

# 海外調査資料

イギリス・フランス編

《別冊》

平成10年3月

財団法人 海上保安協会

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# 海外調査の概要

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## A イギリス

イギリスでは、ケンブリッジ大学とオックスフォード大学で条約加盟までの経過に関する基礎資料を収集し、国内法の概要を調査した上で、外務省担当官から調査事項についてヒアリングを行った。

### 1 批准までの経緯

国連海洋法条約は1982年に採択され、2年間署名のため各国に開放されていた。当時イギリスはサッチャー政権であった。サッチャー内閣は、条約の、国家管轄権、航行の自由、資源利用、環境保護に関する諸規定を好意的に評価していたが、深海底探査のレジームに関する第11部に重大な問題があると考えて、署名に加わらず、1982年12月と1984年12月の2度にわたり議会でその理由を説明していた。アメリカ、ドイツも同様の理由から署名を保留した。他の多くの先進国も署名はしたが、第11部には反対し、そのことを宣言した。

深海底機構および国際海洋法裁判所のための準備委員会が議定書Iにより創設され、11部を含めて条約履行のための作業を始めたが、準備委員会は規定を変更する権限などあろうはずもなかったため、1984年第3回国連海洋法会議が終結した後、この問題を解決する見通しがしばらくは立たなかった。そのため、1990年当時でも、条約を批准していたのはおよそ50ヶ国で、アイスランドの例を除けば、先進国で批准している国はなかった。そこで、国連事務総長が先進国に対して条約への加盟が遅れている理由を表明させる非公式会議を開催し、解決に向けておよそ4年間協議が続けられた。その間、1993年11月にガイアナ

の批准で発効に必要な60ヶ国に達し、1年後の1994年11月16日が効力発生の日と決まった。それに向けて、1994年7月に総会で第11部を実質的に修正する内容の実施協定が採択されるに到り、問題の解決を見た。

他方、条約の他の部分については、世界中の多くの国々にとってもその優れた特質が明らかであったので、イギリスはそのことを考慮し、1980年代から90年代にかけて、条約の文言を考慮して、関連国内法を改正した。そのため、イギリスの国家実行は多くの点で条約の内容に基礎づけられるものとなっていた。

こうした状況下で、メージャー内閣は、実施協定に署名し、1994年7月条約への加入と実施協定の批准に向けて必要な議会の審議に入った。1996年1月には必要な国内法整備は済んだと説明されたが、6月になって、ロックォール周辺の漁業水域の線引きに関して検討が必要ということで、条約加入は延期され、この点をめぐっての論争は1997年の総選挙まで持ち越された。そしてブレア新内閣によって1997年7月21日ついに、条約への加入と実施協定の批准がおこなわれ、7月25日国連事務総長への寄託を経て、30日後の8月24日イギリス国内においても効力を生じた。

## 2 イギリスの今回調査に係る基本的な法令

イギリスにおける、海洋法に関する今回調査に係る法制は、次のような基本的な法令によって構成されている。

1. Territorial Sea Act 1987
2. Territorial Waters Jurisdiction Act 1878
3. Merchant Shipping and Maritime Security Act 1997
4. Fishery Limits Act 1976
5. The Fishery Limits Order 1997
6. Sea Fisheries Act 1968
7. Continental Shelf Act 1964
8. Continental Shelf (Designation of Areas) Order 1997
9. Mineral Workings (Offshore Installations) Act 1971

10. Oil and Gas (Enterprise) Act 1982
  11. Merchant Shipping Act 1995
  12. Merchant Shipping (Prevention of Oil Pollution) Regulations 1996
  13. Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996
  14. Environmental Protection Act 1990
  15. Criminal Justice (International Co-operation) Act 1990
  16. Customs and Excise Management Act 1979
- また、次の海洋法関連の法令によって肉付けがなされている。
- Merchant Shipping (Mandatory Ships' Routeing) Regulations 1997
- State Immunity Act 1978
- Petroleum Act 1987
- Petroleum and Submarine Pipelines Act 1975
- Offshore Safety Act 1992
- Slave Trade Act 1873
- Piracy Acts
- Broadcasting Act 1990
- Marine & C. Broadcasting Offences Act 1967
- Submarine Telegraph Act 1885
- Fishery Limits Order 1997
- Deep Sea Mining (Temporary Provisions) Act 1981
- International Organizations Act 1968
- Protection of Wrecks Act 1973
- Merchant Shipping Legislation in 1995
- Transport and Communications Amendment Act 1994
- Maritime Areas Act 1982
- Territorial Waters (Amendment) Order 1979
- Territorial Sea Act 1987 (Isle of Man) Order 1991
- Health and Safety at Work etc. Act 1974 (Application outside Great Britain)



Order 1989  
Sea Fish (Conservation) Acts 1967  
Sea Fish (Conservation) Acts 1992  
Petroleum Royalties (Relief) and Continental Shelf Act 1989  
Continental Shelf Act 1989  
Civil Jurisdiction (Offshore Activities) Order 1987  
Criminal Jurisdiction (Offshore Activities) Order 1987  
Marine, etc. Broadcasting (Offences) (Prescribed Areas of the High Sea)  
Order 1990  
Water Act 1989  
Water Resources Act 1991  
Environment Act 1995  
Food and Environmental Protection Act 1985  
Sea Act 1799  
Hovercraft (Application of Enactments) Order 1972  
Sea Fisheries Act 1883  
Consular Relations Act 1968  
Petroleum and Submarine Pipe-lines Act 1975  
Health and Safety at Work etc., Act 1974  
Trade Union and Labour Relations (Consolidation) Act 1992  
Employment Rights Act 1996  
Criminal Law Act 1967  
Justices of the Peace Act 1979  
Merchant Shipping (Prevention of Oil Pollution) Order 1983

### 3 通航の意味および有害性の基準

イギリスには、通航および通航の無害性を正面から規定する法令はない。イギリスは、歴史的に無害通航権の強力な主張者であったが、領海条約の批准の際に、無害通航権を定める立法を行わなかった。この点は今回も同様である。

しかし、無害通航権という用語自体は、1997年商船および海上安全法に用いられている。ただ、その基準を規定するものはない。国際法上の権利を国内法に変型せずに、国内法に組み込むという事態が起りかねない状況であることは認識されている。

今回の国内法整備で組み込まれたのは、規定上はそれより広いが、実際には、ロッテルダムの石油市場での石油価格の上昇を待ってイギリス領海内に投錨しているタンカーを通航にあたらぬとする規定である。

国家実行上は、行政上の措置の積み重ねによってその実現が図られているが、部分的には、1878年の領海管轄権法第3条のように、領海における外国人被疑者に対する訴訟手続きの制限を定めるものもある。

#### 4 接続水域

イギリスは、接続水域を設定していないし、するつもりも目下のところない。従って、取り締まりは領海内で初めて行われ、それより外は旗国に任される。

領海が3海里のときと異なり、12海里になれば領海での取り締まりで十分だというのがその理由である。

仮に設定したとしても、実際の取り締まりは下船の時であり、現実に着目すれば意味あいが薄いとも考えられている。

#### 5 排他的経済水域

イギリスには、排他的経済水域は存在しない。

しかし、漁業水域を設けており、その範囲は限度いっぱいの200海里まで拡張している。そのため、アイルランド共和国との境界を画定する必要が生じている。

それより先は、1964年大陸棚法で規制されている。相対国との境界画定は北海、イギリス海峡など、大陸棚に適用されることが明示されている。

その後、汚染防止水域（Pollution Zone）に相当する水域が宣言されているが、排他的経済水域はない。

ただ、英連邦では、ピトケアン、バミューダで、排他的経済水域が設定され

ており、南ジョージアでは海事水域 (Maritime Zone) の名称で同種の海域が設定されている。

大陸棚上の構築物には刑罰規定も適用されている。

## 6 追跡権

追跡権は、国際法に基づいて行使されるが、国内法は包括的規定がなく、行使権限を有する職員について、漁業取締官につき定める1968年漁業法 (Sea Fisheries Act 1968) をはじめとして、税関職員、海軍将校などについて個別法で規定している。

その行使につき裁判所で争われることもあり、二つほど公判判例があるようである。

## 7 汚染防止海域での汚染に対する執行

先に述べたように、イギリスにEEZはないので、規制の目的から汚染防止水域と呼ばれる領海12マイル以遠200マイルまでの海域における、船舶特に外国船舶による汚染の防止がここでの問題となるが、それは、1995年商船法 (Merchant Shipping Act) 第129条、1996年商船 (海洋法条約に関する) (油による汚染防止) 令、同規則により、実施されている。

その規定は、国連海洋法条約の211条、218条、220条の内容を盛り込んだものである。そして、条約228条の手続の停止を含めて必要な保障規定も盛り込まれている。

## B フランス

フランスでは、パリ大学で基礎的な資料収集とフランス法の概要を調査した上で、運輸省の海洋法担当官にヒアリングを行った。

### 1 条約批准に伴う国内法整備の姿勢

フランスは、理論的には、条約の諸規定は自動的に国内法的な効力を持つと考えているので、条約に適合させるための体系的な国内法整備は必要がないと理解し、特にそのための改正は行っていないと、説明されている。しかし実際は、国内法的な判断によるという理由でか、必要な法整備は従来からおこなわれていたようにみえる。

### 2 フランスの今回調査に係る基本法令

フランスにおいては、次のような法令が海洋法関連の今回の調査に係る基本的な法令としてあげられる。

1. Loi n. 68-1181 du 30 décembre 1968 relative à l'exploration du plateau continental et à l'exploitation de ses ressources naturelles (mod. L. n. 77-485 du 11 mai 1977)
2. Loi n. 90-1143 du 21 décembre 1990 relative aux atteintes à la sécurité de la navigation maritime et des plates-formes fixes situées sur le plateau continental.
3. DECRET n. 85-185 portant réglementation du passage des navires étrangers dans les eaux territoriales françaises. Du 6 février 1985.
4. Loi n. 83-583 du 5 juillet 1983 reprimant la pollution par les navires
5. Loi n. 76-600 relative à la prévention et à la répression de la pollution de la mer par les opérations d'incinération du 7 juillet 1976-JO du 8 juillet 1976, p. 4109
6. Loi n. 76-599 relative à prévention et à la répression de la pollution

marine par les opérations d'immersion effectuées par les navires et aéronefs, et à la lutte contre la pollution marine accidentelle. Du 7 juillet 1976

7. Loi n. 38-380 du 10 mai 1983 modifiant l'article 16 de la loi no 76-599 du 7 juillet 1976 relative à la prévention et à la repression de la pollution marine par les opérations d'immersion effectuées par les navires et aéronefs et à la lutte contre la pollution marine accidentelle.
8. Loi n. 83-583 du 5 juillet 1983 reprimant la pollution de la mer par les hydrocarbures.
9. Loi n. 68-1181 du 30 décembre 1968 relative à l'exploration du plateau continental et à l'exploitation de ses ressources naturelles.
10. INSTRUCTION du Premier ministre relative à la recherche et à la répression de la pollution de la mer par les navires. Du 6 septembre 1990.

### 3 通航の意味および有害性の基準

フランスでは、外国船舶の通航に関する大統領令1985年第185号が、通航および無害の意味を定めている。第1条で、この大統領令の定める無害通航の規定に従って無害通航権を享受すると定めた上で、第2条において通航の意味を国連海洋法条約の文言どおりに、また第3条において無害の意味をフランスの平和・秩序・安全を害さないことと定め、通航に直接関係がない行為に従事する場合がそれにあたるとし、国連海洋法条約第19条2項をもとにその例を列挙している。

### 4 接続水域

フランスは、接続水域を設定していない。それは、設定する必要を感じていないからであると説明される。

しかし、関税法上は関税水域と一般にいわれる海域で、従来から特別の取り扱いがなされている。しかしこれは、貿易政策上疑問があるとの見方があり、麻薬対策だけが問題であるが、関税当局には領海で十分ではないかと協議中の

模様である。

## 5 排他的経済水域

1976年法律第655号経済水域法（LOI n. 76-655）により、領海12マイル以遠の188マイルの海域を天然資源の探査・開発のための経済水域として設定し、海洋環境の保護についても条約上認められた権限を行使する旨定めている。プラットフォームに関する規定は同法中にはないが、汚染に関しては1983年法律第583号（LOI n. 83-583）第8条などに規定がある。

しかし、地中海は、条約によって、排他的経済水域を設定することができないこととされている。

海底部分については、1968年法律第1181号大陸棚天然資源探査開発法（LOI n. 68-1181）も規定されている。

漁業に関しては、1983年法律第582号（LOI n. 83-582）などにより規制が行われているが、ECの共同漁業政策に基づいて、漁業協議会が毎年総漁獲量を決定し、各国とともにフランスもその枠内でその指定海域で操業する体制を基本としているとされる。

## 6 追跡権

1994年法律第589号（LOI n. 94-589）第6条に追跡権の規定を置いている。追跡の過程で発砲するには、首相の裁可が必要である。

## 7 EEZでの汚染に対する執行

排他的経済水域における汚染の防止と執行は、1983年法律第583号（LOI n. 83-583）などの汚染防止関係法と1994年法律第589号（LOI n. 94-589）などの執行法とによってなされているが、外国船舶に対する取り締まりの実際は、相手国のフランス船舶への執行との見合いで行われている模様である。

ボンドなどによる早期釈放については、刑事訴訟法の認める手続の範囲で行われているということである。



## イギリスへの質問状





## イギリスへの質問状

9月の調査に向けて、イギリスが条約に加入する以前の7月初旬に英文の質問状を送付したが、その後イギリスが条約に加入し実施協定を批准したことが9月初頭に判明したので、急遽必要最低限の修正を施したものを再送付した。

Questionnaire on the Implementation of the United Nations  
Convention on the Law of the Sea  
For the United Kingdom

Toshiyuki Tanaka

Professor of Law

Yokohama National University

Japan's Maritime Safety Agency has established a Commission for the purpose to understand the national practices under the United Nations Convention on the Law of the Sea.

The Commission has decided to send me to your country in order to research for your national practice.

We recognize that the United Kingdom has not ratified the Convention. But we suppose that the United Kingdom is preparing to implement the provisions of the Convention systematically.

We would be pleased if you answer the following questions.

1 Article 18 of the Convention: Meaning of Passage

- 1.1 Are there any provisions in your national law on the passage of foreign ships within your territorial seas?
- 1.2 If any, provide us with the name of the national law and attach a copy of the text.
- 1.3 Do you have any plan to revise the provisions or to legislate new laws?
- 1.4 If so, please inform us of the outlines.

2 Article 19: Conditions of Non-innocent Passage

- 2.1 Are there any provisions clarifying the conditions of non-innocent passage in your territorial seas by foreign ships?
- 2.2 If any, provide us with the name of the law and attach a copy of the text.
- 2.3 How are the provisions prescribed (punishing the captain and crew, or forcing the ship out of territorial sea)?
- 2.4 Do you have any plan to revise the provisions or to legislate new laws?
- 2.5 If so, please inform us of the outlines.

### 3 Article 33: Continuous Zone

- 3.1 Are there any provisions establishing continuous zone?
- 3.2 If any, provide us with the name of the law and attach a copy of the text.
- 3.3 On what grounds are they established (customs, quarantine, immigration control, revenue, etc.)?
- 3.4 How are the provisions prescribed (punishing the crew or forcing the ship out of territorial sea)?
- 3.5 Do you have any plan to revise the provisions or to legislate new laws?
- 3.6 If so, please inform us of the outlines.
- 3.7 Are there any provisions establishing extraterritorial criminal jurisdiction and punishing the act obstructing the enforcement in foreign ships?

### 4 Article 60: Jurisdiction over Installations

- 4.1 Are there any provisions establishing criminal jurisdiction over installations in Exclusive Economic Zone? (We know that in 1991

the United Kingdom already has Section 22 of the Oil and Gas (Enterprise) Act 1982 and the Criminal Jurisdiction (Offshore Activities) Order 1987. Have they been revised or have new provisions been added since then?)

- 4.2 If any, provide us with the name of the national law and attach a copy of the text.
- 4.3 Do you have any plan to revise the provisions or to legislate new laws?
- 4.4 If so, please inform us of the outlines.

## 5 Article 111: Hot Pursuit

- 5.1 Are there any provisions authorizing Hot Pursuit in your national statutes?
- 5.2 If any, provide the name of the statute and attach a copy of the text.
- 5.3 Are there any provisions establishing extraterritorial criminal jurisdiction and punishing the act obstructing the enforcement in foreign ships in the process of Hot Pursuit?
- 5.4 If any, provide us with the name of the national law and attach a copy of the text.
- 5.5 Do you have any plan to revise the provisions or to legislate new laws?
- 5.6 If so, please inform us of the outlines.

## 6 Article 220: Enforcement by Coastal States

- 6.1 Are there any provisions authorizing the enforcement against the violation of maritime pollution statutes by foreign ships within Exclusive Economic Zone and prescribing the steps of the

enforcement process?

- 6.2 If any, provide the name of the statute and attach a copy of the text.
- 6.3 Are there any provisions establishing extraterritorial criminal jurisdiction and punishing the act obstructing the enforcement in foreign ships in the process of enforcement?
- 6.4 If any, provide us with the name of the national law and attach a copy of the text.
- 6.5 Do you have any plan to revise the provisions or to legislate new laws?
- 6.6 If so, please inform us of the outlines.

#### 7 Article 220 (and also Article 73): Prompt Release Scheme

- 7.1 Are there any provisions prescribing the prompt release with bonding? ( We know that in 1991 your country had no such scheme in stead of speedy trial. Has there been any change since then?)
- 7.2 If any, provide us with the name of the national law and attach a copy of the text.
- 7.3 What is the legal character of the bonding, a kind of a bail or on-the-spot fine or anything else?
- 7.4 Do you have any plan to revise the provisions or to legislate new laws?
- 7.5 If so, please inform us of the outlines.

#### 8 Others

- 8.1 If you have any plan to implement other provisions of the Convention, tell us the provisions and the outlines of the implementation.



## フランスへの質問状





## フランスへの質問状

Questionnaire en vue de l'adaptation de la Convention des Nations Unies sur le droit de la mer

Toshiyuki Tanaka  
Professeur de droit  
Université nationale de Yokohama

L'Agence de sûreté maritime du Japon a établi une commission dans l'intention de comprendre les pratiques des nations sous la Convention des Nations Unies sur le droit de la mer. La commission a souhaité que je mène une recherche sur le droit français en matière maritime.

Nous reconnaissons que la France a ratifié la Convention, et supposons que la France a mis en accord son droit en tenant compte des règlements de la Convention systématiquement. Nous serions heureux si vous répondiez aux questions ci-dessous.

### 1 Article 18 de la Convention : Signification du terme "passage"

- 1.1 Est-ce que vous avez quelques dispositions dans votre droit national sur le passage d'un navire étranger dans les eaux territoriales?
- 1.2 Si c'est le cas, pouvez-vous nous indiquer le terme en rapport avec ces dispositions et nous faire parvenir une copie de ces textes?
- 1.3 Est-ce que vous avez révisé le droit ou légiféré nouvellement pour la ratification de la Convention?
- 1.4 Si oui, pouvez-vous nous transmettre le règlement prévalant avant cette révision?
- 1.5 Est-ce que vous avez des projets de révision ou de législation sur ce point précis?

### 2 Article 19 : Conditions de passage inoffensif

- 2.1 Est-ce que vous avez quelques dispositions qui clarifient les conditions de passage inoffensif de navire étranger dans vos eaux territoriales?
- 2.2 Si c'est le cas, pouvez-vous nous indiquer le terme en rapport avec ces dispositions et nous faire parvenir une copie de ces textes?
- 2.3 Comment sont les dispositions précitées (par ex.: à punir le

- capitaine et les employés, ou à rejeter hors des eaux territoriales)?
- 2.4 Est-ce que vous avez révisé le droit ou légiféré nouvellement pour la ratification de la convention?
  - 2.5 Si oui, pouvez-vous nous transmettre le règlement prévalant avant cette révision?
  - 2.6 Est-ce que vous avez des projets de révision ou de législation concernant ce point précis?

### 3 Article 33 : Zone contiguë

- 3.1 Est-ce que vous avez des dispositions qui établissent une zone contiguë?
- 3.2 Si c'est le cas, pouvez-vous nous indiquer le terme en rapport avec ces dispositions et nous faire parvenir une copie de ces textes?
- 3.3 Sur quelles bases est établie cette zone?
- 3.4 Comment sont les dispositions précitées (par ex.: à punir le capitaine et les employés, ou à rejeter hors des eaux territoriales)?
- 3.5 Est-ce que vous avez des dispositions qui établissent la juridiction criminelle extraterritoriale et qui punissent le cas d'obstruction de contrôle sur un navire étranger?
- 3.6 Est-ce que vous avez révisé le droit ou légiféré nouvellement pour la ratification de la Convention sur ce point?
- 3.7 Si oui, pouvez-vous nous transmettre le règlement prévalant avant cette révision?
- 3.8 Est-ce que vous avez des projets de révision ou de législation concernant ce point précis?

### 4 Article 60 : Juridiction sur installation

- 4.1 Est-ce que vous avez des dispositions qui établissent une juridiction criminelle sur installations hors des eaux territoriales?
- 4.2 Si c'est le cas, pouvez-vous nous indiquer le terme en rapport avec ces dispositions et nous faire parvenir une copie de ces textes?
- 4.3 Est-ce que vous avez révisé le droit ou légiféré nouvellement pour la ratification de la Convention sur ce point?
- 4.4 Si oui, pouvez-vous nous transmettre le règlement prévalant avant cette révision?
- 4.5 Est-ce que vous avez des projets de révision ou de législation concernant ce point précis?

