

**OIL IN TERRITORIAL WATERS ACT**

**Principal Act**

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| <b>Act. No. 1960-14</b> | <i>Commencement</i>         | 8.7.1960             |
|                         | <i>Assent</i>               | 7.7.1960             |
| Amending<br>enactment   | Relevant current provisions | Commencement<br>date |
| Act. 2007-17            | ss. 6(1), 11                | 14.6.2007            |

**English sources**

Oil in Navigable Waters Act 1955 (3 & 4 Eliz.2 c.25)

**ARRANGEMENT OF SECTIONS**

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AN ACT TO MAKE PROVISION FOR PREVENTING THE POLLUTION OF THE TERRITORIAL WATERS OF GIBRALTAR BY OIL.

**Short title.**

1. This Act may be cited as the Oil in Territorial Waters Act.

**Interpretation and application.**

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

“barge” includes a hulk, lighter or any similar vessel;

“mile” means a nautical mile, that is to say, a distance of six thousand and eighty feet ;

“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 material consisting of, or arising from, oil or a mixture containing oil;

“territorial waters” means the whole of the sea within the seaward limits of the territorial waters of Gibraltar.

(2) Any reference in any provision of this Act to a mixture containing oil shall be construed as a reference to any mixture of oil (or, as the case may be, of oil of a description referred to in that provision) with water or with any other substance.

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

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

(5) In this Act “place on land” includes anything resting on the bed or shore of the sea and also includes anything afloat (other than a vessel) if it is anchored or attached to the bed or shore of the sea; and “occupier”, in relation to any such thing as is mentioned in the preceding provisions of this

subsection, if it has no occupier, means the owner thereof, and, in relation to a road vehicle, means the person in charge of the vehicle and not the occupier of the land on which the vehicle stands.

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

### **Discharge of oil into territorial waters.**

3.(1) If any oil or mixture containing oil is discharged into territorial waters from any vessel, or from any place on land or from any apparatus used for transferring oil from or to any vessel (whether to or from a place on land or to or from another vessel), then, subject to the provisions of this Act,—

- (a) if the discharge is from a vessel, the owner or master of the vessel; or
- (b) if the discharge is from a place on land, the occupier of that place; or
- (c) if the discharge is from apparatus used for transferring oil to or from a vessel, the person in charge of the apparatus,

is guilty of an offence and liable on conviction on indictment or on summary conviction to a fine of £1,000.

(2) The Captain of the Port may appoint a place within the territorial waters where the ballast water of vessels in which a cargo of petroleum spirit has been carried may be discharged into the waters at such times and subject to such conditions as the Captain of the Port may determine; and, where a place is so appointed, the discharge of ballast water from such vessel shall not constitute an offence under this section, if the ballast water is discharged at that place and at a time in accordance with the conditions so determined, and the ballast water contains no oil other than petroleum spirit.

In this subsection “petroleum spirit” has the same meaning as in the Petroleum Act. Act.

### **Special defences under section 3.**

4.(1) Where a person is charged with an offence under section 3 as the owner or master of a vessel, it shall be a defence to prove that the oil or mixture in question was discharged for the purpose of securing the safety of the vessel or of preventing damage to the vessel or her cargo, or of saving life :

Provided that a defence under this subsection shall not have effect if the court is satisfied that the discharge of the oil or mixture was not necessary for the purpose alleged in the defence or was not a reasonable step to take in the circumstances.

(2) Where a person is charged as mentioned in subsection (1), 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 a leakage, that the leakage was not 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.

(3) Where a person is charged with an offence under section 3 as the occupier of a place on land, or as the person in charge of any apparatus, from which oil or a mixture containing oil is alleged to have escaped, it shall be a defence to prove that the escape of the oil or mixture was not 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.

(4) Without prejudice to subsection (3), it shall be a defence for the occupier of a place on land, who is charged with an offence under section 3 to prove that the discharge was caused by the act of a person who was in that place without the permission (express or implied) of the occupier.

(5) Where a person is charged with an offence under section 3 in respect of the discharge of a mixture containing oil from a place on land, it shall (without prejudice to any other defence under this section ) be a defence to prove—

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

Provided that a defence under this subsection shall not have effect if it is proved that, at a time to which the charge relates, the surface of the waters into which the mixture was discharged from the place in question, or land adjacent to those waters, was fouled by oil, 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.

(6) Where any oil, or mixture containing oil, is discharged in consequence of—

- (a) the exercise of any power conferred by sections 160 and 161 of the Merchant Shipping Act (which relate to the removal of wrecks by harbour, conservancy and lighthouse authorities) ; or
- (b) the exercise, for the purpose of preventing an obstruction or danger to navigation, of any power under the Port Act or any other law to dispose of sunk, stranded or abandoned vessels which is exercisable by a harbour authority under any local enactment,

and apart from this subsection the authority exercising the power, or a person employed by or acting on behalf of the authority, would be guilty of an offence under section 3 in respect of that discharge, the authority or person shall not be convicted of that offence unless it is shown that they or he failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping or reducing the discharge.

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

5.(1) It shall not be lawful during the hours between sunset and sunrise to transfer any oil to or from a vessel, unless the requisite notice has been given in accordance with this section.

