prove —

- (a) that the oil or mixture escaped in consequence of damage to the vessel, 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.

Defences of other
persons charged
under s. 5 or s. 6.

8. (1) Where a person is charged, in respect of the escape of any oil or mixture with an offence under section 5 or 6 —

- (a) as the occupier of a place on land; or

-
- (b) as a person carrying on operations for the exploration of the sea-bed and subsoil or the exploitation of their natural resources; or
 - (c) as the owner of a pipe-line,

it shall be a defence to prove that neither the escape nor any delay in discovering it was due to 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.

(2) Where a person is charged with an offence under section 5 in respect of the discharge of a mixture from a place on land, it shall also, subject to subsection (3) of this section, be a defence to prove —

- (a) that the oil was contained in an effluent produced by operations for the refining of oil; and
- (b) that it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into the water concerned; and
- (c) that all reasonably practicable steps had been taken for eliminating oil from the effluent.

(3) If it is proved that, at a time to which the charge relates, the surface of the waters into which a mixture was discharged from a place on land, or land adjacent to those waters, was fouled by oil, subsection (2) of this section shall not apply unless the court is satisfied that the fouling was not caused, or contributed to, by oil contained in any effluent discharged at or before that time from that place.

9. (1) The powers exercisable by a port authority in respect of any port shall include power to provide facilities for enabling vessels using the port to discharge or deposit oil residues (in this section referred to as “oil reception facilities”).

Facilities in port for disposal of oil residues.

(2) Any power of a port authority to provide oil reception facilities shall include power to join with any other person in providing them, and references in this section to the provision of oil reception facilities by a port authority shall be construed accordingly; and any such power shall also include power to arrange for the provision of such facilities by any other person.

(3) A port authority providing oil reception facilities or a person providing such facilities by arrangement with a port authority, may make reasonable charges for the use of the facilities, and may impose reasonable conditions in respect of the use thereof.

(4) Subject to the following provisions of this section, any oil reception facilities provided by, or by arrangement with, a port authority shall be open to all vessels using the port on payment of any charges, and subject to compliance with any conditions, imposed in accordance with subsection (3) of this section.

(5) Where in the case of any port it appears to the Minister, after consultation with the port authority and with any organisation appearing to the Minister to be representative of owners of Bahamian ships —

- (a) if the port has oil reception facilities, that those facilities are inadequate; or
- (b) if the port has no such facilities, that the port has need of such facilities,

the Minister may direct the port authority to provide, or arrange for the provision of, such oil reception facilities as may be specified in the direction.

(6) Notwithstanding the provisions of subsection (4) of this section, a port authority providing oil reception facilities, or a person providing such facilities by arrangement with a port authority, shall not be obliged to make those facilities available for use by tankers or for the reception of oil residues discharged for the purpose of enabling a vessel to undergo repairs; and the requirements of tankers, and the reception of oil residues so discharged, shall be disregarded by the Minister in exercising his powers under subsection (5) of this section.

(7) Nothing in this section shall be construed as requiring a port authority to allow untreated ballast water (that is to say ballast water which contains oil and has not been subjected to an effective process for separating the oil from the water) to be discharged into any oil reception facilities provided by, or by arrangement with, the authority and the Minister shall exercise his powers under subsection (5) of this section accordingly.

(8) Any port authority failing to comply with any direction given under subsection (5) of this section within the period specified in the direction, or within any

extended period allowed by the Minister (whether before or after the end of the period so specified), shall be guilty of an offence, and liable on summary conviction to a fine not exceeding twenty-five dollars for each day during which the default continues, from the day after the end of the period specified in the direction, or any extended period allowed by the Minister, as the case may be, until the last day before that on which the facilities are provided in accordance with the direction.

(9) Subsections (1), (2), (5) and (8) of this section shall have effect in relation to arrangements for disposing of oil residues discharged or deposited by vessels using a port's oil reception facilities, and to the making of such arrangements, as those subsections have effect in relation to oil reception facilities and the provision of such facilities.

10. (1) No oil shall be transferred between sunset and sunrise to or from a vessel in any port unless the requisite notice has been given in accordance with this section or the transfer is for the purposes of a fire brigade.