## 5 Article 111 : Droit de poursuite

- 5.1 Est-ce que vous avez des dispositions qui autorisent la poursuite dans votre droit (code, ordonnance, etc.)?
- 5.2 Si c'est le cas, pouvez-vous nous indiquer le terme en rapport avec ces dispositions et nous faire parvenir une copie de ces textes?
- 5.3 Est-ce que vous avez des dispositions qui établissent la juridiction criminelle extraterritoriale et qui punissent le cas d'obstruction dans la procédure de poursuite sur un navire étranger ?
- 5.4 Si c'est le cas, pouvez-vous nous indiquer le terme en rapport avec ces dispositions et nous faire parvenir une copie de ces textes?
- 5.5 Est-ce que vous avez révisé le droit ou légiféré nouvellement pour la ratification de la Convention sur ce point?
- 5.6 Si oui, pouvez-vous nous transmettre le règlement prévalant avant cette révision?
- 5.7 Est-ce que vous avez des projets de révision ou de législation concernant ce point précis?

## 6 Article 220 : Pouvoirs de l'Etat côtier

- 6.1 Est-ce que vous avez des dispositions qui autorisent une action pour infractions en matière de pollution par un navire étranger dans votre zone économique exclusive et qui prescrivent les échelles de ces actions?
- 6.2 Si c'est le cas, pouvez-vous nous indiquer le terme en rapport avec ces dispositions et nous faire parvenir une copie de ces textes?
- 6.3 Est-ce que vous avez des dispositions qui établissent la juridiction criminelle extraterritoriale et qui punissent le cas d'obstruction dans la procédure des actions sur un navire étranger ?
- 6.4 Si c'est le cas, pouvez-vous nous indiquer le terme en rapport avec ces dispositions et nous faire parvenir une copie de ces textes?
- 6.5 Est-ce que vous avez révisé le droit ou légiféré nouvellement pour la ratification de la Convention sur ce point?
- 6.6 Si oui, pouvez-vous nous transmettre le règlement prévalant avant cette révision?
- 6.7 Est-ce que vous avez des projets de révision ou de législation concernant ce point précis?

## 7 Article 220 (et Article 73 aussi) : Libération sans délai

- 7.1 Est-ce que vous avez des dispositions qui prescrivent la libération sans délai après paiement d'une caution.
- 7.2 Si c'est le cas, pouvez-vous nous indiquer le terme en rapport avec ces dispositions et nous faire parvenir une copie de ces textes?
- 7.3 Quelle est que la caractéristique dominante de ces cautions?
- 7.4 Est-ce que vous avez révisé le droit ou légiféré nouvellement pour la ratification de la Convention sur ce point?
- 7.5 Si oui, pouvez-vous nous transmettre le règlement prévalant avant cette révision?
- 7.6 Est-ce que vous avez des projets de révision ou de législation concernant ce point précis?

## 8 Autres

- 8.1 Si vous avez révisé ou légiféré votre législation relative aux autres dispositions de la Convention en vue de sa ratification, pouvez-vous nous faire parvenir les noms de ces droits et un copie de ces textes et de textes antérieurs également?
- 8.2 Est-ce que vous avez des projets de révision ou de législation concernant ce point précis?

イギリス編



## TERRITORIAL SEA ACT 1987

(1987 c 49)

*An Act to provide for the extent of the territorial sea adjacent to the British Islands*

[15 May 1987]

**Northern Ireland.** This Act applies; see

### **1 Extension of territorial sea**

(1) Subject to the provisions of 1

(a) the breadth of the territorial sea adjacent to the United Kingdom shall for all purposes be 12 nautical miles; and

(b) the baselines from which the breadth of that territorial sea is to be measured shall for all purposes be those established by Her Majesty by Order in Council.

(2) Her Majesty may, for the purpose of implementing any international agreement or otherwise, by Order in Council provide that any part of the territorial sea adjacent to the United Kingdom shall extend to such line other than that provided for by subsection (1) above as may be specified in the Order.

(3) In any legal proceedings a certificate issued by or under the authority of the



Secretary of State stating the location of any baseline established under subsection (1) above shall be conclusive of what is stated in the certificate.

(4) As from the coming into force of this section the Territorial Waters Order in Council 1964 and the Territorial Waters (Amendment) Order in Council 1979 shall have effect for all purposes as if they were Orders in Council made by virtue of subsection (1)(b) above; and subsection (5) below shall apply to those Orders as it applies to any other instrument.

(5) Subject to the provisions of this Act, any enactment or instrument which (whether passed or made before or after the coming into force of this section) contains a reference (however worded) to the territorial sea adjacent to, or to any part of, the United Kingdom shall be construed in accordance with this section and with any provision made, or having effect as if made, under this section.

(6) Without prejudice to the operation of subsection (5) above in relation to a reference to the baselines from which the breadth of the territorial sea adjacent to the United Kingdom is measured, nothing in that subsection shall require any reference in any enactment or instrument to a specified distance to be construed as a reference to a distance equal to the breadth of that territorial sea.

(7) In this section "nautical miles" means international nautical miles of 1,852 metres.

#### NOTES

**Commencement.** This Act came into force on 1 October 1987; see the Territorial Sea Act 1987 (Commencement) Order 1987, SI 1987/1270, made under s 4(2) post.

**General Note.** This section extends the breadth of the territorial sea adjacent to the United Kingdom from three to twelve nautical miles except where it may be otherwise provided by Order in Council. The section provides that the baselines from which the breadth of the territorial sea are measured may be established in future by Order in Council and gives effect also to the existing Orders made under the Royal Prerogative.

The section, in setting down specific territorial sea limits, clarifies, at least as far as the United Kingdom is concerned, the question of the extent of territorial waters which is, in general, a much disputed question of international law and practice. The traditional position of the United Kingdom was that the breadth of its territorial sea was three nautical miles and although this, in itself, has somewhat picturesque historical antecedents, that limit had long been adhered to for most purposes (eg this limit was that used in the definition of "the territorial waters of Her Majesty's dominions" in the Territorial Waters Jurisdiction Act 1878, s 7, now repealed by s 3 and Sch 2 post); see further *R v Kent Justices, ex p Lye* [1967] 2 QB 153, [1967] 1 All ER 560, and *Post Office v Estuary Radio Ltd* [1968] 2 QB 740, [1967] 3 All ER 663, CA. However, as the Minister of State at the Foreign and Commonwealth Office noted, in the second reading debate on what is now this Act in the House of Lords, "International practice has now moved on. The majority of countries, if not all, including all our major allies, now either claim a territorial sea of 12 miles for themselves or recognise the territorial sea of 12 miles established by other countries" (484 H of L Official Report 381; 5 February 1987) (more than 120 states now claim territorial sea limits of at least 12 nautical miles).

It will be observed that, for geographical reasons, the United Kingdom will not be able to claim the full breadth of territorial sea in the English Channel—provision for amendment (eg by agreement with France) is provided for in sub-s (2) above. Attention should also be drawn to the fact that the Act will not impede international law and practice with regard to the use of internationally important waters falling within the 12 mile zone set out by sub-s (1) above. The Minister of State observed that "it has been recognised in state practice, international negotiations and the case law of the International Court that a special regime for navigation is appropriate in straits . . . International law and practice have now developed to the point where, if the United Kingdom extends to 12 miles, we should afford to others the essential rights in some internationally important straits for which there is no alternative route; namely, the Straits of Dover, the North Channel lying between Scotland and Northern Ireland, and the passage between Shetland and Orkney. These rights, which are widely recognised as necessary, include: a right of unimpeded passage through such straits for merchant vessels and warships; a right of overflight; the right of submarines to pass through the straits submerged; and appropriate safeguards for the security and other interests of the coastal state. In other straits used for international navigation, such as the Pentland Firth south of Orkney and the passage between the Scilly Isles and the mainland of Cornwall, as in other parts of the territorial sea, a right of innocent passage will continue to exist in accordance with the practice of states" (484 H of L Official Report 382; 5 February 1987).

**Territorial sea.** The Minister of State at the Foreign and Commonwealth Office in the second reading debate on what is now this Act in the House of Lords commented on what she termed as the "legal character" of the territorial sea that "It is a belt of waters adjacent to the coast within which a coastal state enjoys sovereignty. This sovereignty must be exercised in a manner which respects certain rights for the benefit of

other states, notably the right of innocent passage for vessels passing through the territorial sea" (484 H of L Official Report 382, 383; 5 February 1987).

**United Kingdom.** In Great Britain and Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Secretary of State.** In one of Her Majesty's Principal Secretaries of State; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. The Secretary of State here concerned is the Secretary of State for Foreign and Commonwealth Affairs.

**Territorial Waters Order in Council 1964; Territorial Waters (Amendment) Order in Council 1979.** These Orders were made by virtue of the Royal Prerogative on 25 September 1964 and on 23 May 1979, and as such were not issued in the SI series. The 1964 Order was published in the London Gazette, 29 September 1964.

**Orders in Council under this section.** The Territorial Sea (Limits) Order 1989, SI 1989/482, which establishes the seaward limit of the territorial sea adjacent to the United Kingdom in the Straits of Dover and in the vicinity of the Isle of Man.

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes.

## 2 Enactments and instruments not affected

(1) Except in so far as Her Majesty may by Order in Council otherwise provide, nothing in section 1 above shall affect the operation of any enactment contained in a local Act passed before the date on which that section comes into force.

(2) Nothing in section 1 above, or in any Order in Council under that section or subsection (1) above, shall affect the operation of so much of any enactment passed or instrument made before the date on which that section comes into force as for the time being settles the limits within which any harbour authority or port health authority has jurisdiction or is able to exercise any power.

(3) Where any area which is not part of the territorial sea adjacent to the United Kingdom becomes part of that sea by virtue of section 1 above or an Order in Council under that section, subsection (2) of section 1 of the Continental Shelf Act 1964 (vesting and exercise of rights with respect to coal) shall continue, on and after the date on which section 1 above or that Order comes into force, to have effect with respect to coal in that area as if the area were not part of the territorial sea.

(4) Nothing in section 1 above, or in any Order in Council under that section, shall affect—

- (a) any regulations made under section 6 of the Petroleum (Production) Act 1934 before the date on which that section or Order comes into force; or
- (b) any licences granted under the said Act of 1934 before that date or granted on or after that date in pursuance of regulations made under that section before that date.

(5) In this section—

- "coal" has the same meaning as in the Coal Industry Nationalisation Act 1946;
- "harbour authority" means a harbour authority within the meaning of the Harbours Act 1964 or the Harbours Act (Northern Ireland) 1970; and
- "port health authority" means a port health authority for the purposes of the Public Health (Control of Disease) Act 1984.

## NOTES

**Commencement.** This Act came into force on 1 October 1987; see the Territorial Sea Act 1987 (Commencement) Order 1987, SI 1987/1270, made under s 4(2) post.

**Local Act.** For a discussion on the classification of statutes, see the Preliminary Note to Vol 41, title Statutes.

**Territorial sea; United Kingdom.** See the notes to s 1 ante.

**Continental Shelf Act 1964, s 1(2).** See Vol 29, title Mines, Minerals and Quarries.

**Petroleum (Production) Act 1934.** As to regulations made under s 6 of that Act, see the note "Regulations under this section" thereto, Vol 29, title Mines, Minerals and Quarries. Provision for the granting of licences under that Act is made by s 2 thereof.

**Coal Industry Nationalisation Act 1946.** For meaning of "coal" in that Act, see s 63(1) thereof, Vol 29, title Mines, Minerals and Quarries.

**Harbours Act 1964.** For meaning of "harbour authority" in that Act, see s 57(1) thereof, Vol 34, title Ports and Harbours.

**Harbours Act (Northern Ireland) 1970.** 1970 c 1 (NI); not printed in this work.

**Public Health (Control of Disease) Act 1984.** As to port health authorities for the purposes of that Act, see ss 2, 7 thereof, Vol 35, title Public Health.

**Orders in Council under this section.** Up to 1 September 1991 no Orders in Council had been made under sub-s (1) above. As to Orders in Council, generally, see the second paragraph of the note "Orders in Council under this section" to s 1 ante.

### 3 Amendments and repeals

(1) The enactments mentioned in Schedule 1 to this Act shall have effect with the amendments there specified (being minor amendments and amendments consequential on the provisions of this Act).

(2) Her Majesty may by Order in Council—

- (a) make, in relation to any enactment passed or instrument made before the date on which section 1 above comes into force, any amendment corresponding to any of those made by Schedule 1 to this Act;
- (b) amend subsection (1) of section 36 of the Wildlife and Countryside Act 1981 (marine nature reserves) so as to include such other parts of the territorial sea adjacent to Great Britain as may be specified in the Order in the waters and parts of the sea which, by virtue of paragraph 6 of Schedule 1 to this Act, may be designated under that section;
- (c) amend paragraph 1 of Article 20 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (marine nature reserves) so as to include such other parts of the territorial sea adjacent to Northern Ireland as may be specified in the Order in the waters and parts of the sea which, by virtue of paragraph 9 of Schedule 1 to this Act, may be designated under that Article.

(3) Her Majesty may by Order in Council make such modifications of the effect of any Order in Council under section 1(7) of the Continental Shelf Act 1964 (designated areas) as appear to Her to be necessary or expedient in consequence of any provision made by or under this Act.

(4) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

### NOTES

**Commencement.** This Act came into force on 1 October 1987; see the Territorial Sea Act 1987 (Commencement) Order 1987, SI 1987/1270, made under s 4(2) post.

**Territorial sea.** See, as to breadth of the territorial sea, s 1(1) ante and the note thereto.

**Great Britain.** Ie England, Scotland and Wales; see the Union with Scotland Act 1706, preamble, Art I, Vol 10, title Constitutional Law (Pt 1), as read with the Interpretation Act 1978, s 22(1), Sch 2, para 5(a), Vol 41, title Statutes.

**Wildlife and Countryside Act 1981, s 36(1).** See Vol 32, title Open Spaces and Historic Buildings (Pt 2). That subsection is amended by Sch 1, para 6(a) post.

**Nature Conservation and Amenity Lands (Northern Ireland) Order 1985.** SI 1985/170.

**Continental Shelf Act 1964, s 1(7).** See Vol 29, title Mines, Minerals and Quarries.

**Orders in Council under this section.** The Continental Shelf (Designated Areas) (Extended Territorial Sea) Order 1987, SI 1987/1265 was made under sub-s (3) above. Up to 1 September 1991 no Orders in Council had been made under sub-s (2) above. As to Orders in Council, generally, see the second paragraph of the note "Orders in Council under this section" to s 1 ante.

**4 Short title, commencement and extent**

- (1) This Act may be cited as the Territorial Sea Act 1987.
- (2) This Act shall come into force on such day as Her Majesty may by Order in Council appoint, and different days may be so appointed for different provisions and for different purposes.
- (3) This Act extends to Northern Ireland.
- (4) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, to any of the Channel Islands or to the Isle of Man.

**NOTES**

**Channel Islands.** Ie the islands of Jersey, Guernsey, Alderney and Sark and their respective dependencies. The Channel Islands are not part of the United Kingdom (*Navigators and General Insurance Co Ltd v Ringrose* [1962] 1 All ER 97, [1962] 1 WLR 173, CA), though they are included in the "British Islands" as defined by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Acts of Parliament do not apply to the Channel Islands except by express mention or necessary implication. When an Act of Parliament is to apply there, it is sent to the Royal Courts of Jersey and Guernsey for registration. See further, 6 Halsbury's Laws (4th edn) paras 869 et seq.

**Isle of Man.** The Isle of Man is not part of the United Kingdom (*Davison v Farmer* (1851) 6 Exch 242), though it is included in the British Islands as defined by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Legislation passed by the Tynwald Court (or Tynwald) must be assented to by the Queen in Council. Legislation passed by the United Kingdom Parliament does not extend to the Isle of Man except by express mention or necessary implication and that which does so extend is confined to matters of special importance and non-local character. See further 6 Halsbury's Laws (4th edn) paras 879–881.

**Orders in Council under this section.** The Territorial Sea Act 1987 (Commencement) Order 1987, SI 1987/1270 (made under sub-s (2) bringing this Act into force on 1 October 1987; the Territorial Sea Act 1987 (Isle of Man) Order 1991, SI 1991/1722 (made under sub-s (4)). As to Orders in Council, generally, see the second paragraph of the note "Orders in Council under this section" to s 1 ante.

**SCHEDULES****SCHEDULE 1****Section 3****MINOR AND CONSEQUENTIAL AMENDMENTS**

1. ...

*The Mineral Workings (Offshore Installations) Act 1971*

2. For the definition of "foreign sector of the continental shelf" in section 1(4) of the Mineral Workings (Offshore Installations) Act 1971 there shall be substituted the following definition—

"foreign sector of the continental shelf" means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;".

3.–5. ...

*The Wildlife and Countryside Act 1981*

6. In section 36 of the Wildlife and Countryside Act 1981 (marine nature reserves)—

- (a) in subsection (1) for the words "in or adjacent to Great Britain up to the seaward limits of territorial waters" there shall be substituted the words "which are landward of the baselines from which the breadth of the territorial sea adjacent to Great Britain is measured or are seaward of those baselines up to a distance of three nautical miles"; and
- (b) in subsection (7) after the definition of "local authority" there shall be inserted the following definition—

"nautical miles" means international nautical miles of 1,852 metres;".

*The Oil and Gas (Enterprise) Act 1982*

7.—(1) For the definition of “cross-boundary field” in section 22(6) of the Oil and Gas (Enterprise) Act 1982 there shall be substituted the following definition—

“‘cross-boundary field’ means a field that extends across the boundary between waters falling within paragraph (a) or (b) of subsection (4) above and a foreign sector of the continental shelf;”.

(2) For the definition of “foreign sector of the continental shelf” in section 28(1) of that Act there shall be substituted the following definition—

“‘foreign sector of the continental shelf’ means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;”.

8, 9. ...

## NOTES

Para 1 amends the Coast Protection Act 1949, ss 18(3), 49(1), this part of this title ante. Para 3 amends the Salmon and Freshwater Fisheries Act 1975, s 6(1), Vol 18, title Fisheries. Para 4 amends the Customs and Excise Management Act 1979, ss 1(1), 35(7), 64(4), 88, 89(1), (2), 142(2), Vol 13, title Customs and Excise. Para 5 amends the Alcoholic Liquor Duties Act 1979, ss 4(3), 26(4), Vol 24, title Licensing and Liquor Duties. Para 8 amends the Public Health (Control of Disease) Act 1984, s 6, Vol 35, title Public Health. Para 9 amends the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, SI 1985/170.

**Commencement.** This Act came into force on 1 October 1987; see the Territorial Sea Act 1987 (Commencement) Order 1987, SI 1987/1270, made under s 4(2) ante.

**Para 2: United Kingdom.** See the note to s 1 ante.

**Para 6: Territorial sea.** See, as to the breadth of the territorial sea and the baselines from which such breadth is measured, s 1(1) ante and the note “Territorial sea” thereto.

**Great Britain.** See the note to s 3 ante.

**Mineral Workings (Offshore Installations) Act 1971, s 1(4); Oil and Gas (Enterprise) Act 1982, ss 22(6), 28(1).** See Vol 29, title Mines, Minerals and Quarries.

**Wildlife and Countryside Act 1981, s 36.** See Vol 32, title Open Spaces and Historic Buildings (Pt 1).

## SCHEDULE 2

## Section 3

## REPEALS

Chapter	Short Title	Extent of Repeal
41 & 42 Vict c 73	The Territorial Waters Jurisdiction Act 1878	In section 7, the definition of “the territorial waters of Her Majesty’s dominions”, including the words from “and for the purpose of any offence” to “the territorial waters of Her Majesty’s dominions”.
1967 c 41	The Marine, &c, Broadcasting Offences Act 1967	Section 9(2).
1967 c 72	The Wireless Telegraphy Act 1967	Section 9(1).
1979 c 2	The Customs and Excise Management Act 1979	In section 1(1), the definition of “nautical mile”.
1979 c 4	The Alcoholic Duties Act 1979	In section 4(3), the words “nautical mile”.

## NOTE

**Commencement.** This Act came into force on 1 October 1987; see the Territorial Sea Act 1987 (Commencement) Order 1987, SI 1987/1270, made under s 4(2) ante.

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## TERRITORIAL WATERS JURISDICTION ACT 1878

(41 & 42 Vict c 73)

### ARRANGEMENT OF SECTIONS

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*An Act to regulate the law relating to the Trial of Offences committed on the Sea within a certain distance of the Coasts of Her Majesty's Dominions* [16 August 1878]

**Northern Ireland.** This Act applies.

Whereas the rightful jurisdiction of Her Majesty, her heirs and successors, extends and has always extended over the open seas adjacent to the coasts of the United Kingdom and of all other parts of Her Majesty's dominions to such a distance as is necessary for the defence and security of such dominions:

And whereas it is expedient that all offences committed on the open sea within a certain distance of the coasts of the United Kingdom and of all other parts of Her Majesty's dominions, by whomsoever committed, should be dealt with according to law:

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**NOTES**

**General Note.** See the General Note to s 2 post.

**United Kingdom.** For meaning, see s 7 post, and see also the note to s 3 post.

**Her Majesty's dominions.** This signifies the independent or dependent territories under the sovereignty of the Crown; see further, as to the meaning of this expression, 6 Halsbury's Laws (4th edn reissue) para 803.