(2) A notice for the purpose of this section shall be given to the Captain of the Port and shall be of no effect unless given at least three hours and not more than ninety-six hours, before the time at which the operation of transferring the oil commences :

Provided that in the case of an operation to be performed at a place where such operations are frequently and regularly carried on, the notice may be a general notice to the Captain of the Port to the effect that such operations will, during such period not exceeding twelve months from the date of the notice as may be specified therein, be carried on between sunset and sunrise.

(3) If any oil is transferred to or from any vessel in contravention of the provisions of this section, the master of the vessel and, if the oil is

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transferred from or to premises on land, the occupier of the premises is in respect of each offence liable on summary conviction to a fine of £100.

## **Keeping of records of matters relating to oil.**

6.(1) The Government may make regulations relating to the transfer of oil to and from vessels while they are within territorial waters.

(2) Any records required to be kept by virtue of regulations made under subsection (1) in the case of a vessel shall be kept by the master of the vessel:

Provided that in the case of a barge the records, in so far as they relate to the transfer of oil to the barge, shall be kept by the person supplying the oil, and in so far as they relate to the transfer of oil from the barge, shall be kept by the person to whom the oil is delivered.

(3) Where by any regulations made under this section any records are required to be kept, the regulations may—

- (a) prescribe the form in which the records are to be kept and the nature of the entries to be made in them ;
- (b) require the person keeping the records to retain them for a prescribed period ;
- (c) require that person, at the end of the prescribed period, to transmit the records to a place or person determined by or under the regulations ;
- (d) provide for the custody or disposal of the records after their transmission to such a place or person.

(4) A person who fails to comply with any requirements imposed by or under this section, is liable on summary conviction to a fine of £500; and a person who makes an entry in any records kept under this section which is to his knowledge false or misleading in any material particular, is liable on summary conviction to imprisonment for six months and to a fine of £500.

(5) In any proceedings under this Act—

- (a) any records kept in pursuance of regulations made under this section shall be admissible as evidence of the facts stated in those records ;

- (b) any copy of an entry in such records, which is certified by the person by whom the records are required to be kept to be a true copy of the entry, shall be admissible as evidence of the facts stated in the entry;
- (c) any document purporting to be records kept in pursuance of regulations made under this section, or purporting to be such a certified copy as is mentioned in the last preceding paragraph, shall, unless the contrary is proved, be presumed to be such records or such a certified copy, as the case may be.

**Duty to report discharges of oil into territorial waters.**

- 7.(1) If any oil or mixture containing oil—
- (a) is discharged from a vessel into territorial waters for the purposes of securing the safety of the vessel, or of preventing damage to the vessel or her cargo, or of saving life ; or
  - (b) is found to be escaping, or to have escaped, into territorial waters from a vessel in consequence of damage to the vessel, or by reason of leakage ; or
  - (c) is found to be escaping or to have escaped into territorial 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 Captain of the Port, stating, in the case of a report by the owner or master of a vessel, whether it falls within paragraph (a) or (b) of this subsection, and, if he fails to do so, is guilty of an offence against this section.

(2) A person guilty of an offence against this section is liable on summary conviction to a fine of £200.

**Powers to inspect.**

- 8.(1) The Captain of the Port or any person thereunto authorized by the Captain of the Port shall have power—
- (a) to go on board and inspect a vessel or any part thereof or any of the machinery, boats, equipment or articles on board a vessel, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the vessel into the territorial waters ;



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- (b) to require the production of any records which by virtue of this Act are required to be kept in respect of the vessel;
- (c) to copy any entry in any such records, and require the person by whom the records are kept to certify the copy as a true copy of the entry:

Provided that under the powers conferred by this section a vessel shall not be unnecessarily delayed from proceeding on any voyage.

(2) A person who fails to comply with any requirement duly made in pursuance of paragraph (b) or paragraph (c) of subsection (1) is liable on summary conviction to a fine of £10; and a person who wilfully obstructs a person acting in the exercise of any power conferred by virtue of this section is liable on summary conviction to a fine of £100.

### **Enforcement and application of fines.**

9.(1) When 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 remaining unpaid to be levied by distress and sale of the vessel, her tackle, furniture and apparel.

(2) Where a person is convicted of an offence under section 3, 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.

### **Legal proceedings.**

10.(1) Where, immediately before the date which (apart from this section) would be the date of expiry of the time for bringing proceedings in the magistrates' court in respect of an offence alleged to have been committed under this Act, the person to be charged is outside Gibraltar, the time for bringing the proceedings shall be extended until the end of the period of two months beginning with the date on which he next enters Gibraltar.

(2) No proceedings for an offence against this Act shall be brought except by or with the consent of the Attorney-General or the Captain of the Port.

### **Powers of exemption.**

11. The Government may exempt any vessels or classes of vessels from any of the provisions of this Act, either absolutely or subject to such conditions as he thinks fit.

**Application of Act to Crown.**

12.(1) The provisions of this Act shall not apply to vessels of Her Majesty's navy, nor to Government ships in the service of the Admiralty while employed for the purposes of Her Majesty's navy.

(2) Subject to subsection (1) the provisions of this Act shall apply to Government ships as they apply to other vessel;

(3) In this section "Government ships" mean ships not forming part of Her Majesty's navy which belong to Her Majesty, or are held by any person on behalf of or for the benefit of the Crown and for that reason cannot be registered under the Merchant Shipping Acts.