Restrictions on transfer of oil at night.

(2) A general notice may be given to the harbour master of a port that transfers of oil between sunset and sunrise will be frequently carried out at a place in the port 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) of this section, 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 ninety-six hours before the transfer of oil begins.

(4) In the case of a port which has no harbour master, references in this section to the harbour master shall be construed as references to the port authority.

(5) If any oil is transferred to or from a vessel in contravention of this section, the master of the vessel, and, if the oil is transferred from or to a place on land, the occupier of that place, shall be guilty of an offence and liable on summary conviction to a fine not exceeding two hundred and fifty dollars.

Duty to report discharge of oil into waters of ports.

- 11.** (1) If any oil or mixture —
- (a) is discharged from a vessel into the waters of a port; or
 - (b) is found to be escaping or to have escaped from a vessel into any such waters; or
 - (c) is found to be escaping or to have escaped into any such waters from a place on land,

the owner or master of the vessel, or the occupier of the place on land, as the case may be, shall forthwith report the occurrence to the harbour master, or, if the port has no harbour master, to the port authority, and such person or authority shall report the discharge by the quickest possible means to the Director and to the Minister of Health or his representative.

(2) A report made under subsection (1) of this section by the owner or master of a vessel shall state whether the occurrence falls within paragraph (a) or paragraph (b) of that subsection.

(3) If a person fails to make a report as required by this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars.

PART III SHIPPING CASUALTIES

Shipping casualties.

12. (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 Minister oil from the ship will or may cause pollution on a large scale in The Bahamas or in Bahamian waters; and
- (c) in the opinion of the Minister 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 Minister 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 not to be, taken.

(4) If in the opinion of the Minister the powers conferred by subsection (2) of this section are, or have proved to be, inadequate for the purpose, the Minister 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 the subsection the Minister 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 Minister under subsection (4) of this section shall also be exercisable by such persons as may be authorised in writing in that behalf by the Minister.

(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 are without prejudice to any right or powers of the Government 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 a person who arrested the ship or who has it in charge after arrest 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, 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 expenses incurred, or damage suffered as a result of the action,

a person incurring expenses or suffering damage as a result of, or by himself taking, the action shall be entitled to recover compensation from the Government.

(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.

Right to recover in respect of unreasonable loss or damage.

(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 shall include jurisdiction to hear and determine any claim arising under this section.

14. (1) If any person to whom a direction is duly given under section 12 contravenes 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 Minister in connection with the giving or service of a direction under section 12;
- (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 conviction on information to a fine not exceeding one hundred and twenty thousand dollars.

15. (1) If the Minister is satisfied that a company or other body is not one to which any provision of a law relating to the service of notices on a company or other body applies so as to authorise the service of a direction on that body under such provision, he may give a direction under section 12 —

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 15 to or on any person on a ship, a person

acting on behalf of the Minister shall have the right to go on board the ship.

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

16. (1) The Minister may by Order published in the *Gazette* provide that sections 12 to 15, together with any other provisions of this Act, shall apply to a ship —

- (a) which is not a Bahamian ship; and
- (b) which is for the time being outside Bahamian waters,

in such cases and circumstances as may be specified in the Order, and subject to such exceptions, adaptations and modifications, if any, as may be so specified.

(2) An order under subsection (1) of this section may contain such transitional and other consequential provisions as appear to the Minister to be expedient.

(3) Except as provided by an order under subsection (1) of this section, no direction under section 12 shall apply to a ship which is not a Bahamian ship and which is for the time being outside Bahamian waters, 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 Government ship, and no action shall be taken under subsection (4) or (5) of that section as respects any such vessel or ship.

PART IV

CIVIL LIABILITY FOR OIL POLLUTION

International Convention on Civil Liability for Oil Pollution Damage, 1992, to have the force of law.
46 of 2000, s. 3.
37 of 2009, s. 2.

17. (1) The provisions of Articles I to XI of and the Annex to the International Convention on Civil Liability for Oil Pollution Damage, 1992 done at London on 27 November 1992 (in this Part and in the Second Schedule referred to as “1992 Liability Convention”) shall have the force of law.