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**1 Short title**

This Act may be cited as the Territorial Waters Jurisdiction Act 1878.

**2 Amendment of law as to jurisdiction of the Admiral**

An offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly

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**NOTES**

**General Note.** This Act was passed as a result of the decision of the majority of the Court in the case of *R v Keyn* (1876) 2 Ex D 63, to the effect that there was no jurisdiction in the courts of this country to try a foreigner charged with committing an offence while passing the English coast in a foreign ship, although the occurrence took place within three miles of the coast. This section and the preamble to the Act are declaratory of the law as it was laid down by the minority of the judges in that case (*R v Dudley and Stephens* (1884) 14 QBD 273, [1881-5] All ER Rep 61).

As to the punishment of offences committed on the high seas, see the Offences at Sea Act 1799, s 1 ante.

**Territorial waters of Her Majesty's dominions.** As to the extent of the territorial waters of the United Kingdom, see the Territorial Sea Act 1987, s 1, Vol 49, title Water (Pt 1).

**Foreign ship.** References in whatever terms in this Act, to ships, vessels or boats or activities or places connected with them, are extended to include hovercraft or activities or places connected with hovercraft; see the Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1, Pt A. This Act does not expressly exclude or include foreign public vessels, as to which see *The Parlement Belge* (1880) 5 PD 197, [1874-80] All ER Rep 104, CA.

See also the Sea Fisheries Act 1883, s 18, Vol 18, title Fisheries, and *Mortensen v Peters* 1906 8 F (Ct of Sess) 93.

**Validation of colonial laws.** As to the validation of certain provisions in colonial laws repugnant to this Act, see the Consular Relations Act 1968, s 15, Vol 10, title Constitutional Law (Pt 5).

**Definitions.** For "foreign ship", "the jurisdiction of the Admiral" and "offence", see s 7 post.

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**3 Restriction on institution of proceedings for punishment of offence**

Proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and who is charged with any such offence as is declared by this Act to be within the jurisdiction of the Admiral, shall not be instituted in any court of the United Kingdom, except with the consent of one of Her Majesty's Principal Secretaries of State, and on his certificate that the institution of such proceedings is in his opinion expedient, and shall not be instituted in any of the dominions of Her Majesty out of the United Kingdom, except with the leave of the Governor of the part of the dominions in which such proceedings are proposed to be instituted, and on his certificate that it is expedient that such proceedings should be instituted.

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## NOTES

**United Kingdom.** Subject to the definition in s 7 post this means Great Britain and Northern Ireland as the Republic of Ireland is excluded by the Irish Free State (Consequential Adaptation of Enactments) Order 1923, S R & O 1923/405, art 2 (made under the Irish Free State (Consequential Provisions) Act 1922 (Session 2), s 6, Vol 31, title Northern Ireland (Pt 2)) as read with the Eire (Confirmation of Agreements) Act 1938, s 1 (repealed) and the Ireland Act 1949, s 1(1), (3), Vol 31, title Northern Ireland (Pt 2). Cf also the definition of "United Kingdom" in the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

Note also the inclusion of some other territories by s 7 post.

**Dominions of Her Majesty.** See the note "Her Majesty's dominions" to the Preamble to this Act

**Exclusion.** This section is excluded by the Petroleum and Submarine Pipe-lines Act 1975, s 29(6), Vol 36, title Railways, Inland Waterways and Pipelines, the Oil and Gas (Enterprise) Act 1982, s 27(5), Vol 29, title Mines, Minerals and Quarries, the Petroleum Act 1987, s 13(6), in the same title, and the Criminal Justice (International Co-operation) Act 1990, s 21(3), Vol 28, title Medicine and Pharmacy (Pt 2). For powers to exclude this section, see the Health and Safety at Work etc, Act 1974, s 84(4)(d), Vol 19, title Health and Safety at Work, the Trade Union and Labour Relations (Consolidation) Act 1992, s 287(3)(e), and the Employment Rights Act 1996, s 201(3)(e), both Vol 16, title Employment.

**Definitions.** For "Governor", "the jurisdiction of the Admiral" and "offence", see s 7 post.

#### 4 Provisions as to procedure

On the trial of any person who is not a subject of Her Majesty for an offence declared by this Act to be within the jurisdiction of the Admiral, it shall not be necessary to aver in any indictment or information on such trial that such consent or certificate of the Secretary of State or Governor as is required by this Act has been given, and the fact of the same having been given shall be presumed unless disputed by the defendant at the trial; and the production of a document purporting to be signed by one of Her Majesty's Principal Secretaries of State as respects the United Kingdom, and by the Governor as respects any other part of Her Majesty's dominions, and containing such consent and certificate, shall be sufficient evidence for all the purposes of this Act of the consent and certificate required by this Act.

Proceedings before a justice of the peace or other magistrate previous to the committal of an offender for trial or to the determination of the justice or magistrate that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said consent and certificate under this Act.

## NOTES

**Information.** This was a proceeding in the Queen's Bench Division at the suit of the Crown without previous indictment; it was finally abolished by the Criminal Law Act 1967, s 6(6) post.

**United Kingdom.** See the note to s 3 ante, and note also s 7 post.

**Her Majesty's dominions.** See the note to the Preamble to this Act.

**Justice of the peace.** A justice of the peace may be either a lay justice or a stipendiary magistrate. The main provisions relating to justices of the peace (including stipendiary magistrates), covering such matters as appointment, removal and organisation, will be found in the Justices of the Peace Act 1979, Vol 27, title Magistrates, and the office and jurisdiction of justices are considered generally in 29 Halsbury's Laws (4th edn) paras 201 et seq.

**Definitions.** For "Governor", "the jurisdiction of the Admiral" and "offence", see s 7 post.

#### 5 Saving as to jurisdiction

Nothing in this Act contained shall be construed to be in derogation of any rightful jurisdiction of Her Majesty, her heirs or successors, under the law of nations, or to affect or prejudice any jurisdiction conferred by Act of Parliament or now by law existing in relation to foreign ships or in relation to persons on board such ships.



**NOTE**

**Ships.** As to the inclusion in this expression of hovercraft, see the note "Foreign ship" to s 2 ante.

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**6 Saving as to piracy**

This Act shall not prejudice or affect the trial in manner heretofore in use of any act of piracy as defined by the law of nations, or affect or prejudice any law relating thereto; and where any act of piracy as defined by the law of nations is also any such offence as is declared by this Act to be within the jurisdiction of the Admiral, such offence may be tried in pursuance of this Act, or in pursuance of any other Act of Parliament, law, or custom relating thereto.

---

**NOTES**

**General Note.** The effect of this section is to preserve the law of piracy in relation to territorial waters; see *Cameron v HM Advocate* 1971 SLT 333.

**Definitions.** For "jurisdiction of the Admiral" and "offence", see s 7 post.

---

**7 Interpretation**

In this Act, unless there is something inconsistent in the context, the following expressions shall respectively have the meanings herein-after assigned to them; (that is to say,)

"The jurisdiction of the Admiral," as used in this Act, includes the jurisdiction of the Admiralty of England and Ireland, or either of such jurisdictions as used in any Act of Parliament; and for the purpose of arresting any person charged with an offence declared by this Act to be within the jurisdiction of the Admiral, the territorial waters adjacent to the United Kingdom, or any other part of Her Majesty's dominions, shall be deemed to be within the jurisdiction of any judge, magistrate, or officer having power within such United Kingdom, or other part of Her Majesty's dominions, to issue warrants for arresting or to arrest persons charged with offences committed within the jurisdiction of such judge, magistrate, or officer:

"United Kingdom" includes the Isle of Man, the Channel Islands, and other adjacent islands:

"Governor," . . . [as respects a British possession which] consists of several constituent colonies, means the Governor General of the whole possession or the Governor of any of the constituent colonies; and as respects any other British possession, means the officer for the time being administering the government of such possession; also any person acting for or in the capacity of Governor shall be included under the term "Governor:"

"Offence" as used in this Act means an act neglect or default of such a description as would, if committed within the body of a county in England, be punishable on indictment according to the law of England for the time being in force:

"Ship" includes every description of ship, boat, or other floating craft:

"Foreign ship" means any ship which is not a British ship.

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**NOTES**

The definition omitted was repealed by the Territorial Sea Act 1987, s 3(4), Sch 2.

In the definition of "Governor", the words omitted were repealed by the Government of India

(Adaptation of Acts of Parliament) Order 1937, SR & O 1937/230, Schedule, Pt II, and the SL(R) Act 1976, and the words in square brackets were substituted by the 1937 Order.

**Ireland.** This means Northern Ireland only as the Republic of Ireland is excluded by the Irish Free State (Consequential Adaptation of Enactments) Order 1923, SR & O 1923/405, art 2 (made under the Irish Free State (Consequential Provisions) Act 1922 (Session 2), s 6, Vol 31, title Northern Ireland (Pt 2)) as read with the Eire (Confirmation of Agreements) Act 1938, s 1 (repealed), and the Ireland Act 1949, s 1(1), (3), Vol 31, title Northern Ireland (Pt 2).

**Territorial waters.** See the corresponding note to s 2 ante.

**United Kingdom.** See the note to s 3 ante.

**Her Majesty's dominions.** See the note to the Preamble to this Act.

**Channel Islands.** In the islands of Jersey, Guernsey, Alderney and Sark and their respective dependencies.

**Ship.** This expression includes hovercraft; see the note "Foreign ship" to s 2 ante.

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# Merchant Shipping and Maritime Security Act 1997 (c. 28)

1997 Chapter 28 - *continued*

*Pollution control and marine safety - continued*

[back to previous text](#)

Indemnities in connection with counter-pollution measures.

....6. In section 293 of the 1995 Act (functions of Secretary of State in relation to marine pollution), after subsection (4) there is inserted-

...."(4A) Where under subsection (1) above the Secretary of State agrees that another person shall take any measures to prevent, reduce or minimise the effects of marine pollution, he may agree to indemnify that other person in respect of liabilities incurred by that person in connection with the taking of the measures."

Increased penalty for causing pollution, etc.

....7. - (1) In section 131(3) (a) of the 1995 Act (fine on summary conviction of offence of discharging oil into certain United Kingdom waters), for "150,000" there is substituted "1250,000".

....(2) Subsection (1) applies in relation to fines imposed in respect of offences committed after the commencement of this section.

....(3) In section 144(4) (c) (i) and (ii) of the 1995 Act (security for release of ship in case where offence under section 131 suspected) for "155,000", in both places where it occurs, there is substituted "1255,000".

....(4) Subsection (3) applies in relation to ships detained after the commencement of this section.

....(5) Nothing in this section affects any Order in Council or instrument which is in force immediately before the commencement of this section and which-

(a) applies section 131(3) of the 1995 Act; or

(b) makes provision corresponding to that made in connection with offences under section 131 by section 144(4) of the 1995 Act.

....(6) Subsection (7) applies where immediately before the commencement of this section there is in force any Order in Council made under section 128(1) of the 1995 Act that confers power by any instrument made under the Order-

(a) to apply section 131(3) of the 1995 Act; or

(b) to make provision corresponding to that made in connection with offences under section 131 by section 144(4) of the 1995 Act.

....(7) The power conferred by the Order in Council shall be construed as a power to apply section 131(3) as amended by subsection (1) or (as the case may be) to make provision corresponding to that made by section 144(4) as amended by subsection (3).

Safety regulations.

....8. - (1) Section 85 of the 1995 Act (safety and health on ships) is amended as mentioned in subsections (2) to (5).

....(2) In subsection (1), for paragraphs (b) and (c) and the words following paragraph (c) there is substituted-

"(b) for securing the safety of other ships and persons on them while they are within United Kingdom waters and for protecting the health of persons on ships other than United Kingdom ships while they are within United Kingdom waters."

....(3) After subsection (1) there is inserted-

....“(1A) Except as provided by subsection (1B) below, safety regulations shall not apply in relation to-

(a) a qualifying foreign ship while it is exercising-

(i) the right of innocent passage; or

(ii) the right of transit passage through straits used for international navigation; or

(b) persons on such a ship while it is exercising any such right.

....(1B) Safety regulations shall apply in relation to a qualifying foreign ship, and persons on such a ship, even though the ship is exercising a right mentioned in subsection (1A) (a) above, to the extent that the safety regulations give effect to any provisions of an international agreement ratified by the United Kingdom so far as it relates to the safety of ships or persons on them or to the protection of the health of persons on ships.”

....(4) In subsection (3)-

(a) the words from “and regulations” to “relates to safety” are omitted; and

(b) for “paragraph (a), (b) or (c)” there is substituted “paragraph (a) or (b)”.

....(5) In subsection (4) for “subsection (1)(a)” there is substituted “subsection (1)”.

....(6) Section 86(5) and (6) of the 1995 Act (under which certain safety regulations are subject to affirmative resolution procedure) shall cease to have effect.

Inspection and detention of ships.

....9. Schedule 1 (amendments of the 1995 Act relating to the inspection and detention of ships) shall have effect.

Power to require ships to be moved.

....10. - (1) After section 100B of the 1995 Act (which is inserted by section 1 of this Act) there is inserted-

*“Power to require ships to be moved*

Power to  
require ships  
to be moved.

....100C. - (1) The powers conferred by this section shall be exercisable where a ship in United Kingdom waters-

(a) is not a qualifying foreign ship, or

(b) is such a ship but appears to the Secretary of State to be exercising neither of the following rights-

(i) the right of innocent passage, and

(ii) the right of transit passage through straits used for international navigation.

....(2) Subject to subsection (3) below, the Secretary of State may, for any one or more of the purposes specified in subsection (4) below, give directions to any of the persons specified in subsection (5) below requiring-

(a) that the ship is to be moved, or is to be removed from a specified area or locality or from United Kingdom waters, or

(b) that the ship is not to be moved to a specified place or area within United Kingdom waters, or over a specified route within United Kingdom waters.

....(3) The power of the Secretary of State under subsection (2) (a) above to require a ship to be removed from United Kingdom waters is not exercisable in relation to a United Kingdom ship.

....(4) The purposes referred to in subsection (2) above are-

(a) the purpose of securing the safety of the ship or of other ships, of persons on the ship or other ships, or of any other persons or property, or of preventing or reducing any risk to such safety, and

(b) the purpose of preventing or reducing pollution in the United Kingdom, in United Kingdom waters or in a part of the sea specified by virtue of section 129(2)(b), or of preventing or reducing any risk of such pollution.

....(5) The persons referred to in subsection (2) above are-

(a) the owner of the ship or any person in possession of the ship, or

(b) the master of the ship.

....(6) If in the opinion of the Secretary of State the powers conferred by subsection (2) above are, or have proved to be, inadequate for any of the purposes specified in subsection (4) above, the Secretary of State may for that purpose take any such action as he has power to require to be taken by a direction under this section.

....(7) The powers of the Secretary of State under subsection (6) above shall also be exercisable by such persons as may be authorised for the purpose by the Secretary of State.

....(8) 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.

....(9) 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 (6) or (7) above-

(a) does not constitute contempt of court; and

(b) does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.

....(10) In this section-

(a) unless a contrary intention appears, "specified" in relation to a direction under this section, means specified by the direction; and

(b) the reference in subsection (9) above to the Admiralty Marshal includes a reference to the Admiralty Marshal of the Supreme Court of Northern Ireland.

Offences in relation to section 100C.

....100D. - (1) If the person to whom a direction is duly given under section 100C contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.

....(2) If a person intentionally obstructs any person who is-

(a) acting on behalf of the Secretary of State in connection with the giving or service of a direction under section 100C;

(b) acting in compliance with a direction under that section; or

(c) acting under section 100C(6) or (7);

he shall be guilty of an offence.

....(3) In proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

....(4) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to a fine not exceeding £50,000;

(b) on conviction on indictment, to a fine.



Service of  
directions  
under section  
100C.

....100E. - (1) If the Secretary of State is satisfied that a company or other body is not one to which section 695 or section 725 of the Companies Act 1985 (service of notices) applies so as to authorise the service of a direction on that body under either of those sections, he may give a direction under section 100C of this Act 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.

....(2) For the purpose of giving or serving a direction under section 100C to or on any person on a ship, a person acting on behalf of the Secretary of State shall have the right to go on board the ship.

....(3) In the application of subsection (1) above to Northern Ireland, for references to sections 695 and 725 of the Companies Act 1985 there shall be substituted references to Articles 645 and 673 of the Companies (Northern Ireland) Order 1986."

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# FISHERY LIMITS ACT 1976

(1976 c 86)

## ARRANGEMENT OF SECTIONS

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*An Act to extend British fishery limits and make further provision in connection with the regulation of sea fishing* [22 December 1976]

**Transfer of functions.** By the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 2(3), Sch 1, the functions under this Act which are exercised by the Ministers, as defined by s 8 post, were transferred to those Ministers and the Secretary of State for Wales jointly.

**Northern Ireland.** This Act applies except as provided by s 10(1) post. See also s 10(2), (3) post.

*Extension of British fishery limits*

### 1 British fishery limits

(1) Subject to the following provisions of this section, British fishery limits extend to 200 miles from the baselines from which the breadth of the territorial sea adjacent to the United Kingdom, the Channel Islands and the Isle of Man is measured.

(2) Her Majesty may by Order in Council, for the purpose of implementing any international agreement or the arbitral award of an international body, or otherwise, declare that British fishery limits extend to such other line as may be specified in the Order.

(3) Where the median line defined below is less than 200 miles from the baselines referred to in subsection (1), and no other line is for the time being specified by Order in Council under subsection (2), British fishery limits extend to the median line.

(4) The median line is a line every point of which is equidistant from the nearest points of, on the one hand, the baselines referred to in subsection (1) and, on the other hand, the corresponding baselines of other countries.

(5) Subject to section 10(2)(b) below, references to British fishery limits in any enactment for the time being in force relating to sea fishing or whaling are to the limits set by or under this section.

### NOTES

**200 miles.** This distance is to be measured in a straight line on a horizontal plane; see the Interpretation Act 1978, s 8, Vol 41, title Statutes. Note the definition of "miles" in s 8 post.

**Baselines.** This expression is not defined in this Act, but new baselines in conformity with the Convention of the Law of the Sea (Cmnd 584), Annex III, Arts 3–13, signed at Geneva in 1958, were drawn. The promulgation of these baselines is an exercise of the Royal prerogative and, therefore, does not require the authority of an Act of Parliament. The new baselines were promulgated in Orders made by virtue of the Royal Prerogative on 25 September 1946 and on 23 May 1979. The 1964 Order was published in the London Gazette, 29 September 1964.

**Breadth of the territorial sea.** The breadth of the territorial sea adjacent to the United Kingdom has been extended from three to twelve nautical miles except where it may be otherwise provided by Order in Council; see the Territorial Sea Act 1987, s 1, Vol 49, title Water (Pt 1).

**United Kingdom.** In Great Britain and Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. "Great Britain" means England, Scotland and Wales by virtue of the Union with Scotland Act 1706, preamble, Art I, Vol 10, title Constitutional Law (Pt 1), as read with s 22(1) of, and Sch 2, para 5(a) to, the 1978 Act. Neither the Channel Islands nor the Isle of Man is within the United Kingdom.

**Channel Islands.** In the islands of Jersey, Guernsey, Alderney and Sark and their respective dependencies. The Channel Islands are not part of the United Kingdom (*Navigators and General Insurance Co Ltd v Ringrose* [1962] 1 All ER 97, [1962] 1 WLR 173, CA), though they are included in the "British Islands" as defined by

the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Acts of Parliament do not apply to the Channel Islands except by express mention or necessary implication. When an Act of Parliament is to apply there, it is sent to the Royal Courts of Jersey and Guernsey for registration. See further, 6 Halsbury's Laws (4th edn) paras 869 et seq.

**Isle of Man.** The Isle of Man is not part of the United Kingdom (*Davison v Farmer* (1851) 6 Exch 242), though it is included in the British Islands as defined by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Legislation passed by the Tynwald Court (or Tynwald) must be assented to by the Queen in Council. Legislation passed by the United Kingdom Parliament does not extend to the Isle of Man except by express mention or necessary implication and that which does so extend is confined to matters of special importance and non-local character. See further 6 Halsbury's Laws (4th edn) paras 879–881.

**Definitions.** For "enactment", "miles" and "sea fishing", see s 8 post. Note as to the median line, sub-s (4) above.

**Orders in Council under this section.** Up to 1 April 1991 no Order in Council had been made under sub-s (2) above.

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes.

As to the variation or revocation of Orders in Council, see s 6(2) post, and as to orders in respect of British fishery limits adjacent to Northern Ireland and the Republic of Ireland, note also s 10(3) post.

**Transitional provisions.** See s 9(2), Sch 3, para 9 post.

## 2 Access to British fisheries

(1) The Ministers may by order designate any country outside the United Kingdom, the Channel Islands and the Isle of Man and, in relation to it, areas within British fishery limits in which, and descriptions of sea fish for which, fishing boats registered in that country may fish.

(2) A foreign fishing boat not registered in a country for the time being designated under subsection (1) shall not enter British fishery limits except for a purpose recognised by international law or by any convention for the time being in force between Her Majesty's Government in the United Kingdom and the government of the country to which the boat belongs; and any such boat which enters those limits for such a purpose—

- (a) shall return outside the limits as soon as the purpose has been fulfilled; and
- (b) shall not fish or attempt to fish while within the limits.