(2) The provisions of the Second Schedule shall have effect in connection with 1992 Liability Convention, and subsection (1) shall have effect subject to those provisions.

(3) The provisions of the Articles 1 to 36 *quater* and the Annex to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 done at London on 27 November 1992 (in this Part and in the Second Schedule referred to as “1992 Oil Fund Convention”) shall have the force of law.

(4) The provisions of the Second Schedule shall have effect in connection with 1992 Oil Fund Convention, and subsection (3) shall have effect subject to those provisions.

(5) The provisions of Articles 1 to 10, and the Annex to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 done at London on 23rd March, 2001 (in this section and in the Third Schedule referred to as the “Bunker Oil Liability Convention”) shall have the force of law. *37 of 2009, s. 2.*

(6) The provisions of the Third Schedule shall have effect in connection with the Bunker Oil Liability Convention, and subsection (5) shall have effect subject to those provisions. *37 of 2009, s. 2.*

(7) If it appears to the Minister that the Government of The Bahamas has agreed to any revision of the International Convention on Civil Liability for Oil Pollution Damage, 1992, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 and the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, the Minister may — *37 of 2009, s. 2.*

(a) by Order —

(i) make such modifications to this section;

(ii) make such modifications to the Second and Third Schedules;

(b) make such regulations as he considers appropriate in consequence of the revision.

(8) Nothing in any modification made by virtue of subsection (7) shall affect any rights or liabilities arising before the day on which the modification comes into force. *37 of 2009, s. 2.*

PART V ENFORCEMENT

18. (1) The Minister may appoint any duly qualified person to report to him — *Powers of inspection.*

(a) whether the prohibitions, restrictions and obligations imposed by virtue of this Act (including prohibitions so imposed by the creation of offences under any provision of this Act other than section 6) have been complied with;

(b) what measures have been taken to prevent the escape of oil and mixtures; *46 of 2000, s. 12.*

(c) whether the oil reception facilities provided in ports are adequate, and any such person may be so appointed to report either in a particular case or in a class of cases specified in his appointment.

(2) Every inspector shall be taken to be a person appointed generally under the preceding subsection to report to the Minister in every kind of case falling within that subsection.

(3) Section 283 of the Merchant Shipping Act (powers of inspectors) shall apply to persons appointed or taken to be appointed under subsection (1) of this section as it applies to inspectors referred to in that section and shall, as so applying, have effect as if —

- (a) in paragraph (a) of subsection (1) of that section, the reference to a ship included any vessel, and the reference to that Act were a reference to this Act and any regulations made under this Act; and
- (b) any power of inspection under that section included power to inspect any apparatus used for transferring oil.

46 of 2000, s. 12.

(4) Any power of an inspector applied by subsection (3) of this section to inspect a vessel shall include power to test any equipment with which the vessel is required to be fitted.

46 of 2000, s. 12.

(5) Any power of an inspector applied by subsection (3) of this section to require the production of any oil record book required to be carried or records required to be kept shall include power to copy any entry therein and require the master to certify the copy as a true copy of the entry, and in section 283 of the Merchant Shipping Act, as so applied, the reference to making a declaration shall be construed as a reference to the certification of such a copy.

(6) Without prejudice to any powers exercisable by virtue of the preceding provisions of this section, in the case of a vessel which is for the time being in a port the harbour master, and any other person appointed or taken to be appointed by the Minister under this section (either generally or in relation to a particular vessel), shall have power —

- (a) to go on board and inspect the vessel or any part thereof, or any of the machinery, boats, equipment or articles on board the vessel, for the

purpose of ascertaining the circumstances relating to any alleged discharge of oil or a mixture from the vessel into the waters of the port.

- (b) to require the production of any oil record book required to be carried or records to be kept; and *46 of 2000, s. 12.*
- (c) to copy any entry in any such book or record and require the master to certify the copy as a true copy of the entry.

(7) A person exercising any powers conferred by subsection (6) of this section shall not unnecessarily detain or delay the vessel from proceeding on any voyage.

(8) If any person fails to comply with any requirement duly made in pursuance of paragraph (b) or paragraph (c) of subsection (6) of this section, he shall be guilty of an offence, and liable on summary conviction to a fine not exceeding five thousand dollars, and if any person wilfully obstructs a person acting in the exercise of any power conferred by virtue of this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars. *46 of 2000, s. 12.*

19. (1) Where, immediately before the date on which (apart from this subsection) the time for bringing proceedings for an offence under this Act would expire, the person to be charged is outside The Bahamas, the time for bringing proceedings shall be extended until the end of the period of two months beginning with the date on which he next enters The Bahamas. *Proceedings.*

(2) Proceedings for any offence under this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a person at any place at which he is for the time being.

(3) Proceedings for an offence under section 6 may be brought only by or with the consent of the Attorney-General, and any such proceedings may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in The Bahamas.

20. (1) Where a fine imposed by a court in proceedings against the owner or master of a vessel 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 *Enforcement and application of fines.*

remaining unpaid to be levied by distress and sale of the vessel, her tackle, furniture and apparel.

46 of 2000, s. 13.

(2) Where a person is convicted of an offence under section 5 or the First Schedule 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.

PART VI SUPPLEMENTAL

Offences by
bodies corporate.

21. Where an offence under this Act, or any regulations made thereunder, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Testing of
equipment.

22. Any power conferred by this Act or by regulations made thereunder to test equipment on board a vessel shall be construed as including a power to require persons on board the vessel to carry out such work as may be requisite for the purpose of testing the equipment, and any provisions of this Act or such regulations as to submitting equipment for testing shall be construed accordingly.

46 of 2000, s. 16;
11 of 2001, s. 4.

FIRST SCHEDULE (Section 4)

PROVISIONS HAVING EFFECT IN CONNECTION WITH MARPOL 73/78

Meaning of
administration.

1. (1) For the purposes of MARPOL 73/78 “Administration” shall in reference to The Bahamas mean the Minister, the Director or The Bahamas Maritime Authority.

(2) For the purposes of this Schedule and MARPOL 73/78 “Contracting Government” shall in reference to The Bahamas, where the context allows, means the Minister, the Director or The Bahamas Maritime Authority.

Meaning of contracting government.

2. Notwithstanding anything to the contrary in Article 3 of the International Convention for the Prevention of Pollution from Ships 1973, MARPOL 73/78 shall apply *mutatis mutandis* to ships entitled to fly the flag of a country to which that Convention as modified by the Protocol of 1978 relating thereto does not apply while such ships are in The Bahamas and engaged on international voyages.

Application of MARPOL 73/78 to non-Convention ships while in The Bahamas.

3. The Minister may by Order certify that any State specified in the Order is a party to the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 in respect of a specified country or territory and the Order shall, subject to the provisions of any subsequent Order made for those purposes, be conclusive evidence that the State is a Contracting Government to that Convention as so modified in respect of that country or territory.

Countries and territories to which the Convention applies.

4. The Minister may for classes of ships or individual ships grant, on such terms (if any) as he may specify, exemptions from all or any of the provisions of MARPOL 73/78 as he may specify, and may, subject to giving reasonable notice, alter or cancel any such exemption.

Exemptions.

5. In any case where a ship does not comply with MARPOL 73/78 it may be detained, provided that the ship shall not be unreasonably detained or delayed.

Detentions.

6. In the event of an incident referred to in Protocol I in MARPOL 73/78 the same report as is required by that Protocol shall also be made to the Administration as is to be made to the Coastal State.

Reporting pollution and other incidents.

7. (1) It shall be the duty of the owner and the master of the ship to comply with and ensure compliance with the provisions of MARPOL 73/78.

General compliance, duty and offences.

(2) It shall be the duty of any person —

- (a) upon whom an obligation is imposed by MARPOL 73/78; or
- (b) to whom a direction is given in pursuance of MARPOL 73/78 (whether under subparagraph (1) or otherwise),

to comply or ensure compliance with MARPOL 73/78.

(3) Where any natural or legal person other than a person specified in subparagraph (1) has control of the matter to which the subparagraph relates because he has responsibility for the operation of the ship, then any duty imposed by that subparagraph shall extend to the person who has control of that matter.