(3) A foreign fishing boat registered in a country designated under subsection (1) shall not fish or attempt to fish within British fishery limits except in an area and for descriptions of fish for the time being designated under this section in relation to that country.

(4) At any time when a foreign fishing boat is in an area within British fishery limits and either—

- (a) it is prohibited by this section from fishing in that area at all; or
- (b) it is permitted under this section to fish only for certain descriptions of fish,

then, its fishing gear, or so much of the gear as is not required for permitted fishing, shall be stowed in accordance with an order made by the Ministers.

(5) If this section is contravened in the case of any fishing boat—

- (a) the master of the boat is liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine;
- (b) the court may on convicting him of an offence under this section order the forfeiture of any fish or fishing gear found in the boat or taken or used by any person from the boat; and
- (c) where the contravention takes place in Scotland, any fish or fishing gear forfeited under paragraph (b) above may be destroyed or disposed of as the court may direct.

(6) The foregoing provisions of this section do not prohibit or restrict fishing by fishing boats registered in a country outside the United Kingdom in any area with respect to which special provision is made by any arrangement between Her Majesty's

Government in the United Kingdom and the government of that country for fishing by such boats for the purpose of scientific research.

(7) Orders made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) Without prejudice to section 38 (1) of the Interpretation Act 1889 (references to provisions repealed and replaced), a reference to this section is substituted for every reference to section 6 of the Sea Fisheries Act 1968 in the following enactments, that is to say, in—

- (a) (*applies to Scotland only*);
- (b) . . . ;
- (c) section 17 (2) of the Sea Fish Industry Act 1962; and
- (d) sections 8 (1) . . . , 12 (1) and (2), 13 (2) and (4) and 14 of the Sea Fisheries Act 1968.

#### NOTES

Sub-s (8)(b) was repealed by the Merchant Shipping Act 1988, s 57(5), Sch 7.

The words omitted from sub-s 8(d) were repealed by the Fisheries Act 1981, s 46(2), Sch 5, Pt II.

**Sub-s (1): United Kingdom; Channel Islands; Isle of Man.** See the notes to s 1 ante.

**British fishery limits.** I.e. the limits set by or under s 1 ante; see s 1(5) ante. See also, however, s 10(2)(b) post.

**Sub-s (5): Is liable, etc.** For the procedure for determining the mode of trial of offences triable either summarily or on indictment, see the Magistrates' Courts Act 1980, ss 18 et seq, Vol 27, title Magistrates.

**Summary conviction.** Summary jurisdiction and procedure are mainly governed by the Magistrates' Courts Act 1980, Vol 27, title Magistrates, and by rules made under s 144 of that Act.

**Conviction on indictment.** All proceedings on indictment are to be brought before the Crown Court; see the Supreme Court Act 1981, s 46(1), Vol 11, title Courts. As to indictments and the trial thereof, see generally 11(2) Halsbury's Laws (4th edn reissue) paras 913 et seq, 942 et seq.

**Fine.** There is no specific limit to the amount of the fine which may be imposed on conviction on indictment, but the fine should be within the offender's capacity to pay; see, in particular, *R v Churchill* (No 2) [1967] 1 QB 190, [1966] 2 All ER 215, CCA (revsd on other grounds sub nom *Churchill v Walton* [1967] 2 AC 224, [1967] 1 All ER 497, HL) and *R v Garner and others* [1986] 1 All ER 78, [1986] 1 WLR 73, CA; and see also the Bill of Rights (1688), s 1, Vol 10, title Constitutional Law (Pt 1). As to when a fine may be imposed in addition to imprisonment, see *R v Garner* above.

**Sub-s (7): Subject to annulment.** For provisions as to annulment of statutory instruments in pursuance of a resolution of either House of Parliament, see the Statutory Instruments Act 1946, ss 5(1), 7(1), Vol 41, title Statutes.

**Further provisions.** See, in particular, by virtue of sub-s (8) above, the Sea Fisheries Act 1968, s 8(1)–(4) ante (enforcement of this section and orders thereunder by British sea fishery officers); s 12 of that Act ante (recovery of fines imposed on master); s 13 of that Act ante (compensation for damage caused by offence); s 14 of that Act ante (jurisdiction to try offences); and the Sea Fish Industry Act 1962, s 17 ante (exemption for operations for scientific and other purposes).

**Definitions.** For "fishing boat", "foreign fishing boat", "the Ministers" and "sea fish," see s 8 post.

See also as to "the Ministers", the Introductory Note "Transfer of functions" to this Act.

**Orders under this section.** The Fishing Boats (European Economic Community) Designation Order 1983, SI 1983/253, as amended by SI 1986/382 (made under sub-s (1) above); the Fishing Boats (Norway) Designation (Revocation) Order 1985, SI 1985/244 (made under sub-s (1) above).

By virtue of s 9(2), Sch 3, para 1 post, the following orders continue in force as if made under sub-s (1) above: the Fishing Boats (France) Designation Order 1965, SI 1965/1241, as revoked in part by SI 1972/2026; the Fishing Boats (Republic of Ireland) Designation Order 1965, SI 1965/1448, as revoked in part by SI 1972/2026; and the Fishing Boats (Belgium) Designation Order 1965, SI 1965/1569, as revoked in part by SI 1972/2026. The amending SI 1972/2026 was itself revoked by SI 1983/253. In addition by virtue of Sch 3, para 7 post, the Foreign Fishing Boats (Stowage of Gear) Order 1970, SI 1970/318, continues in force as if made under sub-s (4) above.

As to orders generally, see s 6 post; and note sub-s (7) above.

**Interpretation Act 1889, s 38.** Repealed by the Interpretation Act 1978, s 25(1), Sch 3, and replaced by s 17(2)(a) of, and Sch 2, para 3 to, that Act, Vol 41, title Statutes.

**Sea Fisheries Act 1968.** See this title ante; s 6 is repealed by s 9(3), Sch 4 post.

**Sea Fish Industry Act 1962.** See this title ante.

*Regulation of sea fishing, etc*

3, 4 (*S 3 substitutes the Sea Fish (Conservation) Act 1967, s 4 ante; s 4 amends the Sea Fisheries Act 1968, s 5 ante, and the Sea Fisheries (Scotland) Amendment Act 1885, s 10 (not printed in this work).*)

### 5 Revised penalties for offences

The enactments mentioned in Schedule 1 to this Act are amended as there provided, being amendments which revise the penalties for certain offences under enactments relating to sea fishing.

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#### NOTE

**Definitions.** For "enactment" and "sea fishing", see s 8 post.

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### *General*

### 6 Orders

(1) Orders made under any provision of this Act shall be made by statutory instrument.

(2) Power conferred by any provision of this Act to make an Order in Council or other order includes power to vary or revoke by a further Order in Council or order under that provision.

---

#### NOTES

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes.

**Vary or revoke.** The express power to vary or revoke orders is necessary because the Interpretation Act 1978, s 14, Vol 41, title Statutes, does not extend to powers to make such instruments contained in Acts passed before 1 January 1979; see s 22(1) of, and Sch 2, para 3 to, that Act.

---

### 7 Finance

(1) The Minister of Agriculture, Fisheries and Food may, with the approval of the Treasury, incur expenditure in employing officers and vessels and generally taking such measures as appear to him necessary to protect British fisheries.

(2) Expenses incurred by the Ministers which are attributable to the provisions of this Act, being—

- (a) such expenses as are referred to in subsection (1) above; or
- (b) increased administrative expenses,

shall be defrayed out of money provided by Parliament.

---

#### NOTES

**Treasury.** I.e. the Commissioners of HM Treasury; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Appear.** Statutory powers are often conferred in subjective terms, the competent authority being entitled to act, eg. when it "appears" to it or it is "satisfied" that, or when in its "opinion", a prescribed state of affairs exists, but the inherent jurisdiction of the courts to determine whether such powers have been exceeded is not readily ousted by the use of such language. See, further, 1 Halsbury's Laws (4th edn) para 22.

**British fisheries.** This expression is not defined, but cf s 1 ante, and s 10(2)(b) post.

**The Ministers.** For meaning, see s 8 post; and see also the Introductory Note "Transfer of functions" to this Act.

---

## 8 Interpretation

In this Act—

“enactment” includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;

“fishing boat” means any vessel for the time being employed in fishing operations or any operations ancillary thereto;

“foreign fishing boat” means a fishing boat which is not—

(a) registered in the United Kingdom, the Channel Islands or the Isle of Man; or

[(b) excluded from registration by (regulations under section 13 of the Merchant Shipping Act 1988; or

(c) owned wholly by one or more qualified persons or companies within the meaning of section 14 of the Merchant Shipping Act 1988];

“miles” means international nautical miles of 1,852 metres;

“the Ministers” means the Minister of Agriculture, Fisheries and Food and the Secretaries of State concerned with sea fishing in Scotland and Northern Ireland respectively;

“sea fish” includes shellfish, salmon and migratory trout, and “sea fishing” has a corresponding meaning.

## NOTES

In the definition of “foreign fishing boat”, paras (b), (c) were substituted by the Merchant Shipping Act 1988, s 57(4), Sch 6.

**Parliament of Northern Ireland.** That Parliament was established by the Government of Ireland Act 1920, s 1(1) (repealed), and it was abolished by the Northern Ireland Constitution Act 1973, s 31, Vol 31, title Northern Ireland (Pt 2). References to enactments of the Parliament of Northern Ireland include references to Orders in Council made during the period 30 March 1972 to 31 December 1973 under the Northern Ireland (Temporary Provisions) Act 1972, s 1(3), Vol 31, title Northern Ireland (Pt 2) (see that subsection), and references to Measures of the Northern Ireland Assembly (Northern Ireland Constitution Act 1973, s 40(1), Sch 5, para 1(1), (2), in the same title).

**Northern Ireland Assembly.** This Assembly was established by the Northern Ireland Assembly Act 1973, and further relevant provisions are contained in the Northern Ireland Constitution Act 1973, Pts II, IV, both Vol 31, title Northern Ireland (Pt 2). The Assembly elected under s 2 of the first-mentioned Act was dissolved in 1975 by Order in Council made under the Northern Ireland Act 1974, s 1(1), Vol 31, title Northern Ireland (Pt 2). Under Sch 1, para 1, to the 1974 Act, laws for Northern Ireland may be made by Order in Council during the interim period as defined by s 1(4) of that Act. By para 1(7) of that Schedule, references to Measures of the Northern Ireland Assembly include references to such Orders in Council.

Provision for the general or partial suspension of the system of direct rule introduced by Sch 1 to the 1974 Act may now be made by Order in Council made under the Northern Ireland Act 1982, s 2, Vol 31, title Northern Ireland (Pt 2), and the effect of any such Order is set out in Sch 1 to that Act. See also, in particular, s 3 of the 1982 Act, as to matters which may be considered by the Assembly pending general suspension of direct rule, and s 5 as to the dissolution of the Assembly and revocation of Orders in Council made under s 2 of the Act. A new Assembly was elected on 20 October 1982 (ie the day appointed by Order in Council made under the Northern Ireland Constitution Act 1973, s 27(7), as applied by s 1(1) of the 1974 Act), but direct rule was not suspended under the 1982 Act and the new Assembly was dissolved on 23 June 1986 by Order in Council made under s 5 of that Act.

**Fishing boat . . . registered in the United Kingdom.** As to the registration of British fishing vessels, see the Merchant Shipping Act 1988, Pt II (ss 12–25, Schs 2, 3), Vol 39, title Shipping and Navigation, and as to the registration of British ships generally, see ss 2 et seq of that Act. See also the note “United Kingdom” to s 1 ante.

**Channel Islands; Isle of Man.** See the notes to s 1 ante.

**The Ministers.** As to transfer of functions, see the Introductory Note “Transfer of functions” to this Act.

**Shellfish.** This expression is not defined in this Act, but cf the definition in the Sea Fisheries (Shellfish) Act 1967, s 22(2) ante.

**Merchant Shipping Act 1988, ss 13, 14.** See Vol 39, title Shipping and Navigation; and for the meaning of “qualified person” and “qualified company”, see s 14(7) thereof.

## 9 Amendments, transitional provisions and repeals

(1) The enactments mentioned in Schedule 2 to this Act are amended as there provided, being amendments consequential on the provisions of this Act.

(2) The transitional provisions in Schedule 3 to this Act have effect.

(3) The enactments mentioned in Schedule 4 to this Act are repealed to the extent there specified.

### NOTE

**Enactments.** For meaning, see s 8 ante.

## 10 Northern Ireland

(1) This Act, except the repeals in section 13 of the Sea Fisheries Act 1968 (compensation for damage caused by offence), extends to Northern Ireland.

(2) Subject to subsection (3) below,—

- (a) nothing in this Act affects the extent of British fishery limits in the waters adjacent both to Northern Ireland and the Republic of Ireland to a distance of 12 miles from the baselines from which the breadth of the respective territorial seas is measured; and
- (b) references to “British fishery limits” in any enactment for the time being in force relating to sea fishing or whaling shall be construed as including a reference to those limits as well as to the limits set by or under section 1 of this Act.

(3) The power conferred on Her Majesty by section 1(2) of this Act to declare the extent of British fishery limits by Order in Council includes power to declare the extent of the limits in the waters referred to its subsection (2)(a) above.

### NOTES

**Nothing in this Act affects the extent of British fishery limits.** As to British fishery limits generally, see s 1 ante.

**Republic of Ireland.** I.e. that part of Ireland previously officially known in this country as Eire and originally called the Irish Free State; see the Ireland Act 1949, s 1(1), (3), Vol 7, title Commonwealth and Other Territories (Pt 3(c)), in conjunction with the Eire (Confirmation of Agreements) Act 1938, s 1 (repealed).

**12 miles.** This distance is to be measured in a straight line on a horizontal plane, see the Interpretation Act 1978, s 8, Vol 41, title Statutes. Note the definition of “miles” in s 8 ante.

**Baselines; breadth of the . . . territorial seas; Order in Council.** See the notes to s 1 ante.

**Definitions.** For “enactment”, “miles” and “sea fishing”, see s 8 ante.

**Sea Fisheries Act 1968, s 13.** See this title ante.

**Transitional provision.** See s 9(2) ante, and Sch 3, para 9 post.

## 11 Isle of Man and Channel Islands

(1) Her Majesty may by Order in Council make such provision for the Isle of Man and the Channel Islands as appears to Her Majesty to be necessary in consequence of the extension of British fishery limits by or under this Act.

(2) Such an Order may, in particular, specify waters adjacent to the Isle of Man or any of the Channel Islands as waters to which enactments relating to sea fishing or whaling apply—

- (a) by virtue of having been extended by Order in Council to the Isle of Man or any of the Channel Islands; and
- (b) with the exceptions, adaptations and modifications (if any) specified in the extending Order.



(3) Her Majesty may by Order in Council direct that all or any of the provisions of sections 2 (2) to (7), 3, 4, 5, 8 and 9 and of the Schedules to this Act—

- (a) shall extend, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, to the Isle of Man or any of the Channel Islands;
- (b) shall apply, with such exceptions, adaptations and modifications as may be specified in the Order, in relation to British fishing boats registered in the Isle of Man or any of the Channel Islands as they apply in relation to British fishing boats registered in the United Kingdom.

#### NOTES

**Isle of Man; Channel Islands.** See the notes to s 1 ante.

**Extension of British fishery limits by or under this Act.** See s 1 ante.

**British fishing boats.** This expression is not defined in this Act, but cf the definition of "foreign fishing boat" in s 8 ante, and the definition of "British fishing boat" in the Sea Fish (Conservation) Act 1967, s 4(12) ante.

**Fishing boats registered in the United Kingdom.** See the note to s 8 ante.

**Definitions.** For "enactment", "fishing boat" and "sea fishing", see s 8 ante.

**Orders in Council under this section.** See the Sea Fish (Conservation) (Isle of Man) Order 1977, SI 1977/1244; the Sea Fish (Conservation) (Channel Islands Boats) Order 1978, SI 1978/280; the Sea Fish (Conservation) (Manx Boats) Order 1978, SI 1978/281; and the Fishery Limits Act 1976 (Guernsey) Order 1989, SI 1989/2407.

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes.

As to the variation or revocation of Orders in Council, see s 6(2) ante.

#### 12 Short title and commencement

(1) This Act may be cited as the Fishery Limits Act 1976.

(2) The provisions of this Act come into force on such day as the Ministers may by order appoint and different days may be appointed for different provisions and for different purposes.

(3) Without prejudice to subsection (2) orders under that subsection may so provide that the extension of British fishery limits by section 1 of this Act comes into force on different days in relation to different parts of the United Kingdom, the Channel Islands and the Isle of Man.

(4) An order under subsection (2) may contain such supplementary, incidental and transitional provisions as appear to the Ministers to be necessary or expedient in connection with the provisions of this Act which are thereby brought (wholly or partly) into operation, including such adaptations of those provisions then in force as appear to the Ministers to be necessary or expedient in consequence of their partial operation (whether before, on or after the day appointed by the order).

#### NOTES

**The Ministers.** For meaning, see s 8 ante; see also the Introductory Note "Transfer of functions" to this Act.

**United Kingdom; Channel Islands; Isle of Man.** See the notes to s 1 ante.

**Appear.** See the note to s 7 ante.

**Order under this section.** The Fishery Limits Act 1976 (Commencement) Order 1976, SI 1976/2215, bringing this Act into force on 1 January 1977.

As to orders generally, see s 6 ante.

**Transitional provisions.** See s 9(2) ante, and Sch 3, paras 8(3), 9 post.

“the high seas” means the seas outside the seaward limits of the territorial waters adjacent to the United Kingdom or to any country or territory outside the United Kingdom;  
 “ship” includes every description of vessel used in navigation;  
 “wireless telegraphy”, “wireless telegraphy apparatus” and “wireless telegraphy licence” have the same meanings respectively as in the Wireless Telegraphy Act 1949.

(2) ...

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**NOTES**

Sub-s (2) was repealed by the Territorial Sea Act 1987, s 3(4), Sch 2.  
**United Kingdom.** See the note to s 1 ante.  
**Territorial waters.** See the note to the Wireless Telegraphy Act 1949, s 6 ante.  
**Ship.** This includes hovercraft; see the Introductory Note “Hovercraft” to this Act.  
**Wireless Telegraphy Act 1949.** For “wireless telegraphy licence”, see s 1(2) of that Act ante, and for “wireless telegraphy” and “wireless telegraphy apparatus”, see s 19(1) thereof ante.

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**10 Power to extend Act to Isle of Man and Channel Islands**

(1) Her Majesty may by Order in Council direct that this Act shall extend to the Isle of Man or any of the Channel Islands, with such exceptions, adaptations and modifications as may be specified in the Order.

(2) An Order in Council under this section may be varied or revoked by a subsequent Order of Her Majesty in Council.

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**NOTES**

**Isle of Man.** The Isle of Man is not part of the United Kingdom (*Davison v Farmer* (1851) 6 Exch 242), though it is included in the British Islands as defined by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Legislation passed by the Tynwald Court (or Tynwald) must be assented to by the Queen in Council. Legislation passed by the United Kingdom Parliament does not extend to the Isle of Man except by express mention or necessary implication and that which does so extend is confined to matters of special importance and non-local character. See further 6 Halsbury’s Laws (4th edn reissue) paras 848–850.

**Channel Islands.** ie the islands of Jersey, Guernsey, Alderney and Sark and their respective dependencies. The Channel Islands are not part of the United Kingdom (*Navigators and General Insurance Co Ltd v Ringrose* [1962] 1 All ER 97, [1962] 1 WLR 173, CA), though they are included in the “British Islands” as defined by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Acts of Parliament do not apply to the Channel Islands except by express mention or necessary implication. When an Act of Parliament is to apply there, it is sent to the Royal Courts of Jersey and Guernsey for registration. See further, 6 Halsbury’s Laws (4th edn reissue) paras 838 et seq.

**Varied or revoked.** The express power to vary or revoke Orders in Council is necessary because the Interpretation Act 1978, s 14, Vol 41, title Statutes, does not extend to powers to make such instruments contained in Acts passed before 1 January 1979; see s 22(1) of, and Sch 2, para 3 to, that Act.

**Orders in Council under this section.** The Marine, &c, Broadcasting (Offences) (Guernsey) Order 1967, SI 1967/1274; the Marine, &c, Broadcasting (Offences) (Jersey) Order 1967, SI 1967/1275; the Marine, &c, Broadcasting (Offences) (Isle of Man) Order 1967, SI 1967/1276.

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes.

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**11 Short title and commencement**

(1) This Act may be cited as the Marine, &c, Broadcasting (Offences) Act 1967.

(2) This Act shall not come into operation before the expiry of one month beginning with the day on which it is passed, but subject thereto it shall come into operation on a day to be appointed by Her Majesty in Council.

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**NOTES**

**Day on which it was passed.** This Act was passed, ie received the Royal Assent, on 14 July 1967.

**Day to be appointed.** The Marine, &c, Broadcasting (Offences) Act 1967 (Commencement) Order 1967, SI 1967/1149, appointed 15 August 1967 as the date for the coming into operation of the Act.

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1997 No. 1750

**SEA FISHERIES**

**The Fishery Limits Order 1997**

*Made - - - - - 22nd July 1997*

*Coming into force in accordance with Article 1*

At the Court at Buckingham Palace, the 22nd day of July 1997

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 1(2) of the Fishery Limits Act 1976(a) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Fishery Limits Order 1997 and shall come into force on the date on which the United Nations Convention on the Law of the Sea(b) enters into force in respect of the United Kingdom. This date shall be notified in the London, Edinburgh and Belfast Gazettes.

2. It is hereby declared that between Latitude 56° 17' 22"N, Longitude 10° 15' 38"W and Latitude 60° 02' 16"N, Longitude 10° 29' 21"W, British fishery limits extend to the lines specified in the Schedule to this Order.

*N. H. Nicholls*  
Clerk of the Privy Council

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(a) 1976 c. 86.  
(b) Cmnd. 8941.

## SCHEDULE

The lines referred to in Article 2 of the Order are those of the type described in Column 2 joining the co-ordinates on WGS 84 Datum specified in Column 1:

<i>Column 1</i>		<i>Column 2</i>
<i>Co-ordinates of Latitude and Longitude</i>		<i>Line type</i>
1.	56° 17' 22"N      10° 15' 38"W	
2.	56° 23' 05"N      11° 15' 28"W	1-2 Geodesic
3.	56° 21' 12"N      11° 41' 47"W	2-3 Geodesic
4.	56° 21' 10"N      11° 42' 36"W	3-4 Geodesic
5.	56° 21' 06"N      11° 44' 01"W	4-5 Geodesic
6.	56° 20' 48"N      11° 52' 54"W	5-6 Geodesic
7.	56° 23' 28"N      12° 18' 29"W	6-7 Geodesic
8.	56° 27' 34"N      12° 59' 54"W	7-8 Geodesic
9.	56° 34' 47"N      14° 19' 49"W	8-9 Geodesic
10.	57° 00' 00"N      14° 37' 09"W	9-10
11.	57° 52' 22"N      14° 53' 22"W	10-11
12.	58° 30' 00"N      14° 48' 58"W	11-12
13.	59° 00' 00"N      14° 35' 07"W	12-13
14.	59° 40' 54"N      13° 58' 10"W	13-14
15.	60° 09' 01"N      13° 16' 10"W	14-15
16.	60° 07' 47"N      12° 16' 38"W	15-16 Geodesic
17.	60° 04' 34"N      11° 40' 55"W	16-17 Geodesic
18.	60° 02' 16"N      10° 29' 21"W	17-18 Geodesic

9-10	}	arcs of 200
10-11	}	nautical miles
11-12	}	measured from the baselines
12-13	}	from which the territorial
13-14	}	sea of Saint Kilda
14-15	}	is measured

# SEA FISHERIES ACT 1968

(1968 c 77)

## ARRANGEMENT OF SECTIONS

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*An Act to make further provision with respect to the subsidies payable to, and the levies which may be imposed on, the white fish and herring industries, to make further provision for the*

*regulation of sea fishing, to amend the Sea Fisheries (Shellfish) Act 1967 and the Sea Fish (Conservation) Act 1967, to make provision with respect to fishing boats and gear lost or abandoned at sea, to remove anomalies in certain enactments relating to sea fisheries and the white fish and herring industries and to repeal other such enactments which are obsolete or unnecessary; and for connected purposes* [18 December 1968]

**Northern Ireland.** This Act applies except to the extent that it affects enactments which do not extend to Northern Ireland.

1-4 (*Repealed by the Sea Fish Industry Act 1970, s 61, Sch 6, Pt I.*)

### *Regulation of sea fishing operations*

## **5 Regulation of conduct of fishing operations**

(1) The Ministers may, [whenever it appears to them necessary or expedient], by order make provision for regulating the conduct of, and safeguarding, fishing operations and operations ancillary thereto, including provision with respect to the identification and marking of fishing boats and fishing gear.

(2) The provisions of any order under subsection (1) above shall, except as provided by the order, apply—

- (a) to all British fishing boats, and things done by such boats and their crews, [wherever they may be], and
- (b) to all foreign fishing boats, and things done by such boats and their crews, in [waters within British fishery limits].

(3) The Ministers may by order make such provision as is mentioned in subsection (1) above with respect to foreign fishing boats which, in pursuance of an arrangement for the time being in force between Her Majesty's Government in the United Kingdom and the government of any other country, enter [British fishery limits] for the purpose of carrying on fishing operations or operations ancillary thereto, including provisions regulating the movement of those boats within those limits.

(4) Where a provision of an order under this section is not complied with in the case of a fishing boat or its crew, any person prescribed by the order in relation to that provision, being one or more of the following, that is to say the master, the owner, and the charterer, if any, shall be liable on summary conviction [to a fine not exceeding [the prescribed sum]] [or on conviction on indictment to a fine].

(5) The provisions of any order under this section shall be taken to be in addition to and not to derogate from the provisions of any other enactment or any instrument made under any other enactment.

### **NOTES**

The words in square brackets in sub-ss (1), (2), (3), and those in the first pair of square brackets in sub-s (4) were substituted by the Fishery Limits Act 1976, ss 4(1)-(3), 5, 9(1), Sch 1, para 3(1), Sch 2, para 17(1).

The reference to "the prescribed sum" in sub-s (4) is substituted by virtue of the Magistrates' Courts Act 1980, s 32(2), Vol 27, title Magistrates.

The words in the third pair of square brackets in sub-s (4) were added by the Fisheries Act 1981, s 24(2).

**Transfer of functions.** By the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 2(3), Sch 1, the Ministerial functions under this section and s 7 post of the Ministers as defined in s 19(1) post are transferred to those Ministers and the Secretary of State for Wales acting jointly.

**Appears.** Statutory powers are often conferred in subjective terms, the competent authority being entitled to act, eg, when it "appears" to it or it is "satisfied" that, or when in its "opinion", a prescribed state of affairs exists, but the inherent jurisdiction of the courts to determine whether such powers have been exceeded is not readily ousted by the use of such language. See, further, 1 Halsbury's Laws (4th edn) para 22.

**British fishery limits.** ie the limits set by or under the Fishery Limits Act 1976, s 1 post; see s 1(5) of that Act post.

**Shall be liable, etc.** For the procedure for determining the mode of trial of offences triable either summarily or on indictment, see the Magistrates' Courts Act 1980, ss 18 et seq, Vol 27, title Magistrates.

**Summary conviction.** Summary jurisdiction and procedure are mainly governed by the Magistrates' Courts Act 1980, Vol 27, title Magistrates, and by rules made under s 144 of that Act.

**Prescribed sum.** Is the prescribed sum within the meaning of the Magistrates' Courts Act 1980, s 32, Vol 27, title Magistrates; see the Criminal Justice Act 1982, s 74(1), in the same title. By s 32(9) of the 1980 Act, as amended, the prescribed sum is £2,000 but a different amount may be substituted by order under s 143(1) of that Act.

**Conviction on indictment.** All proceedings on indictment are to be brought before the Crown Court; see the Supreme Court Act 1981, s 46(1), Vol 11, title Courts. As to indictments and the trial thereof, see generally 11(2) Halsbury's Laws (4th edn reissue) paras 913 et seq, 942 et seq.

**Fine.** There is no specific limit to the amount of the fine which may be imposed on conviction on indictment, but the fine should be within the offender's capacity to pay; see, in particular, *R v Churchill* (No 2) [1967] 1 QB 190, [1966] 2 All ER 215, CCA (revsd on other grounds sub nom *Churchill v Walton* [1967] 2 AC 224, [1967] 1 All ER 497, HL) and *R v Garner and others* [1986] 1 All ER 78, [1986] 1 WLR 73, CA; and see also the Bill of Rights (1688), s 1, Vol 10, title Constitutional Law (Pt 1). As to when a fine may be imposed in addition to imprisonment, see *R v Garner* above.

**Further provisions.** See, in particular, s 8(1)–(4) post (enforcement of orders under this section by British sea-fishery officers) (and cf s 9 post (powers of sea-fishery officers to enforce conventions)); s 12 post (recovery of fines imposed on master, owner or charterer); s 13 post (compensation for damage caused by offence); and s 14 post (jurisdiction to try offences).

**Definitions.** For "British fishing boat", "foreign fishing boat", "enactment", "fishing boat", "master" and "the Ministers", see s 19(1) post.

**Order under this section.** Up to 1 April 1991, no order had been made under this section.

For general provisions as to orders, see s 18 post.

**6** (*Repealed by the Fishery Limits Act 1976, s 9(1), (3), Sch 2, para 17(2), Sch 4, subject to a saving in Sch 3, para 7 to that Act post.*)

## 7 Sea-fishery officers

(1) The following persons shall be British sea-fishery officers for the purposes of the Sea Fisheries Acts, that is to say—

- (a) officers of the sea-fishery inspectorates of each of the appropriate Ministers other than assistant fishery officers;
- (b) commissioned officers of any of Her Majesty's ships;
- (c) persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force;
- (d) officers of the fishery protection service of the Secretary of State holding the rank of commander, first officer or second officer;
- (e), (f) . . .
- (g) other persons appointed as British sea-fishery officers by one of the appropriate Ministers.

(2) The appropriate Minister may appoint any person to exercise and perform the powers and duties of a British sea-fishery officer subject to such limitations as may be specified in the instrument appointing him; and for the purposes of the Sea Fisheries Act a person so appointed shall be a British sea-fishery officer within those limitations, but not otherwise.

(3) An appointment made under subsection (2) above may be limited in any one or more of the following ways, that is to say—

- (a) to particular matters;
- (b) to a particular area;
- (c) to a particular order or class of orders.

(4) In this Act, "foreign sea-fishery officer", in relation to any convention with respect to the conduct or safeguarding of fishing operations or operations ancillary thereto to which Her Majesty's Government in the United Kingdom is a party, means a person of any class specified in an order made by the Ministers, being a person appointed by the government of any other country which is a party to the convention to enforce its



provisions or any other person having power under the laws of that other country to enforce those provisions.

(5) In this section "the appropriate Minister" means—

- (a) in relation to England and Wales, the Minister of Agriculture, Fisheries and Food;
- (b) in relation to Scotland, the Secretary of State; and
- (c) in relation to Northern Ireland, the [Department] of Agriculture for Northern Ireland.

#### NOTES

Sub-s (1)(e), (f) were repealed by the Fisheries Act 1981, ss 26(1), 46(2), Sch 5, Pt II.

The word in square brackets in sub-s (5)(c) is substituted by virtue of the Northern Ireland Constitution Act 1973, s 40, Sch 5, para 8(1), Vol 31, title Northern Ireland (Pt 2).

**Transfer of functions.** See the note to s 5 ante.

**British sea-fishery officer.** A British sea-fishery officer may perform certain functions of an investigating officer and of an enforcement officer under the Food and Environment Protection Act 1985; see s 3(4) of that Act, title Food post.

**Further provisions.** See s 8 post (general powers of British sea-fishery officers); s 9 post (powers of sea-fishery officers to enforce conventions); s 10 post (miscellaneous provisions); and s 11 post (evidence).

**Definitions.** For "convention", "the Ministers" and "Sea Fisheries Acts", see s 19(1) post. Note as to "the appropriate Minister", sub-s (5) above.

**Orders under this section.** The Foreign Sea-Fishery Officers Order 1973, SI 1973/1998; and the Foreign Sea-Fishery Officers Order 1976, SI 1976/1103.

For general provisions as to orders, see s 18 post.

### 8 General powers of British sea-fishery officers

(1) For the purpose of enforcing the provisions of any order under section 5 above or [section 2 of the Fishery Limits Act 1976] or any order thereunder a British sea-fishery officer may exercise in relation to any fishing boat within [British fishery limits] and in relation to any British fishing boat anywhere outside those limits the powers conferred by subsections (2) to (4) below.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose mentioned in subsection (1) above and, in particular,—

- (a) may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him to be necessary for facilitating the examination; and
- [(b) may require any person on board the boat to produce any document relating to the boat, to its fishing operations or other operations ancillary thereto or to the persons on board which is in his custody or possession and may take copies of any such document;
- (c) for the purpose of ascertaining whether the master, owner or charterer of the boat has committed an offence under any of the provisions mentioned in subsection (1) above, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search;
- (d) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence;

but nothing in paragraph (d) above shall permit any document required by law to be

carried on board the boat to be seized and detained except while the boat is detained in a port].

[(4) Where it appears to a British sea-fishery officer that a contravention of any provision of an order under section 5 above or of section 2 of the Fishery Limits Act 1976 or any order thereunder has at any time taken place within British fishery limits, he may—

- (a) require the master of the boat in relation to which the contravention took place to take, or may himself take, the boat and its crew to the port which appears to him to be the nearest convenient port; and
- (b) detain or require the master to detain the boat in the port;

and where such an officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.]

(5) If it appears to a British sea-fishery officer that a British fishing boat or a fishing boat belonging to a country which is party to a convention to which Her Majesty's Government in the United Kingdom is a party is being so navigated or stationed as to interfere or be likely to interfere with fishing operations which are being carried on, or about to be carried on, within [British fishery limits], he may require the boat to move away or to move in a direction or to a position specified by him.

(6) For the purpose of enforcing the collision regulations made under section 418 of the Merchant Shipping Act 1894, so far as they apply to fishing boats, a British sea-fishery officer may exercise, in relation to any fishing boat within [British fishery limits] and in relation to a British fishing boat anywhere outside those limits, the powers conferred by section 723(1) of that Act (enforcement), whether or not he is mentioned in that subsection, and also the powers conferred by the foregoing provisions of this section, and section 723(2) of that Act so far as it relates to the former powers shall apply accordingly.

#### NOTES

The words in square brackets in sub-ss (1), (5), (6) were substituted by the Fishery Limits Act 1976, ss 2(8), 9(1), Sch 2, para 17(1).

The words in square brackets in sub-s (3) were substituted for the original sub-s (3)(b) by the Fisheries Act 1981, s 26(2), and sub-s (4) was substituted by s 26(3) of that Act.

**Sub-s (1): British sea-fishery officer.** As to these officers, see s 7(1)–(3), (5) ante.

**British fishery limits.** See the note to s 5 ante.

**Sub-s (3): Appears.** See the note to s 5 ante.

**Produce any document.** As to production of certificates and other documents for certain purposes to British sea fishery officers for the purposes of the Sea Fisheries Acts within the meaning of this Act, see the Merchant Shipping Act 1970, s 95(1), Sch 2, para 3, Vol 39, title Shipping and Navigation.

**In his custody; possession.** "Custody" means physical custody and "control" imports the notion of the power to direct what shall be done with the property in question, and these words are intended to provide a clearer concept than "possession" which is a technical term of some difficulty; see *Warner v Metropolitan Police Comr* [1969] 2 AC 256, [1968] 2 All ER 356, HL. It is thought that the word "possession" must be construed in a popular and not in a narrow sense; both in the commercial world and in connection with the criminal law "possession" has been given a broad interpretation covering something more than actual physical possession, including cases where, eg, a man has the right on demand to recover goods from a bailee (*Webb v Baker* [1916] 2 KB 753, 86 LJKB 36; *Oliver v Goodger* [1944] 2 All ER 481; *Towers & Co Ltd v Gray* [1961] 2 QB 351, [1961] 2 All ER 68).

The leading case on the nature of statutory offences of possession of prohibited articles or substances, and whether a person is to be deemed to have been in possession of such an article or substance when to his knowledge he was in physical possession of it but was unaware of its true nature, is *Warner v Metropolitan Police Comr* [1969] 2 AC 256, [1968] 2 All ER 356, HL.

On the meaning of "possession" or "possession for sale", see also *Bull v Lord* (1908) 9 LGR 829; *Walkling Ltd v Robinson* (1929) 99 LJKB 171, [1929] All ER Rep 658; *Kilsby v Horsford* (1949) 93 Sol Jo 601; *Challand v Bartlett* [1953] 2 All ER 832, [1953] 1 WLR 1105; *Melias Ltd v Preston* [1957] 2 QB 380, [1957] 2 All ER 449; *Lockyer v Gibb* [1967] 2 QB 243, [1966] 2 All ER 653; *Ben Worsley Ltd v Harvey* [1967] 2 All ER 507, [1967] 1 WLR 889; *R v Hussain* [1969] 2 QB 567, [1969] 2 All ER 1117, CA; *R v Graham* [1969] 2 All ER

1181, [1970] 1 WLR 113, CA; *R v Worsell* [1969] 2 All ER 1183, [1970] 1 WLR 111; *R v Fernandez* [1970] Crim LR 227, CA; *R v Marriott* [1971] 1 All ER 595, [1971] 1 WLR 187, CA; *R v Buswell* [1972] 1 All ER 75, [1972] 1 WLR 64, CA; *R v Howells* [1977] QB 614, [1977] 3 All ER 417, CA; *R v Carver* [1978] QB 472, [1978] 3 All ER 60, CA; *Bellerby v Carle* [1983] 2 AC 101, [1983] 1 All ER 1031, HL; and *R v Martindale* [1986] 3 All ER 25, CA.

**Reason to suspect.** It is submitted that these words require not only that the person in question has reason to suspect but also that he does actually suspect; see *R v Banks* [1916] 2 KB 621, [1916-17] All ER Rep 356, and *R v Harrison* [1938] 3 All ER 134, 159 LT 95; and see also *Nakkuda Ali v Jayaratne* [1951] AC 66, PC.

The existence of the reason to suspect and of the suspicion founded on it is ultimately a question of fact to be tried on evidence and the grounds on which the person acted must be sufficient to induce in a reasonable person the required suspicion; see in particular, *McArdle v Egan* (1933) 150 LT 412, [1933] All ER Rep 611, CA; *Nakkuda Ali v Jayaratne* supra; *Registrar of Restrictive Trading Agreements v W H Smith & Son Ltd* [1969] 3 All ER 1065 at 1070, [1969] 1 WLR 1460 at 1468, CA per Lord Denning MR; and *IRC v Rossminster Ltd* [1980] AC 952, [1980] 1 All ER 80 at 84, 92, 103, 104, HL.

**Sub-s (4): Writing.** Unless the contrary intention appears this includes other modes of representing or reproducing words in a visible form; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Enforcement of Community rules.** This section has effect in relation to enforceable Community restrictions relating to sea fishing as it has effect in relation to the provisions mentioned in sub-s (1) above, except where, or except to the extent that, other provision is made by an order under the Fisheries Act 1981, s 30(2) post; see s 30(1) of that Act post. As to such orders, see the note to that section post.

**Further provisions.** See, in particular, s 9 post (powers to enforce conventions); s 10 post (miscellaneous provisions); the Sea Fisheries Act 1868, s 26(4) ante (application of sub-s (4) above in relation to the contravention of s 26(1) or (2) of the 1868 Act); and the Sea Fish (Conservation) Act 1967, s 15(3) ante (application of sub-ss (2)-(4) above for purposes of enforcement of provisions of the 1967 Act).

**Application to registered British fishing vessels.** This section and s 9 post apply in relation to the Merchant Shipping Act 1988, Pt II (registration of British fishing vessels) and any regulations thereunder, as they apply in relation to any order mentioned in this section and in relation to any convention mentioned in s 9 post respectively; and ss 10-12, 14 post apply accordingly (see s 25(3) of the 1988 Act, Vol 39, title Shipping and Navigation).

**Definitions.** For "British fishing boat", "convention", "fish", "fishing boat" and "master", see s 19(1) post.

**Fishery Limits Act 1976, s 2.** See this title post.

**Merchant Shipping Act 1894, ss 418, 723.** See Vol 39, title Shipping and Navigation. S 418 of that Act was repealed, except in its application to seaplanes, by the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1983, SI 1983/708, reg 1(4). See now the Merchant Shipping Act 1979, s 21, Vol 39, title Shipping and Navigation.

## 9 Powers of sea-fishery officers to enforce conventions

(1) For the purpose of enforcing the provisions of any convention with respect to the conduct or safeguarding of fishing operations to which Her Majesty's Government in the United Kingdom is a party a foreign sea-fishery officer may, in relation to a British fishing boat, and a British sea-fishery officer may, in relation to any foreign fishing boat, exercise anywhere within the convention area outside [British fishery limits] the powers conferred by section 8(2) and (3) above.

(2) Nothing in this section shall authorise a British or foreign sea-fishery officer to do anything not authorised by the convention he is purporting to enforce or authorise him to exercise in relation to a boat belonging to a country which is a party to the convention any power which the government of that country has informed the other parties to the convention is not to be exercised in relation to its fishing boats.

### NOTES

The words in square brackets in sub-s (1) were substituted by the Fishery Limits Act 1976, s 9(1), Sch 2, para 17(1).

**British sea-fishery officer.** As to these officers, see s 7(1)-(3), (5) ante.

**British fishery limits.** See the note to s 5 ante.

**Further provisions.** See, in particular, s 8 ante (general powers of British sea-fishery officers); and s 10 post (miscellaneous provisions).

**Application to registered British fishing vessels.** See the note to s 8 ante.

**Definitions.** For "foreign sea-fishery officer", see s 7(4) ante; for "British fishing boat", "convention", "convention area", "fishing boat" and "foreign fishing boat", see s 19(1) post.

## 10 Miscellaneous provisions as to sea-fishery officers

[(1) A British sea-fishery officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by section 8 or 9 of this Act, section 15 of the Sea Fish (Conservation) Act 1967 or section 27 of the Fisheries Act 1981, and a foreign sea-fishery officer shall not be liable in any such proceedings for anything done in purported exercise of the powers conferred on him by section 9 of this Act, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.]