11 of 2001, s. 4.

(4) Where a person specified in subparagraph (1), (2) or (3) contravenes that subparagraph, that person is guilty of an offence and is liable —

- (a) on summary conviction to a fine of five thousand dollars; or
- (b) on conviction on information to a fine of one hundred and twenty thousand dollars.

Fraud, misuse of certificates, etc.

8. No person shall —

- (a) intentionally alter a certificate issued for the purposes of MARPOL 73/78;
- (b) falsely make a certificate referred to in MARPOL 73/78;
- (c) in connection with any survey required by MARPOL 73/78, knowingly or recklessly furnish false information;
- (d) with intent to deceive, use, lend, or allow to be used by another, a certificate referred to in MARPOL 73/78;
- (e) fail to surrender a certificate to be surrendered for the purposes of MARPOL 73/78.

Customs clearance.

9. Before a ship proceeds to sea from any port in The Bahamas, the master of that ship shall produce to a customs officer from whom a clearance for the ship is demanded for an international voyage —

- (a) in respect of a ship to which MARPOL 73/78 applies, certificates required to be issued to such a ship complying with the relevant provisions of the MARPOL 73/78, and in the case of any qualified certificate, the corresponding valid exemption certificate;
- (b) in respect of a Bahamian ship required to possess a local safety certificate, a valid local safety certificate.

46 of 2000, s. 17;
S.I. 83/2001.

SECOND SCHEDULE (Section 17) *

S.I. 83/2001.

PROVISIONS HAVING EFFECT IN CONNECTION WITH THE 1992 LIABILITY CONVENTION AND THE 1992 OIL FUND CONVENTION

Interpretation.
Meaning of state of ship's registry.

Ch. 268.

1. (1) Where the registry of a Bahamian ship is suspended and that ship is registered in a foreign country for the duration of a bareboat charter in accordance with section 25 of the Ch. 268. Merchant Shipping Act, notwithstanding anything to the contrary in Article I of the 1992 Liability Convention (or Article I of the 1992 Oil Fund Convention), the “State of the ship’s registry” is such foreign country.

Meaning of Administration.

(2) In this Schedule “Administration” means the Minister, the Director or The Bahamas Maritime Authority.

* Date of commencement of the Second Schedule: 1st April, 1998 (Act 11 of 2001, s.

Compulsory Insurance

2. (1) This paragraph applies to any ship carrying in bulk cargo of more than 2,000 tons of persistent hydrocarbon mineral oil.

Compulsory insurance against liability for pollution.

(2) A ship shall not enter or leave a port in The Bahamas or arrive at or leave an offshore terminal in the territorial sea of The Bahamas nor, if the ship is a Bahamian ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subparagraph (3).

(3) (a) The certificate must show that there is in force in respect of that ship a contract of insurance or other security satisfying the requirements of Article VII of the 1992 Liability Convention and

(b) The certificate must be —

- (i) if the ship is a Bahamian ship, a certificate issued by the Administration;
- (ii) if the ship is registered in a country to which the Liability Convention applies other than The Bahamas, a certificate issued by or under the authority of the government of that country;
- (iii) if the ship is registered in a country which is not a country to which the Liability Convention applies, a certificate issued by the Administration or by or under the authority of the government of any country to which the Liability Convention applies other than The Bahamas.

(4) A certificate required by this paragraph to be in force in respect of a ship shall be carried in the ship and shall be produced on demand by the master to any customs officer or the Administration and if the ship is a Bahamian ship also to any registrar, inspector, or consular officer.

(5) If any ship enters or leaves or attempts to enter or leave a port, or arrives at or leaves or attempts to arrive at or leave a terminal in contravention of subparagraph (2), the master and owner shall be guilty of an offence and liable on conviction on information to a fine of \$120,000.

S.I. 83/2001.

(6) If a ship fails to carry or the master of a ship fails to produce, a certificate as required by subparagraph (4), the master shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$2,500.

(7) If a ship attempts to leave a port in The Bahamas in contravention of this paragraph the ship may be detained.