(2) Any person who on any fishing boat within [British fishery limits], or on a British fishing boat anywhere outside those limits,—

- (a) fails [without reasonable excuse] to comply with any requirement imposed, or to answer any question asked, by a British sea-fishery officer under section 8 or 9 of this Act;
- (b) prevents, or attempts to prevent, any other person from complying with any such requirement or answering any such question; or
- (c) assaults any such officer while exercising any of the powers conferred on him by or by virtue of section 8 or 9 of this Act or [wilfully obstructs] any such officer in the exercise of any of those powers;

shall be guilty of an offence.

[(2A) Any person who on any vessel within British fishery limits—

- (a) fails without reasonable excuse to comply with any requirement imposed, or to answer any question asked, by a British sea-fishery officer under section 27 of the Fisheries Act 1981;
- (b) prevents, or attempts to prevent, any other person complying with any such requirement or answering any such question; or
- (c) assaults any such officer while exercising any of the powers conferred on him by that section or wilfully obstructs any such officer in the exercise of any of those powers;

shall be guilty of an offence.]

(3) Subsection (2) above shall apply in relation to things done on a British fishing boat anywhere within the convention area outside [British fishery limits] by or in relation to a foreign sea-fishery officer who is exercising powers to enforce the provisions of the convention relating to that area as it applies in relation to things done on any fishing boat within those limits by or in relation to a British sea-fishery officer.

(4) A person guilty of an offence under this section shall be liable [on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to a fine].

### NOTES

Sub-s (1), the words in square brackets in sub-s (2)(c) and the words in square brackets in sub-s (4) were substituted by the Fisheries Act 1981, ss 26(4), (5)(b), 24(3), respectively, and the words in square brackets in sub-s (2)(a) and the whole of sub-s (2A) were inserted by s 26(5)(a), (6) of that Act, respectively.

The words in the first pair of square brackets in sub-s (2) and the words in square brackets in sub-s (3) were substituted by the Fishery Limits Act 1976, s 9(1), Sch 2, para 17(1).

**Sub-s (1): British sea-fishery officer.** As to these officers, see s 7(1)–(3), (5) ante.

**Sub-s (2): British fishery limits.** See the note to s 5 ante.

**Reasonable excuse.** What is a reasonable excuse is largely a question of fact: cf *Leck v Epsom RDC* [1922] 1 KB 383, [1922] All ER Rep 784. Yet it is clear that ignorance of the statutory provisions provides no reasonable excuse (cf *Aldridge v Warwickshire Coal Co Ltd* (1925) 133 LT 439, CA), nor does a mistaken view of the effect of those provisions (*R v Philip Reid* [1973] 3 All ER 1020, [1973] 1 WLR 1283, CA). Quære whether reliance on the advice of an expert can amount to a reasonable excuse; see *Saddleworth UDC v Aggregate and Sand Ltd* (1970) 69 LGR 103.

Once evidence of a reasonable excuse emerges, it is for the prosecution to eliminate the existence of that defence to the satisfaction of the court: see *R v Clarke* [1969] 2 All ER 1008, [1969] 1 WLR 1109, CA.

**Attempts.** Attempts to commit an offence. As to when a person may be guilty of an attempt to commit

an offence under [this section] [sub-s ( ) above], see the Criminal Attempts Act 1981, s 3, Vol 12, title Criminal Law; and for provisions as to trial and evidence, see s 4(2), (4) of that Act. On attempts generally, see 11(1) Halsbury's Laws (4th edn reissue) paras 71 et seq.

**Wilfully obstructs.** Obstruction need not involve physical violence; see, in particular, *Borrow v Howland* (1896) 74 LT 787, and *Hinchliffe v Sheldon* [1955] 3 All ER 406, [1955] 1 WLR 1207. In fact there is authority for saying that anything which makes it more difficult for a person to carry out his duty amounts to obstruction; see *Hinchliffe v Sheldon* [1955] 3 All ER 406 at 408 per Lord Goddard CJ. Thus merely giving a warning to some other person may amount to obstruction of the person carrying out his duty; see *Green v Moore* [1982] QB 1044, [1982] 1 All ER 428, and *Moore v Green* [1983] 1 All ER 663. Yet standing by and doing nothing is not obstruction unless there is a legal duty to act; see *Swallow v LCC* [1916] 1 KB 224, [1914-15] All ER Rep 403; and contrast *Baker v Ellison* [1914] 2 KB 762; but see *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649. However, a positive act does not cease to be obstructive just because it is lawful in itself; see *Dibble v Ingleton* [1972] 1 QB 480, sub nom *Ingleton v Dibble* [1972] 1 All ER 275.

Obstruction must, however, to be an offence under this section, be wilful; and an act is done wilfully if it is deliberate and intentional, not accidental or inadvertent, but so that the mind of the person who does the act goes with it; see *R v Senior* [1899] 1 QB 283 at 290, 291, [1895-9] All ER Rep 511 at 514 per Lord Russell of Killowen. It is therefore necessary to prove that the act in question was done with the intention of obstructing and intervention with the intention of assisting the person obstructed is not an offence; see *Willmott v Atack* [1977] QB 498, [1976] 3 All ER 794. Provided, however, that the person charged intended to do an act which amounted to obstruction, it is immaterial that he did not appreciate that what he did amounted in law to obstruction or that his actions were not aimed primarily at the person obstructed; see *Moore v Green* above; *Hills v Ellis* [1983] QB 680, [1983] 1 All ER 667; and *Lewis v Cox* [1984] 3 All ER 672. See also *R v Walker* (1934) 24 Cr App Rep 117; *Eaton v Cobb* [1950] 1 All ER 1016, 114 JP 271; *Arrowsmith v Jenkins* [1963] 2 QB 561, [1963] 2 All ER 210; *Rice v Connolly* above; *Dibble v Ingleton* above; *Wershof v Metropolitan Police Comr* [1978] 3 All ER 540, [1978] Crim LR 424; and *R v Sheppard* [1981] AC 394, [1980] 3 All ER 899, HL.

**Guilty of an offence.** See, as to the penalties for offences under this section, sub-s (4) above, and for further provisions as to offences under this section, see ss 12-14 post.

**Sub-s (4): Shall be liable, etc; summary conviction; conviction on indictment; fine.** See the notes to s 5 ante.

**Further provisions.** See s 12 post (recovery of fines imposed on master, etc, or crew); s 13 post (compensation for damage caused by offence); s 14 post (jurisdiction to try offences); and the Sea Fish (Conservation) Act 1967, s 15(5) ante (application of this section for purposes of enforcement of the 1967 Act).

**Application to registered British fishing vessels.** See the note to s 8 ante.

**Definitions.** For "foreign sea-fishery officer", see s 7(4) ante; for "British fishing boat", "convention", "convention area" and "fishing boat", see s 19(1) post.

**Sea Fish (Conservation) Act 1967, s 15.** See this title ante.

**Fisheries Act 1981, s 27.** See this title post.

## 11 Evidence

(1) In any civil or criminal proceedings a written statement purporting to be a report made by a British or foreign sea-fishery officer on matters ascertained in the course of exercising his powers under section 9 above for the purpose of enforcing the provisions of any convention mentioned in that section shall be admissible as evidence to the like extent as oral evidence to the like effect by that officer.

(2) Subsection (1) above shall be taken to be in addition to, and not to derogate from, the provisions of any other enactment relating to the reception or admissibility of documentary evidence.

## NOTES

**Written.** See the note "Writing" to s 8 ante.

**British . . . sea-fishery officer.** As to these officers, see s 7(1)-(3), (5) ante.

**Application to registered British fishing vessels.** See the note to s 8 ante.

**Definitions.** For "foreign sea-fishery officer", see s 7(4) ante; for "convention" and "enactment", see s 19(1) post.

## 12 Recovery of fines imposed on master, etc, or crew

(1) Where a fine is imposed by a magistrates' court in England and Wales or Northern Ireland on the master, owner or charterer or a member of the crew of a

fishing boat who is convicted by the court of an offence under section 5 or 10 of this Act [or section 2 of the Fishery Limits Act 1976], the court may—

- (a) issue a warrant of distress against the boat and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and
- (b) if the boat is a foreign fishing boat, order it to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Where a fine is imposed by a sheriff in Scotland on the master, owner or charterer or a member of the crew of a fishing boat who is convicted by the sheriff of an offence under section 5 or 10 of this Act [or section 2 of the Fishery Limits Act 1976], the sheriff may—

- (a) issue a warrant for the [arrestment] and sale of the boat and its gear and catch and any property of the person convicted; and
- (b) if the boat is a foreign fishing boat, order it to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid, whichever occurs first.

(3) [Sections 77(1) and 78 of the Magistrates' Courts Act 1980] (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this section in England and Wales as they apply to a warrant of distress issued under Part III of that Act.

(4) [Article 114(2) of the Magistrates' Courts (Northern Ireland) Order 1981] (postponement of issue of certain warrants) shall apply to a warrant of distress issued under this section in Northern Ireland as it applies to a warrant referred to in [that paragraph].

#### NOTES

The words in square brackets in sub-s (1), and the words in the first pair of square brackets in sub-s (2), were substituted by the Fishery Limits Act 1976, s 2(8)(d).

The word in square brackets in sub-s (2)(a) was substituted by the Debtors (Scotland) Act 1987, s 108(1), Sch 6, para 13.

The words in square brackets in sub-s (3) were substituted by the Magistrates' Courts Act 1980, s 154, Sch 7, para 77, and those in square brackets in sub-s (4) were substituted by the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675, art 170(2), Sch 6, Pt I, para 16.

**Magistrates' court.** For meaning, see, by virtue of the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, the Magistrates' Courts Act 1980, s 148, Vol 27, title Magistrates.

**Arrestment.** This is a term of Scots law for the arrest of a person or the seizure of his effects, analogous to the English attachment.

**Three months from, etc.** As a general rule the effect of defining a period in such a manner is to exclude the day on which the event in question occurs; see 45 Halsbury's Laws (4th edn) para 1127. See also *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL; *E J Riley Investments Ltd v Eurostile Holdings Ltd* [1985] 3 All ER 181, CA, and 45 Halsbury's Laws (4th edn) para 1111, as to the day of expiry of periods of a month or a specified number of months.

**Further provisions.** See s 13(3) post (application of this section to recovery of compensation); and the Sea Fish (Conservation) Act 1967, s 15(5) ante (application of this section for purposes of enforcement of the 1967 Act).

**Application to registered British fishing vessels.** See the note to s 8 ante.

**Definitions.** For "fishing boat", "foreign fishing boat" and "master", see s 19(1) post.

**Fishery Limits Act 1976, s 2.** See this title post.

**Magistrates' Courts Act 1980.** See Vol 27, title Magistrates.

**Magistrates' Court (Northern Ireland) Order 1981.** SI 1981/1675.

### 13 Compensation for damage caused by offence

(1) . . .

(2) Where a person is to be brought to trial before a sheriff in Scotland for an offence under section 5, or 10 of this Act [or section 2 of the Fishery Limits Act 1976]—

- (a) any person who considers that personal injury to him or damage to his property has been caused by the offence may, at any time before the commencement of the trial, give notice in writing to the accused person and the sheriff clerk that at the trial of the offence the sheriff shall be called upon to make an award of compensation in respect of that injury or damage;
- (b) if notice has been given as aforesaid and the accused is convicted of the offence the sheriff shall thereupon dispose of the question of compensation, but shall not order payment of a sum by way of compensation exceeding [level 5 on the standard scale];
- (c) any evidence led at the trial shall be admissible as evidence in the disposal of the question of compensation, and if the compensation claimed is in respect of damage to property and a report of a British sea-fishery officer relating to the damage is produced as evidence, that report shall, unless the sheriff considers that it is necessary in the interests of justice to allow additional evidence, be sufficient evidence for the disposal of the question of compensation; and
- (d) in disposing of the question of compensation the sheriff may, subject to paragraph (b) above, give decree as in any ordinary action brought before him.

(3) Section 12 of this Act shall apply in relation to compensation . . . ordered to be paid under this section by the master, owner or charterer or a member of the crew of a fishing boat as it applies in relation to a fine imposed by a . . . sheriff on such a person.

(4) The provisions of this section shall not be taken to derogate from any right of a person who has suffered personal injury or damage to property in consequence of an offence under section 5 or 10 of this Act [or section 2 of the Fishery Limits Act 1976] to recover damages in respect of the injury or damage in civil proceedings.

#### NOTES

Sub-s (1) and the words omitted from sub-s (3) were repealed by the Fishery Limits Act 1976, ss 5, 9(3), 10(1), Sch 1, para 3(3), (4), Sch 4, and the words in the first pair of square brackets in sub-s (2) and the words in square brackets in sub-s (4) were substituted by s 2(8)(d) of the 1976 Act.

The reference to level 5 on the standard scale in sub-s (2)(b) is substituted by virtue of the Criminal Justice Act 1982, s 56, Sch 7 (not printed in this work).

**Writing.** See the note to s 8 ante.

**Standard scale.** This means, for Scotland, the standard scale set out in the Criminal Procedure (Scotland) Act 1975, s 289G (not printed in this work). The scale as amended is: level 1: £50; level 2: £100; level 3: £400; level 4: £1,000; and level 5: £2,000.

**British sea-fishery officer.** As to these officers, see s 7(1)–(3), (5) ante.

**Sufficient evidence.** This is not the same as conclusive evidence; see *Re Duce & Boots Cash Chemists (Southern) Ltd's Contract* [1937] Ch 642 at 649, 650 per Bennett J. It usually means no more than prima facie evidence (*Barracough v Greenhough* (1867) LR 2 QB 612 at 619, 620), but the matter is always one of interpretation.

**Further provision.** See the Sea Fish (Conservation) Act 1967, s 15(5) ante (application of this section for purposes of the 1967 Act).

**Definitions.** For "fishing boat" and "master", see s 19(1) post.

**Fishery Limits Act 1976, s 2.** See this title post.

#### 14 Jurisdiction to try offences

Proceedings for an offence under section 5 or 10 of this Act [or section 2 of the Fishery Limits Act 1976] may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

#### NOTES

The words in square brackets were substituted for a reference to s 6 of this Act (repealed) by the Fishery Limits Act 1976, s 2(8)(d).

**United Kingdom.** ie Great Britain and Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1.

Vol 41, title Statutes. "Great Britain" means England, Scotland and Wales by virtue of the Union with Scotland Act 1706, preamble, Art I, Vol 10, title Constitutional Law (Pt 1), as read with s 22(1) of, and Sch 2, para 5(a) to, the 1978 Act. Neither the Channel Islands nor the Isle of Man is within the United Kingdom.

**Further provisions.** See the Sea Fish (Conservation) Act 1967, s 15(5) ante (application of this section for purposes of the 1967 Act).

**Application to registered British fishing vessels.** See the note to s 8 ante.

### Miscellaneous

#### 15 Amendments of Sea Fisheries (Shellfish) Act 1967

(1) The Sea Fisheries (Shellfish) Act 1967 shall be amended in accordance with, and have effect subject to, the following provisions of this section.

(2) ...

(3) The power to make an order under that section conferring on the grantees a right of regulating a fishery for any specified description of shellfish shall be construed as including a power to enable them with the consent of the appropriate Minister to impose restrictions on, and make regulations respecting, the dredging, fishing for and taking of shellfish of that description within the limits of the regulated fishery.

(4) An order under that section which imposes tolls or royalties upon persons dredging, fishing for and taking any specified description of shellfish within the limits of a fishery shall be construed as conferring on the grantees of the fishery power with the consent of the appropriate Minister to vary the tolls or royalties so imposed.

(5) In subsections (3) and (4) above "the appropriate Minister" has the same meaning as in the Sea Fisheries (Shellfish) Act 1967.

(6) Anything purporting to be done at any time before the passing of this Act under or by virtue of section 1 or 3 of the Sea Fisheries (Shellfish) Act 1967 or any enactment thereby re-enacted which could have been done by virtue of subsection (3) or (4) above if that subsection had been in force at that time shall be treated as if it had been done by virtue of that subsection.

(7) ...

#### NOTES

Sub-ss (2), (7) amend the Sea Fisheries (Shellfish) Act 1967, s 1(1), Sch 1, para 4(6) ante, respectively.

**Transfer of functions.** See the Introductory Note to the Sea Fisheries (Shellfish) Act 1967 ante.

**That section.** The section referred to in sub-ss (3), (4) above is the Sea Fisheries (Shellfish) Act 1967, s 1 ante.

**Shellfish.** This expression is defined by the Sea Fisheries (Shellfish) Act 1967, s 22(2) ante.

**Passing of this Act.** This act was passed, ie received the Royal Assent, on 18 December 1968.

**Sea Fisheries (Shellfish) Act 1967.** See this title ante; and for the meaning of "the appropriate Minister" in that Act, see s 22(1) thereof.

#### 16 (Repealed by the Fisheries Act 1981, s 46(2), Sch 5, Pt II.)

#### 17 Fishing boats and gear lost or abandoned at sea

Without prejudice to section 72 of the Merchant Shipping Act 1906 (wreck brought within the limits of the United Kingdom), fishing boats or fishing gear lost or abandoned at sea and either—

- (a) found or taken possession of within the territorial waters of the United Kingdom; or
- (b) found or taken possession of beyond those waters and brought within those waters;



shall be treated as wreck for the purposes of Part IX of the Merchant Shipping Act 1894.

#### NOTES

**Fishing boat.** For meaning, see s 19(1) post.

**Territorial waters of the United Kingdom.** As to the extent of the territorial waters (or sea) of the United Kingdom, see the Territorial Sea Act 1987, s 1, Vol 49, title Water (Pt 1), and the Orders in Council made or having effect thereunder.

**Merchant Shipping Act 1906, s 72; Merchant Shipping Act 1894, Part IX.** See Vol 39, title Shipping and Navigation.

### *Supplemental*

#### 18 Orders

(1) Any power conferred on the Ministers by this Act to make an order shall be exercisable by statutory instrument.

(2) A statutory instrument containing an order made by the Ministers under any provision of this Act, . . . shall be laid before Parliament.

(3) Any power conferred by this Act on the Ministers to make an order includes power to vary or revoke the order by a subsequent order.

#### NOTES

The words omitted from sub-s (2) were repealed by the Sea Fish Industry Act 1970, s 61, Sch 6, Pt I.

**The Ministers.** For meaning, see s 19(1) post.

**Statutory instrument; laid before Parliament.** For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes; and for provisions as to statutory instruments which are required to be laid before Parliament, see s 4(1), (2) of that Act. See also the Laying of Documents before Parliament (Interpretation) Act 1948, ss 1, 2, Vol 41, title Statutes.

**Vary or revoke.** The express power to vary or revoke orders is necessary because the Interpretation Act 1978, s 14, Vol 41, title Statutes, does not extend to powers to make such instruments contained in Acts passed before 1 January 1979; see s 22(1) of, and Sch 2, para 3 to, that Act.

#### 19 Interpretation

(1) In this Act, except so far as the context otherwise requires,—

“British fishing boat” means a fishing boat which is registered in the United Kingdom, [excluded from registration by regulations under section 13 of the Merchant Shipping Act 1988] or owned wholly by a person who is (within the meaning of the Merchant Shipping Act 1894) a person qualified to own a British ship, and “foreign fishing boat” means a fishing boat which is not so registered, [so excluded] or so owned;

“convention” includes an agreement or other arrangement;

“convention area” means, in relation to any international convention, the area to which the convention relates;

“enactment” includes an enactment of the Parliament of Northern Ireland;

“fish” includes shellfish, and cognate expressions shall be construed accordingly;

“fishing boat” means any vessel for the time being employed in fishing operations or any operations ancillary thereto;

“foreign sea-fishery officer” has the meaning assigned to it by section 7 of this Act;

“master” includes, in relation to any fishing boat, the person for the time being in command or charge of the boat;

“the Ministers” means the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with the sea fishing industry in Scotland and Northern Ireland;

“Sea Fisheries Acts” means any enactments for the time being in force relating to sea-fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout.

(2) ...

(3) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied by or under any other enactment, including this Act.

#### NOTES

In the definition of “British fishing boat” in sub-s (1) the words in square brackets were substituted by the Merchant Shipping Act 1988, s 57(4), Sch 6.

The definition of “outer belt” in sub-s (1), and the whole of sub-s (2), were repealed by the Fishery Limits Act 1976, s 9(1), (3), Sch 2, para 17(2), Sch 4.

The definition of “products” in sub-s (1) was repealed by the Sea Fish Industry Act 1970, s 61, Sch 6, Pt I.

**Fishing boat . . . registered in the United Kingdom.** As to the registration of British fishing vessels, see the Merchant Shipping Act 1988, Pt II (ss 12–25, Schs 2, 3), Vol 39, title Shipping and Navigation; as to the term “British ship”, see s 2 of the 1988 Act; and as to the registration of ships generally, see Pt I of the 1988 Act, in the same title.

As to “United Kingdom”, see the note to s 14 ante.

**Parliament of Northern Ireland.** That Parliament was established by the Government of Ireland Act 1920, s 1(1) (repealed), and it was abolished by the Northern Ireland Constitution Act 1973, s 31, Vol 31, title Northern Ireland (Pt 2). References to enactments of the Parliament of Northern Ireland include references to Orders in Council made during the period 30 March 1972 to 31 December 1973 under the Northern Ireland (Temporary Provisions) Act 1972, s 1(3), Vol 31, title Northern Ireland (Pt 2) (see that subsection), and references to Measures of the Northern Ireland Assembly (Northern Ireland Constitution Act 1973, s 40(1), Sch 5, para 1(1), (2), in the same title).

**Shellfish.** This expression is not defined in this Act, but cf the definition in the Sea Fisheries (Shellfish) Act 1967, ss 22(2) ante.

**The Ministers.** See the note “Transfer of functions” to s 5 ante.

**Merchant Shipping Act 1988, s 13; Merchant Shipping Act 1894.** See Vol 39, title Shipping and Navigation; and for the persons who are, within the meaning of Pt I of the 1894 Act, qualified to own British ships, see s 3 of the 1988 Act.

20 (Repealed by the Northern Ireland Constitution Act 1973, s 41(1), Sch 6, Pt I.)

#### 21 Isle of Man and Channel Islands

(1) Her Majesty may by Order in Council direct that all or any of the provisions of sections 5 to 14, 16, 17, 19, 22 and 23 of this Act and of Part II of Schedule 1 and Part II of Schedule 2 thereto—

- (a) shall extend, with such exceptions, adaptations and modifications if any, as may be specified in the Order, to the Isle of Man or any of the Channel Islands; and
- (b) shall apply, with such exceptions, adaptations and modifications as aforesaid, in relation to British fishing boats registered in the Isle of Man or any of the Channel Islands as they apply in relation to British fishing boats registered in the United Kingdom.

(2) An Order in Council under this section may be varied or revoked by a subsequent Order thereunder.

#### NOTES

**Shall extend.** The provisions capable of being extended under this section to the Isle of Man and Channel Islands include the provisions relating to this Act in the Fisheries Act 1981, Pt III (ss 19–30) post; see s 46(7) of that Act post.

**Isle of Man.** The Isle of Man is not part of the United Kingdom (*Davison v Farmer* (1851) 6 Exch 242), though it is included in the British Islands as defined by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Legislation passed by the Tynwald Court (or Tynwald) must be assented to by the Queen in Council. Legislation passed by the United Kingdom Parliament does not extend to the Isle of Man except by

express mention or necessary implication and that which does so extend is confined to matters of special importance and non-local character. See further 6 Halsbury's Laws (4th edn) paras 879–881.

**Channel Islands.** In the islands of Jersey, Guernsey, Alderney and Sark and their respective dependencies. The Channel Islands are not part of the United Kingdom (*Navigators and General Insurance Co Ltd v Ringrose* [1962] 1 All ER 97, [1962] 1 WLR 173, CA), though they are included in the "British Islands" as defined by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Acts of Parliament do not apply to the Channel Islands except by express mention or necessary implication. When an Act of Parliament is to apply there, it is sent to the Royal Courts of Jersey and Guernsey for registration. See further, 6 Halsbury's Laws (4th edn) paras 869 et seq.

**British fishing boat.** For meaning, see s 19(1) ante.

**Varied or revoked.** Cf the note "Vary or revoke" to s 18 ante.

**Orders in Council under this section.** The Sea Fisheries (Isle of Man) Order 1971, SI 1971/1747, as amended by SI 1973/236; the Sea Fishing (Manx Boats) Order 1971, SI 1971/1748; the Sea Fisheries (Channel Islands) Order 1973, SI 1973/1319, as amended by SI 1989/2412; the Sea Fisheries (Channel Islands Boats) Order 1973, SI 1973/1320.

The power to make Orders in Council is exercisable by statutory instruments; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes.

## 22 Minor and consequential amendments and repeals, and savings

(1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments set out in that Schedule, being minor amendments and amendments consequential on the foregoing provisions of this Act.

(2) The enactments specified in Schedule 2 to this Act (which include enactments which were obsolete or unnecessary before the passing of this Act) are hereby repealed to the extent specified in the third column of that Schedule.

(3), (4) . . .

(5) The amendment by Schedule 1 to this Act of section 15 of the Sea Fish (Conservation) Act 1967 shall not affect any order made under that section, but any such order which is in force immediately before the coming into force of the amendment shall have effect as if made under that subsection as so amended.

(6) The repeal by this Act of the Sea Fisheries Act 1883 shall not affect the operation—

- (a) of any Order in Council under section 23 of that Act which is in force immediately before the coming into force of the repeal; or
- (b) of any provision of that Act which is applied by any such Order or by any provision of the Fisheries Act 1891 or the North Sea Fisheries Act 1893.

## NOTES

Sub-ss (3), (4) were repealed by the Sea Fish Industry Act 1970, s 612, Sch 6, Pt I.

**Commencement.** The amendments set out in Pt II of Sch 1 to this Act, and certain of the repeals set out in Pt II of Sch 2 post, were brought into force on 24 November 1969; see the note "Order under this section" to s 23 post. Up to 1 April 1991, no order had been made under s 23(2) post bringing into force the remaining repeals set out in the said Pt II of Sch 2 post.

**Sea Fish (Conservation) Act 1967, s 15; Sea Fisheries Act 1883; Fisheries Act 1891; North Sea Fisheries Act 1893.** See this title ante.

## 23 Short title and commencement

(1) This Act may be cited as the Sea Fisheries Act 1968.

(2) Sections 5 to 14 of this Act and Part II of Schedule 1 and Part II of Schedule 2 thereto shall come into force on such day as the Ministers may by order appoint, and different days may be so appointed for different purposes of those provisions.

(3) Any order under this section may make such transitional provision as appears to the Ministers to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions or any provisions of this Act then in force as appear to him to be necessary or expedient in consequence of

the partial operation of this Act (whether before or after the day appointed by the order).

**NOTES**

**The Ministers.** For meaning, see s 19(1) ante, and see also the note "Transfer of functions" to s 5 ante.

**Appears.** See the note to s 5 ante.

**Orders under this section.** The Sea Fisheries Act 1968 (Commencement No 1) Order 1969, SI 1969/1551, bringing into force on 24 November 1969 the remaining provisions of this Act except for Sch 2, Pt II, so far as it relates to the following repeals:

- (1) Sea Fisheries Act 1883, ss 1-5, 11, 12, 14-22, in s 25 the words "this Act shall apply to the whole of the British Islands as defined by this Act and to the seas surrounding the same whether within or without the fishery limits of the British Islands", ss 26, 28, 31 and Sch 1, Arts XIII-XXIII, XXX, XXXI and XXXIII;
- (2) Sea Fisheries (Scotland) Act 1885, s 5;
- (3) Illegal Trawling (Scotland) Act 1934, s 3;
- (4) Sea Fisheries Act 1951, s 25;
- (5) Sea Fish Industry Act 1962, s 18.

Although the repeal of the Fishery Limits Act 1964, s 3(2) by Sch 2, Pt II, post, was not implemented by the above Order, it has since been repealed by the SL(R) Act 1978.

For general provisions as to orders, see s 18 ante.

**SCHEDULES**

*(Sch 1, Pt I, repealed by the Sea Fish Industry Act 1970, s 61, Sch 6, Pt I; Sch 1, Pt II repealed in part by the Fishery Limits Act 1976, s 9(1), (3), Sch 2, para 17(2), Sch 4, by the Inshore Fishing (Scotland) Act 1984, s 10(2), Sch 2, and by the Merchant Shipping Act 1988, s 57(5), Sch 7, or is spent, remainder amends the following enactments: the Fisheries Act 1891, s 13 ante, the Sea Fisheries Regulation Act 1966, s 13(5) ante, and the Sea Fish (Conservation) Act 1967, ss 15, 22(1) ante, and enactments that apply to Scotland only.)*

**SCHEDULE 2**

Section 22(2)

**ENACTMENTS REPEALED**

**PART I**

**REPEALS COMING INTO FORCE ON PASSING OF ACT**

Chapter	Short Title	Extent of Repeal
31 & 32 Vict c 45	The Sea Fisheries Act 1868	Section 1. In section 5, the definitions of "person" and "the Irish Fishery Commissioners". Section 67.
25 & 26 Geo 5 c 9	The Herring Industry Act 1935	In section 70, the proviso. In section 14, the definition of "boat". In Schedule 2, in section 9(6) of the Agricultural Marketing Act 1931 as there set out, the words "or commodities produced wholly or partly therefrom" and the words "or such commodities as aforesaid".
1 & 2 Geo 6 c 30	The Sea Fish Industry Act 1938	Section 50.
1 & 2 Geo 6 c 42	The Herring Industry Act 1938	In section 2(1), the words "and assistance".
9 & 10 Geo 6 c 11	The Inshore Fishing Industry Act 1945	The whole Act.

Chapter	Short Title	Extent of Repeal
11 & 12 Geo 6 c 51	The White Fish and Herring Industries Act 1948	Section 3.
14 & 15 Geo 6 c 30 1 & 2 Eliz 2 c 17	The Sea Fish Industry Act 1951 The White Fish and Herring Industries Act 1953	Section 13(3). In section 1(3), the words "(of whatever size and in whatever way propelled)". Section 2(4). Section 13(2) and (3). Section 1(3A) and (4). Section 4. In section 5(3), the words "or order". In section 5(4), the words from "and an order" to the end.
5 & 6 Eliz 2 c 22	The White Fish and Herring Industries Act 1957	Section 6(2). Section 1. Section 1(4) and (6). Section 2. In section 3(3), the words "(of whatever size and in whatever way propelled)". Section 3(6). Section 31. Section 33(3). In section 35(5), the words "and thirty-one". In Schedule 2, paragraphs 18(1), 21(3) and (4), 22(1) and 23.
8 & 9 Eliz 2 c 7 10 & 11 Eliz 2 c 31	The Sea Fish Industry Act 1959 The Sea Fish Industry Act 1962	Section 28.
1966 c 34	The Industrial Development Act 1966	The whole Act.
1967 c 35	The Fishing Vessel Grants Act 1967	

## PART II

## REPEALS COMING INTO FORCE ON APPOINTED DAY

Chapter	Short Title	Extent of Repeal
31 & 32 Vict c 45	The Sea Fisheries Act 1868	In section 5, the definitions of "Great Britain and Ireland", "United Kingdom", "exclusive fishery limits of the British Islands" and "exclusive fishery limits of France". In section 57, the words from "or under" to "provided)". Section 63. In section 65, the second paragraph. Section 66. In section 70, the words from the beginning to "save as aforesaid", the words from "the seas adjoining" to "the whole of" and the words from "and to the seas" to "British Islands" in the fourth place where it occurs.

Chapter	Short Title	Extent of Repeal
46 & 47 Vict c 22 48 & 49 Vict c 70 54 & 55 Vict c 37	The Sea Fisheries Act 1883 The Sea Fisheries (Scotland) Amendment Act 1885 The Fisheries Act 1891	The whole Act. Section 3. Section 5. Section 5. In section 6(1), the words "as one with the Sea Fisheries Act 1883, and" and the words "also", and section 6(2). In section 13, the words "the Sea Fisheries Act 1883 or any other Act relating to sea fisheries, or by".
24 & 25 Geo 5 c 18 1 & 2 Geo 6 c 30	The Illegal Trawling (Scotland) Act 1934 The Sea Fish Industry Act 1938	Section 3. Section 54. Section 59. Section 61. Section 62. Section 63(2).
14 & 15 Geo 6 c 30 8 & 9 Eliz 2 c 7 10 & 11 Eliz 2 c 31	The Sea Fish Industry Act 1951 The Sea Fish Industry Act 1959 The Sea Fish Industry Act 1962	Section 25. Section 9. Section 16. Section 18. Section 36(1). Section 1(2). Section 2. Section 3(2) and (5). In Schedule 1 the amendments of the Sea Fisheries Act 1883.
1964 c 72	The Fishery Limits Act 1964	In section 13(5), the words from the beginning to "1883" and from "the provisions" to "and of" and the word "other". Schedule 2, so far as relating to the Sea Fisheries (Scotland) Amendment Act 1885.
1966 c 38	The Sea Fisheries Regulation Act 1966	In section 15(1), the words from the beginning to "1962".
1967 c 83	The Sea Fisheries (Shellfish) Act 1967	
1967 c 84	The Sea Fish (Conservation) Act 1967	

**NOTE**

**Commencement.** See the note "Order under this section" to s 23 ante.

# CONTINENTAL SHELF ACT 1964

(1964 c 29)

## ARRANGEMENT OF SECTIONS

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*An Act to make provision as to the exploration and exploitation of the continental shelf; to enable effect to be given to certain provisions of the Convention on the High Seas done in Geneva on 29th April 1958; and for matters connected with those purposes*  
[15 April 1964]

**Northern Ireland.** This Act applies.

## 1 Exploration and exploitation of continental shelf

(1) Any rights exercisable by the United Kingdom outside territorial waters with respect to the sea bed and subsoil and their natural resources, except so far as they are exercisable in relation to coal, are hereby vested in Her Majesty.

(2) . . .

(3) In relation to any petroleum with respect to which those rights are exercisable sections 2 and 6 of the Petroleum (Production) Act 1934 (which relate to the granting of licences to search and bore for, and get, petroleum) shall apply as they apply in relation to petroleum in Great Britain, and section 3 of that Act (which enables persons holding licences under that Act to acquire ancillary rights) and section 5 of that Act (which makes provision as to receipts and expenditure under that Act) shall have effect as if this subsection were part of that Act.

(4), (5) . . .

(6) The general duty of the [Secretary of State] of securing the effective and co-ordinated development of such resources in Great Britain as are mentioned in section 1(1) of the Ministry of Fuel and Power Act 1945 shall extend to any such resources outside Great Britain with respect to which the said rights are exercisable.

(7) Her Majesty may from time to time by Order in Council designate any area as an area within which the rights mentioned in subsection (1) of this section are exercisable, and any area so designated is in this Act referred to as a designated area [; and the power to make Orders under this subsection shall include power to revoke Orders for the purpose of consolidating them].

(8) In this section "coal" has the same meaning as in the Coal Industry Nationalisation Act 1946 and "petroleum" has the same meaning as in the Petroleum (Production) Act 1934.

### NOTES

Sub-s (2) was repealed by the Coal Industry Act 1994, s 67(8), Sch 11, Pt II.

Sub-s (4) was repealed by the Offshore Safety Act 1992, ss 3(1)(a), 7(2), Sch 2.

Sub-s (5) was repealed by the Petroleum Act 1987, ss 20, 30, Sch 3.

The words "Secretary of State" in square brackets in sub-s (6) are substituted by virtue of the Minister of Technology Order 1969, SI 1969/1498, arts 2(1), 5(6), the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, arts 2(2), 7(4), the Secretary of State (New Departments) Order 1974, SI 1974/692, and the Transfer of Functions (Energy) Order 1992, SI 1992/1314.

The words in square brackets in sub-s (7) were inserted by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, para 1.

**Sub-s (1): United Kingdom.** I.e. Great Britain and Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Territorial waters (of the United Kingdom).** As to the extent of the territorial waters (or sea) of the United Kingdom, see the Territorial Sea Act 1987, s 1, Vol 49, title Water (Pt 1), and the Orders in Council made or having effect thereunder.

**Natural resources, except . . . coal.** This Act does not define "natural resources". This Act was enacted consequent upon the United Kingdom becoming a party to the Convention on the Continental Shelf (Geneva, 29 April to 31 October 1958; Cmnd 2422). The natural resources of the continental shelf referred to in the Convention (which is not referred to in this Act) consist of the



mineral and other non-living resources of the sea bed and sub-soil, together with living organisms which, at the harvestable stage, are either immobile on or under the sea bed or unable to move except in constant physical contact with the sea bed or the sub-soil (Convention on the Continental Shelf, art 2, para 4).

Rights to coal vested on 1 January 1947 in the British Coal Corporation (formerly the National Coal Board) (by the Coal Industry Nationalisation Act 1946, ss 5, 38, Sch 1). The National Coal Board (Additional Powers) Act 1966, s 1, and the Coal Industry Act 1977, s 9, conferred on the British Coal Corporation, powers to enable them to participate in the search for and getting of petroleum and natural gas. The British Coal Corporation's coal and coal mines, and the exclusive right to work coal and coal mines vested in the Coal Authority on 31 October 1994, by the Coal Industry Act 1994, s 7. The vesting is subject to the provisions of ss 8, 9 (Coal Authority's right to coal under territorial waters and in the continental shelf, and rights required for the exploitation of methane gas associated with coal) of the 1994 Act, and to the power to make restructuring schemes conferred by s 12(1) of that Act. For the meaning of "coal" in that Act, see s 65(1) thereof post.

**Sub-s (3): Petroleum in Great Britain.** The Petroleum (Production) Act 1934 ante vests petroleum in strata in the Crown and authorises the issue of licences for winning the petroleum and for regulating operations. The application of the 1934 Act was restricted initially to Great Britain including the territorial seas up to the three mile limit, but its scope has been extended to cover rights exercisable in Northern Ireland territorial waters.

As to the Northern Ireland and Isle of Man shares of revenue from the continental shelf, see the Miscellaneous Financial Provisions Act 1968, s 2 post, and the Oil and Gas (Enterprise) Act 1982, s 29 post.

**Sub-s (6): Secretary of State.** Is one of Her Majesty's Principal Secretaries of State; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. The Secretary of State here concerned is the Secretary of State for Trade and Industry.

Ministerial functions for the purposes of this Act were originally exercisable by the Minister of Power. His functions were transferred to the Minister of Technology by the Minister of Technology Order 1969, SI 1969/1498, arts 2(1), 5(1), (6). The functions of the Minister of Technology were transferred to the Secretary of State by the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 2(2). His functions were exercised by the Secretary of State for Energy by virtue of the Secretary of State (New Departments) Order 1974, SI 1974/692. By the Transfer of the Functions (Energy) Order 1992, SI 1992/1314, the functions of the Secretary of State for Energy became exercisable again by the Secretary of State for Trade and Industry.

**Sub-s (7): Designated area.** In relation to the safety, health and welfare of persons on offshore installations or engaged on pipe-line works in designated areas, as to safety zones around installations in designated areas, and as to the control of submarine pipe-lines in designated areas, see the Mineral Workings (Offshore Installations) Act 1971, the Petroleum Act 1987, ss 11, 21-24 post; and the Petroleum and Submarine Pipe-lines Act 1975, Pt III (ss 20-33, Sch 4), Vol 36, title Railways, Inland Waterways and Pipelines; these Acts are being progressively replaced by health and safety regulations made under the Health and Safety at Work etc Act 1974, s 15, Vol 19, title Health and Safety at Work.

"Visiting force", for the purposes of the Visiting Forces Act 1952, Pt I (ss 1-12), Vol 3, title Armed Forces (Pt 4), includes service personnel present on any installation in a designated area; see s 12(1A) of the 1952 Act, Vol 12, title Criminal Law. It is a defence for a person charged in respect of an offence under the Criminal Justice Act 1988, s 141 (offensive weapons), to prove that his conduct was for the purposes of functions carried out on behalf of a "visiting force" present on an installation in a designated area or within 500 metres of such an installation on the invitation of the United Kingdom Government; see s 141(5)-(7) of the 1988 Act, Vol 12, title Criminal Law.

Complaints by persons on installations in designated areas may be entertained by the Parliamentary Commissioner for Administration; see the Parliamentary Commissioner Act 1967, s 6(4), Vol 10, title Constitutional Law (Pt 4).

As to the discharge of certain oils as the result of exploration etc in designated areas, see the Prevention of Oil Pollution Act 1971, s 3(2), Vol 49, title Water (Pt 1).

For contributions in respect of mineral exploration in designated areas, and for taxation provisions relating to mineral extractive activities, foreign earnings, etc, see the Mineral Exploration and Investment Grants Act 1972, s 1 post; the Finance Act 1973, s 38, Sch 15, Vol 42, title Taxation; the Income and Corporation Taxes Act 1988, ss 193, 314, 502(2)(a), 830, Sch 12, para 5, Vol 44, title Taxation; the Taxation of Chargeable Gains Act 1992, s 276, and the Finance Act 1993, s 94A (as inserted by the Finance Act 1994, s 136(1)), Vol 43, title Taxation.

In relation to employment in continental shelf operations in designated areas, and social security contributions and benefits for employment on the continental shelf, see the Sex Discrimination Act 1975, s 10(5) and the Race Relations Act 1976, s 8(5), Vol 6, title Civil Rights and Liberties; the Employment Protection (Consolidation) Act 1978, s 137 and the Trade Union and Labour Relations (Consolidation) Act 1992, s 287, Vol 16, title Employment; and the Social Security Act 1986, s 80, Vol 40, title Social Security.

As to the exclusion, from the Restrictive Trade Practices Act 1976, of participation agreements relating to activities connected with petroleum in designated areas, see the Participation Agreements Act 1978, s 1(3), Vol 47, title Trade and Industry (Pt 1).

References to the United Kingdom in the State Immunity Act 1978, ss 3(1) (commercial

transactions), 4(1) (contracts of employment), 5 (personal injuries and damage to property) and 16(2) (armed forces), Vol 10, title Constitutional Law (Pt 5), include references to designated areas; see s 17(4) of that Act.

Any goods brought into the United Kingdom which are shown to the satisfaction of the Commissioners of Customs and Excise to have been grown, produced or manufactured in any designated area are deemed for the purposes of any charge to customs duty not to be imported; see the Customs and Excise Duties (General Reliefs) Act 1979, s 14, Vol 13, title Customs and Excise.