(8) Nothing in preceding provisions of this paragraph applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

(9) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be sufficient compliance with subparagraph (2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the 1992 Liability Convention will be met up to the limit prescribed by Article V of the 1992 Liability Convention.

Issue of
certificate by the
administration.

3. (1) If the Administration is satisfied on application for a certificate mentioned in paragraph 2 in respect of a Bahamian ship or a ship registered in any country to which the 1992 Liability Convention does not apply, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying Article VII of the 1992 Liability Convention, the Administration may issue such a certificate to the owner.

(2) If the Administration is of the opinion that there is a doubt whether the person providing insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under the 1992 Liability Convention in all circumstances, the Administration may refuse the certificate.

Cancellation and
delivery up of
certificates.

4. (1) Where the person to whom a certificate has been issued under paragraph 2 ceases to be the owner of the ship to which the certificate relates the certificate shall cease to be valid and he shall immediately deliver up the certificate to the Administration for cancellation.

(2) Where, at any time while a certificate issued under paragraph 3 is in force, it is established in any legal proceedings that the contract of insurance or other security in respect of which the certificate was issued is or may be treated as invalid, the certificate may be cancelled by the Administration and, if so cancelled, shall on demand immediately be delivered up to the Administration by the person to whom the certificate was issued.

(3) Where, at any time while a certificate issued under paragraph 3 is in force, circumstances arise in relation to the insurer or guarantor named in the certificate (or where more than one is so named, to any of them) such that, if the certificate were applied for at that time, the Administration would be entitled to refuse the application under subparagraph (2) of paragraph 3 the certificate may be cancelled by the Administration and, if so cancelled, shall on demand immediately be delivered up to the Administration by the person to whom the certificate was issued.

Conversion of Special Drawing Rights

5. (1) For the purpose of converting an amount from special drawing rights into dollars where no sum in dollars has been fixed by the International Monetary Fund as being equivalent of one Special Drawing Right for any relevant date referred to in the 1992 Liability Convention and the 1992 Oil Fund Convention, the last day before such relevant date for which a sum has been so fixed shall be used to determine the relevant amount.

Conversion of special drawing rights.

(2) (a) A certificate by or on behalf of the Central Bank stating that a particular sum in dollars had been fixed for a relevant date, or that no sum had been fixed for such relevant date but a particular sum had been fixed for a day which was the last day for which a sum had been fixed prior to such relevant date, shall be conclusive evidence of those matters for the purposes of this subparagraph, the 1992 Liability Convention or the 1992 Oil Fund Contention;

(b) A document purporting to be such a certificate shall, in any proceedings, be received in evidence and unless the contrary is proved, be deemed to be such a certificate.

6. The Contributory Negligence Act shall apply in relation to any damage or cost for which a person is liable under the 1992 Liability Convention, but which is not due to his fault, as if it were due to his fault: Provided, however, than in the case of any conflict between the 1992 Liability Convention and the preceding provisions of this paragraph or the Contributory Negligence Act, the 1992 Liability Convention shall be decisive.

Application of Contributory Negligence Act.

Ch. 75.

Contributions to Fund

7. For the purposes of Article 10(2) of the 1992 Oil Fund Convention an “Associated person” is —

Definition of associated person.

- (a) where the person referred to in Article 10 (1) is a member of a group of companies, all the other members of that group;
- (b) where two or more companies have been amalgamated into a single company and the person referred to in Article 10 (1) is one such company, the other companies amalgamated;
- (c) any subsidiary company of the person referred to in Article 10 (1).

8. (1) For the purposes of transmitting to the International Oil Pollution Compensation Fund the names and addresses of the persons who are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Administration may require any person engaged in producing, importing, receiving, treating, distributing, or transporting oil to furnish such information as may be specified.

Power to obtain information.

(2) The Administration may require a company to give such information as may be required to ascertain whether its liability is affected by the 1992 Oil Fund Convention.

(3) The Administration may specify a way in which and a time within which such information is to be supplied.

(4) In proceedings by the Fund against any person to recover any amount due under the 1992 Oil Fund Convention, particulars contained in any list transmitted by the Administration to the Fund shall, so far as those particulars are based on information obtained under this paragraph, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

Jurisdiction of the Supreme Court and Registration of Foreign Judgments

Action for pollution damage brought in Supreme court.

9. For the purposes of Article IX of the 1992 Liability Convention, an action brought in The Bahamas under paragraph 1 of that Article for pollution damage caused —

- (a) in The Bahamas;
- (b) in the territorial waters of The Bahamas; or
- (c) in the exclusive economic zone of The Bahamas established in accordance with international law, or in absence of the establishment of such a zone in an area beyond and adjacent to the territorial seas of The Bahamas determined by the Government of The Bahamas in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of the territorial sea of The Bahamas is measured,

may be brought in the Supreme Court of The Bahamas.

Extension of admiralty jurisdiction of the Supreme Court.

10. (1) The admiralty jurisdiction of the Supreme Court of The Bahamas shall extend to —

- (a) actions for compensation under the 1992 Liability Convention; and
- (b) actions (referred to in Article 7(1) of the 1992 Oil Fund Convention) against the International Oil Pollution Compensation Fund 1992.

Application of the Foreign Judgments (Reciprocal Enforcement) Act, 1933. S.I. 83/2001.

11. The Foreign Judgments (Reciprocal Enforcement) Act, 1933, shall apply, whether or not it would so apply apart from this subparagraph, to any judgment given by —

- (a) a court in a country to which the 1992 Liability Convention applies to enforce a claim in respect of a liability incurred under any provision implementing the 1992 Liability Convention and

in its application to such a judgment that Act shall have with the omission of sections 4(2) and 4(3) of the Act;

- (b) a court in a country to which the 1992 Oil Fund Convention applies to enforce a claim in respect of a liability incurred under any provision implementing the 1992 Oil Fund Convention and in its application to such a judgment that Act shall have with the omission of sections 4(2) and 4(3) of the Act.

(2) No steps shall be taken to enforce a judgment referred to in subparagraph (1)(b) unless and until the court in which the judgment is registered gives leave to enforce it and —

- (a) the Fund has notified such court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Oil Fund Convention or that it is to be reduced to a specified amount;
- (b) in the latter case, the judgment shall be enforceable only for the reduced amount.

THIRD SCHEDULE (section 17)

37 of 2009, s. 3.

PROVISIONS HAVING EFFECT IN CONNECTION WITH THE BUNKER OIL LIABILITY CONVENTION

1. (1) Where the registry of a Bahamian ship is suspended and that ship is registered in a foreign country for the duration of a bareboat charter in accordance with section 25 of the Merchant Shipping Act, notwithstanding anything to the contrary in Article 1 of the Bunker Oil Liability Convention, the “State of the ship's registry” is such foreign country.

Suspended ship's registry under bareboat charter and definition of Administration.

Ch. 268.

(2) In this Schedule “Administration” means the Director of the Bahamas Maritime Authority.

2. (1) This paragraph applies to any ship having a gross tonnage of more than 1,000.

Compulsory insurance against liability for pollution.

(2) A ship shall not enter or leave a port in The Bahamas or arrive at or leave an offshore terminal in the territorial sea of The Bahamas nor, if the ship is a Bahamian ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subparagraph (3).

(3) The certificate shall —

- (a) show that there is in force in respect of that ship a contract of insurance or other security satisfying the requirements of Article 7 of the Bunker Oil Liability Convention; and
- (b) be —

-
- (i) if the ship is a Bahamian ship, a certificate issued by the Administration;
 - (ii) if the ship is registered in a country to which the Bunker Oil Liability Convention applies other than The Bahamas, a certificate issued by or under the authority of the government of that country;
 - (iii) if the ship is registered in a country which is not a country to which the Bunker Oil Liability Convention applies, a certificate issued by the Administration, or by or under the authority of the government of any country to which the Bunker Oil Liability Convention applies other than The Bahamas.

(4) A certificate required by this paragraph to be in force in respect of a ship shall be carried in the ship and shall be produced on demand by the master to any customs officer or the Administration and if the ship is a Bahamian ship also to any registrar, inspector, or consular officer.

(5) Where a ship enters or leaves or attempts to enter or leave a port, or arrives at or leaves or attempts to arrive at or leave a terminal in contravention of subparagraph (2), the master and owner commits an offence and is liable on conviction on information to a fine not exceeding \$120,000.

(6) Where a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subparagraph (4), the master commits an offence and is liable on summary conviction to a fine not exceeding \$2,500.

(7) Where a ship attempts to leave a port in The Bahamas in contravention of this paragraph the ship may be detained.

(8) Nothing in preceding provisions of this paragraph applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

(9) Where a ship is owned by a State it shall be sufficient compliance with subparagraph (2) if there is in force a certificate issued by the government of that State showing that the ship is owned by that State and that any liability for pollution damage as defined in Article 1 of the Bunker Oil Liability Convention will be met up to the limit prescribed by paragraph I of Article 7 of the Bunker Oil Liability Convention.

Issue of
certificate by the
Administration.

3. (1) If the Administration is satisfied on application for a certificate mentioned in paragraph 2 in respect of a Bahamian ship or a ship registered in any country to which the Bunker Oil Liability Convention does not apply, that there will be in force in respect of the ship, throughout the period for which the

certificate is to be issued, a contract of insurance or other security satisfying Article 7 of the Bunker Oil Liability Convention, the Administration may issue such a certificate to the owner.

(2) If the Administration is of the opinion that there is a doubt whether the person providing insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under the Bunker Oil Liability Convention in all circumstances, the Administration may refuse the certificate.

4. (1) Where the person to whom a certificate has been issued under paragraph 3 ceases to be the owner of the ship to which the certificate relates the certificate shall cease to be valid and he shall immediately deliver up the certificate to the Administration for cancellation.

Cancellation and delivery up of certificates.

(2) Where, at any time while a certificate issued under paragraph 3 is in force, it is established in any legal proceedings that the contract of insurance or other security in respect of which the certificate was issued is or may be treated as invalid, the certificate may be cancelled by the Administration and, if so cancelled, shall on demand, immediately be delivered up to the Administration by the person to whom the certificate was issued.

(3) Where, at any time while a certificate issued under paragraph 3 is in force, circumstances arise in relation to the insurer or guarantor named in the certificate (or where more than one is so named, to any of them) such that, if the certificate were applied for at that time, the Administration would be entitled to refuse the application under subparagraph (2) of paragraph 3, the certificate may be cancelled by the Administration and, if so cancelled, shall on demand, immediately be delivered up to the Administration by the person to whom the certificate was issued.

5. The Contributory Negligence Act shall apply in relation to any damage or cost for which a person is liable under the Bunker Oil Liability Convention, but which is not due to his fault, as if it were due to his fault:

Application of the Contributory Negligence Act.

Ch. 75.

Provided, however, that in the case of any conflict between the Bunker Oil Liability Convention and the Contributory Negligence Act, the Bunker Oil Liability Convention shall be decisive.

Ch. 75.

6. For the purposes of Article 9 of the Bunker Oil Liability Convention, an action brought in The Bahamas under paragraph 1 of that Article for pollution damage caused —

Action for pollution damage brought in Supreme Court.

- (a) in The Bahamas;
- (b) in the territorial waters of The Bahamas; or

-
- (c) in the exclusive economic zone of The Bahamas established in accordance with international law, or in absence of the establishment of such a zone in an area beyond and adjacent to the territorial seas of The Bahamas determined by the Government of The Bahamas in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of the territorial sea of The Bahamas is measured, may be brought in the Supreme Court of The Bahamas.

Admiralty
jurisdiction.

7. The Admiralty jurisdiction of the Supreme Court of The Bahamas shall extend to actions for compensation under the Bunker Oil Liability Convention.

Application.
Ch. 77.

8. The Reciprocal Enforcement of Judgments Act, shall apply, whether or not it would so apply, apart from this paragraph, to any judgment given by a court in a country to which the Bunker Oil Liability Convention applies to enforce a claim in respect of a liability incurred under any provision implementing the Bunker Oil Liability Convention.