By the Merchant Shipping Act 1988, s 39, Vol 39, title Shipping and Navigation, the Secretary of State has power to prohibit the provision of non-British-based shipping services between offshore installations in designated areas.

As to the application of the criminal law to offences committed on, under or above installations in designated areas over the continental shelf, or within 500 metres of such installations, and for the prosecution of offences, see the Oil and Gas (Enterprise) Act 1982, ss 22, 27 post. Compensation may be payable under the Criminal Justice Act 1988, ss 108–117 and Schs 6, 7, Vol 12, title Criminal Law, for a criminal injury sustained on, under or above an installation in a designated area or in any waters within 500 metres of such an installation; see s 110(2)(d) of that Act, as from a day to be appointed under s 171(1) of that Act.

As to the application civil law (including wireless telegraphy and food safety legislation) to installations in designated areas, see s 6 post, and the Oil and Gas (Enterprise) Act 1982, s 23 post, and the notes thereto.

**Petroleum (Production) Act 1934.** See this title ante; for the meaning of "petroleum" in that Act, see s 1(4) thereof.

**Ministry of Fuel and Power Act 1945, s 1(1).** See Vol 10, title Constitutional Law (Pt 4).

**Coal Industry Nationalisation Act 1946.** See this title ante; for the meaning of "coal" in that Act, see s 63(1) thereof. See also the second paragraph of the note "Natural resources, except . . . coal" above.

**Orders in Council under this section.** The areas to which this Act applies have been designated by the following Continental Shelf (Designation of Areas) Orders made under this section, or under this section as extended by the Territorial Sea Act 1987, s 3(3), Vol 49, title Water (Pt 1), and by the Petroleum Royalties (Relief) and Continental Shelf Act 1989, s 3 post:—

SI 1964/697 (North Sea); SI 1965/1531 (North Sea, English Channel, Irish Sea, Orkneys and Shetlands); SI 1968/891 (Irish Sea, St George's Channel and Bristol Channel); SI 1971/594 (English Channel, West Coast of Scotland, Shetlands), as amended by SI 1989/2398, art 3, Sch 2; SI 1974/1489 (West Coast of Scotland), as amended by SI 1989/2398, art 4, Sch 3; SI 1976/1153 (South of Cornwall and English Channel); SI 1977/1871 (English Channel and South Western Approaches); SI 1978/178 (North West of Shetland Islands); SI 1978/1029 (South Western Approaches to the English Channel); SI 1979/1447 (North Sea); SI 1982/1072 (English Channel, southern North Sea and West and North-West of the Shetland Islands), as modified by SI 1987/1265; SI 1987/1265 (Extended Territorial Sea); SI 1989/2398 (Irish Sea, South Western Approaches and West of Scotland); SI 1993/599 and SI 1993/1782 (southern North Sea).

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes.

**2, 3** (*S 2 repealed by the Oil and Gas (Enterprise) Act 1982, ss 21(11), 37, Sch 4; s 3 repealed by the Oil and Gas (Enterprise) Act 1982, ss 22(8), 37, Sch 4, and superseded by ss 22, 23 of that Act post.*)

#### 4 Safety of navigation

(1) Part II of the Coast Protection Act 1949 (which requires the consent of the Minister of Transport to the carrying out of certain works on the sea shore if obstruction or danger to navigation is likely to result) except section 34(1)(b) (which restricts the deposit of materials) shall apply in relation to any part of the sea bed in a designated area as it applies in relation to the sea shore; and section 46 of that Act (local inquiries) shall extend to any matter arising under this section.

(2) Any person guilty of an offence under the said Part II as applied by this section shall be liable, on summary conviction to a fine not exceeding [the prescribed sum], and on conviction on indictment to a fine [of any amount].

#### NOTES

The reference to the prescribed sum in sub-s (2) is substituted by virtue of the Magistrates' Courts Act 1980, s 32(2), Vol 27, title Magistrates. The reference to a fine of any amount in that subsection is substituted by virtue of the Criminal Law Act 1977, s 32(1), Vol 12, title Criminal Law.

**Minister of Transport.** Ministerial functions under the Coast Protection Act 1949, Pt II (ss 34–36A), Vol 49, title Water (Pt 1), originally lay with the Minister of Transport, but were transferred to Board of Trade by the Transfer of Functions (Shipping and Construction of Ships) Order 1965, SI 1965/145, art 2, Sch 1, to the Secretary of State by the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 2(1), and the Secretary of State (New Departments) Order 1974, SI 1974/692, art 2(3), and to the Secretary of State for Transport by the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127, art 2(3).

**Summary conviction.** Summary jurisdiction and procedure are mainly governed by the Magistrates' Courts Act 1980, Vol 27, title Magistrates, and by rules made under s 144 of that Act.

**Prescribed sum.** Is the prescribed sum within the meaning of the Magistrates' Court Act 1980, s 32, Vol 27, title Magistrates. By s 32(9) of the 1980 Act, the prescribed sum is £5,000 but a different amount may be substituted by order under s 143 of that Act.

As to the fixing of fines, see the Criminal Justice Act 1991, s 18, Vol 12, title Criminal Law.

**Conviction on indictment.** All proceedings on indictment are to be brought before the Crown Court; see the Supreme Court Act 1981, s 46(1), Vol 11, title Courts and Legal Services. As to indictments and the trial thereof, see generally 11(2) Halsbury's Laws (4th edn reissue) paras 913 et seq, 942 et seq.

**Fine.** There is no specific limit to the amount of the fine which may be imposed on conviction on indictment, but it has for long been the law that the fine should be within the offender's capacity to pay (see, in particular, *R v Churchill (No 2)* [1967] 1 QB 190, [1966] 2 All ER 215, CCA (revsd on other grounds sub nom *Churchill v Walton* [1967] 2 AC 224, [1967] 1 All ER 497, HL) and *R v Garner* [1986] 1 All ER 78, [1986] 1 WLR 73, CA; and see also the Bill of Rights (1688), s 1, Vol 10, title Constitutional Law (Pt 1)), and it is now provided by the Criminal Justice Act 1991, s 18(3), Vol 12, title Criminal Law, that in fixing the amount of a fine a court shall take into account, inter alia, the financial circumstances of the offender so far as they are known, or appear, to the court. For further provisions as to the fixing of fines, see s 18 of the 1991 Act, Vol 12, title Criminal Law, and as to when a fine may be imposed in addition to imprisonment, see *R v Garner* above.

**Prosecution of offences.** See s 11 post.

**Coast Protection Act 1949.** See Vol 49, title Water (Pt 1).

## 5 (Repealed by the Prevention of Oil Pollution Act 1971, s 33(1), Schedule.)

## 6 Wireless Telegraphy

An Order in Council under [section 23 of the Oil and Gas (Enterprise) Act 1982] may make provision for treating for the purposes of the Wireless Telegraphy Act 1949 and any regulations made thereunder any installation in [waters to which that section applies and] with respect to which provision is made under that section and any waters within five hundred metres of such an installation as if they were situated in such part of the United Kingdom as may be specified in the Order.

### NOTES

The words in the first pair of square brackets were substituted by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, para 2.

The words in the second pair of square brackets were substituted by the Telecommunications Act 1984, s 107(2).

**Installation.** See, as to meaning, s 11A post.

**United Kingdom.** See the note to s 1 ante.

**Oil and Gas (Enterprise) Act 1982, s 23.** See this title post.

**Wireless Telegraphy Act 1949.** See Vol 45, title Telecommunications and Broadcasting.

**Order in Council.** The Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, made under the Oil and Gas (Enterprise) Act 1982, s 23 post, as applied by this section.

## 7 Radioactive substances

An Order in Council under [section 23 of the Oil and Gas (Enterprise) Act 1982] may make provision for treating for the purposes of the [Radioactive Substances Act 1993] and any orders and regulations made thereunder any installation in an area or part with respect to which provision is made under that section and any waters within five hundred metres of such an installation as if they were situated in such part of the United Kingdom as may be specified in the Order, and for

modifying the provisions of that Act in their application to such an installation or waters.

#### NOTES

The words in the first pair of square brackets were substituted by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, para 2 post.

The words in the second pair of square brackets were substituted by the Radioactive Substances Act 1993, s 49(1), Sch 4, para 1.

**Installation.** See, as to meaning, s 11A post.

**United Kingdom.** See the note to s 1 ante.

**Oil and Gas (Enterprise) Act 1982, s 23.** See this title post.

**Radioactive Substances Act 1993.** See Vol 47, title Trade and Industry.

**Order in Council.** As at 1 January 1995 no Order in Council making provision for treating installations in designated areas or in waters within 500 metres thereof as if situated in part of the United Kingdom for the purposes of the Radioactive Substances Act 1993 had been made under the Oil and Gas (Enterprise) Act 1982, s 23 post, as applied by this section.

### 8 Submarine cables and pipe-lines

(1) Section 3 (punishment for damaging cables) of the Submarine Telegraph Act 1885 and Article IV and paragraph 1 of Article VII (liability to pay compensation for damage to cables and for loss of gear sacrificed to avoid such damage) of the Convention set out in the Schedule to that Act (which by virtue of section 2 thereof has the force of law) shall apply in relation to all submarine cables under the high seas (and not only to those to which that Convention applies) and to pipe-lines under the high seas; and the said section 3 shall be construed as referring to telephonic as well as telegraphic communication, and, in relation to high-voltage power cables and to pipe-lines, as if the words from "in such manner" to the end of subsection (1) were omitted.

(2) ...

#### NOTES

Sub-s (2) was repealed by the SL(R) Act 1974. That repeal was extended to the Isle of Man by the Statute Law Repeals (Isle of Man) Order 1984, SI 1984/1692.

**Pipe lines under the high seas.** These include pipe-lines under the territorial sea adjacent to the United Kingdom; see the Petroleum and Submarine Pipe-Lines Act 1975, s 45(1) post.

**Submarine Telegraph Act 1885.** See Vol 45, title Telecommunications and Broadcasting.

**9, 10** (*S 9 repealed by the Energy Act 1976, s 22, Sch 4, Pt I; s 10 repealed by the SLR (Consequential Repeals) Act 1965.*)

### 11 Prosecution of offences, etc

(1) Proceedings for any offence [under another Act as applied by or under this Act] may be taken, and the offence may for all incidental purposes be treated as having been committed in any place in the United Kingdom.

(2) Where a body corporate is guilty of such an offence and the offence 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 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 the offence and shall be liable to be proceeded against and punished accordingly.

In this subsection, "director" in relation to a body corporate established for the purpose of carrying on under national ownership any industry or part of an

industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

(3) ...

## NOTES

The words in square brackets in sub-s (1) were substituted, and sub-s (3) was repealed, by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, para 3, Sch 4.

**United Kingdom.** See the note to s 1 ante.

**Body corporate ... guilty of such an offence.** Except when the penalty is inappropriate or where, by the nature of the offence, it must be committed by an individual, a corporation may be convicted for the criminal acts (including those requiring mens rea) of the directors and managers who represent the directing mind and will of the corporation and control what it does (*DPP v Kent & Sussex Contractors Ltd* [1944] KB 146, [1944] 1 All ER 119; *R v ICR Haulage Ltd* [1944] KB 551, [1944] 1 All ER 691, CCA; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL), but it cannot be convicted for the criminal acts of its inferior employees or agents unless the offence is one for which an employer or principal may be vicariously liable (*John Henshall (Quarries) Ltd v Harvey* [1965] 2 QB 233, [1965] 1 All ER 725; *Tesco Supermarkets Ltd v Natrass* above; *R v Andrews-Weatherfoil Ltd* [1972] 1 All ER 65, [1972] 1 WLR 118, CA). See further, on the criminal liability of corporations, 9 Halsbury's Laws (4th edn) para 1379 and 11(1) Halsbury's Laws (4th edn reissue) para 35, and as to vicarious liability, 11(1) Halsbury's Laws (4th edn reissue) paras 52 et seq.

**Consent.** There is authority for saying that this presupposes knowledge; see *Re Caughey, ex p Ford* (1876) 1 Ch D 521 at 528, CA, per Jessel MR, and *Lamb v Wright & Co* [1924] 1 KB 857 at 864, [1924] All ER Rep 220 at 223. It is thought, however, that actual knowledge is not necessary; cf *Knox v Boyd* 1941 JC 82 at 86; *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449, 450, [1951] WN 383, per Devlin J; *James & Son Ltd v Smee* [1955] 1 QB 78 at 91, [1954] 3 All ER 273 at 278 per Parker J; and *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847.

**Connivance.** Though there are many decisions on the meaning of this word in matrimonial law (see *Godfrey v Godfrey* [1965] AC 444, [1964] 3 All ER 154, HL, especially the speech of Lord Guest in which earlier decisions are reviewed), there is little authority as to its meaning in the context in which it appears in this section (see *Gregory v Walker* (1912) 77 JP 55, 29 TLR 51, and *Glanville Williams, Criminal Law: The General Part*, para 222). It is thought that the word implies knowledge of, and acquiescence in, the offence committed. Yet it seems that here again positive knowledge is not necessary and that suspicion is enough although mere negligence or inattention is not; see *Rogers v Rogers* (1830) 3 Hag Ecc 57 (but note the express reference to neglect in this section).

**Neglect.** This word implies failure to perform a duty of which the person knows or ought to know; see *Re Hughes, Rea v Black* [1943] Ch 296 at 298, [1943] 2 All ER 269 at 271 per Simonds J. For circumstances in which an offence was held to be attributable to neglect on the part of a director, see *Crickitt v Kursaal Casino Ltd (No 2)* [1968] 1 All ER 139 at 146, 147, [1968] 1 WLR 53, HL, and for circumstances in which the opposite was held, see *Huckerby v Elliott* [1970] 1 All ER 189, (1969) 113 Sol Jo 1001.

**Purporting to act.** The reference to any person who was purporting to act in any such capacity is introduced in view of *Dean v Hiesler* [1942] 2 All ER 340, where a director who had not been duly appointed was held not liable for an offence committed by the company.

**Definitions.** For "designated area", see s 1(7) ante; and for "installation", see s 11A post. Note as to "director", sub-s (2) above.

## [11A Interpretation

In this Act "installation" includes any floating structure or device maintained on a station by whatever means.]

## NOTE

This section was inserted by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, para 4.

12 (*Repealed by the Northern Ireland Constitution Act 1973, s 41(1), Sch 6, Pt 1.*)

## 13 Short title

This Act may be cited as the Continental Shelf Act 1964.

## Statutory Instrument 1997 No. 268

## The Continental Shelf (Designation of Areas) Order 1997

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STATUTORY INSTRUMENTS

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1997 No. 268

CONTINENTAL SHELF

The Continental Shelf (Designation of Areas) Order 1997

*Made*

*12th February 1997*

At the Court at Buckingham Palace, the 12th day of February 1997

Present,

The Queen's Most Excellent Majesty in Council

Whereas by the Continental Shelf (Designation of Areas) Orders 1964 to 1993<sup>[1]</sup> certain areas are designated as areas within which the rights of the United Kingdom with respect to the sea bed and subsoil and their natural resources may be exercised:

And whereas it is expedient that a further such area should be so designated:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1(7) of the Continental Shelf Act 1964<sup>[2]</sup> and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:---

.... 1 . ---(1) This Order may be cited as the Continental Shelf (Designation of Areas) Order 1997.

....(2) This Order and the Orders recited in the preamble to this Order may be cited together as the Continental Shelf (Designation of Areas) Orders 1964 to 1997.

.... 2 . The area defined in the Schedule to this Order is hereby designated

as an area within which the rights of the United Kingdom outside territorial waters with respect to the sea bed and subsoil and their natural resources are exercisable.

*M. H. Nicholls*  
Clerk of the Privy Council

#### SCHEDULE

#### Article 2

Article 2 of this Order applies to the area bounded by a line joining the following co-ordinates on European Datum

....(1) 60- 40' 00" N .	4- 24' 00" W
....(2) 60- 40' 00" N .	4- 00' 00" W

and the co-ordinates numbered (24) and (25) in the Schedule to the Continental Shelf (Designation of Additional Areas) Order 1982, and thence to the co-ordinates numbered (1) in this Schedule.

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#### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order designates a further area of the continental shelf north-west of the Shetland Islands as an area within which the rights of the United Kingdom with respect to the sea bed and subsoil and their natural resources are exercisable.

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#### Notes:

[1] S.I. 1964/697, 1965/1531, 1968/891, 1971/594, 1974/1489, 1976/1153, 1977/1871, 1978/178, 1029, 1979/1447, 1982/1072, 1987/1265, 1989/2398, 1993/599, 1993/1782. [back](#)

[2] 1964 c. 29. [back](#)

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ISBN 0 11 063912 X



# MINERAL WORKINGS (OFFSHORE INSTALLATIONS) ACT 1971

(1971 c 61)

## ARRANGEMENT OF SECTIONS

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*An Act to provide for the safety, health and welfare of persons on installations concerned with the underwater exploitation and exploration of mineral resources in the waters in or surrounding the United Kingdom, and generally for the safety of such installations and the prevention of accidents on or near them* [27 July 1971]

**Power to amend, modify or repeal Act: (i) Great Britain.** The Offshore Safety Act 1992, s 1, Vol 19, title Health and Safety at Work, enables the Health and Safety Executive, under the Health and Safety at Work etc Act 1974, s 15 (health and safety regulations), Vol 19, title Health and Safety at Work, progressively to replace the provisions of this Act and its United Kingdom subsidiary legislation relating to health and safety offshore, by regulations providing for the safety, health and welfare of persons on offshore installations or engaged on related pipe-line work in British (ss 1(5), 7(4) of that Act) controlled waters. Accordingly, a number of provisions of this Act have been repealed or modified by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 3(1), 4(2) (made under the 1974 Act, ss 15(1), (3)(a), 82(3)(a) and the 1992 Act, ss 1(2)(a), 2(2)(a), both Vol 19, title Health and Safety at Work), subject to savings in reg 6(1) thereof for regulations made under the repealed provisions which were in force immediately before those regulations came into force (23 August 1993) and in reg 6(2) thereof for any exemption, approval, authorisation or direction granted or given or other thing done for the purposes of any of the modified provisions which were in force immediately before that date. Provisions of this Act which have been thus repealed subject to savings for regulations thereunder are accordingly printed in italics in this work.

**Power to amend, modify or repeal Act: (ii) Northern Ireland.** The Offshore, and Pipelines, Safety (Northern Ireland) Order 1992, SI 1992/1728 (NI 17), art 3 (made under the Northern Ireland Act 1974, Sch 1, para 1, Vol 31, title Northern Ireland (Pt 2), as modified by the Offshore Safety Act 1992, s 6, Vol 19, title Health and Safety at Work), is the Northern Ireland equivalent of the Offshore Safety Act 1992, s 1 (as to which, see head (i) above). That article enables the Department of Economic Development for Northern Ireland, under the Health and Safety at Work (Northern Ireland) Order 1978, SI 1978/1039 (NI 9), art 17 (the Northern Ireland equivalent of the Health and Safety at Work etc Act 1974, s 15), progressively to replace the provisions of this Act and its United Kingdom subsidiary legislation relating to health and safety offshore, by regulations providing for the safety,



health and welfare of persons on offshore installations or engaged on related pipe-line work in waters adjacent to Northern Ireland. The Department of Economic Development for Northern Ireland has made the following regulations in the exercise of those powers—

- (i) the Offshore Installations (Safety Case) Regulations (Northern Ireland) 1993, SR 1993/221. Those regulations provide, partly (reg 10 and Sch 6), as from 30 November 1995, for the preparation of safety cases for offshore installations in waters adjacent to Northern Ireland and for the notification of specified activities to the Department of Economic Development for Northern Ireland;
- (ii) the Offshore Installations and Pipeline Works (First Aid) Regulations (Northern Ireland) 1993, SR 1993/323. Those regulations revoke and replace provisions relating to first-aid in certain United Kingdom regulations made under ss 3, 6 of this Act, so far as they apply to any offshore installation maintained in tidal waters and parts of the sea in or adjacent to Northern Ireland up to the seaward limit or territorial waters;
- (iii) the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 1, 2, 3(1), (4), 4(1), (4), 5(1), 6, Schedule. Those regulations—
  - (a) repeal the following provisions of this Act (which align with the repeals made in relation to Great Britain by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 3(1))— ss 2, 3(1)–(3), 4(2); in ss 4(7), 5(9), the words “in relation to any class or description of installation by regulations under this Act, or”; ss 6, 7(1), (2); in s 7(4), the words “in relation to any class or description of installation by the regulations; or”; in s 7(5), the words “by regulations under this Act, or”; and s 7(7), (8), Schedule;
  - (b) revoke the Offshore Installations (Public Inquiries) Regulations 1974, SI 1974/338 (made under s 6 of this Act);
  - (c) provide for the continuance in force (with the exception of SI 1974/338), with modifications for Northern Ireland, of United Kingdom regulations made under ss 2, 3(1)–(3), 6 of this Act; and
  - (d) provide (i) that in ss 4(1), (4), (7), 5(8), (9), 7(4), (5) of this Act, any reference to the Secretary of State is to be construed as, or as including, a reference to the Department of Economic Development for Northern Ireland; and (ii) provide for the construction of any reference, in any provision of a statutory provision or other document, to an inspector appointed under s 6(4) of this Act; and
- (iv) the Offshore Installations (Life-Saving Appliances and Fire-fighting Equipment) (Fees) Regulations (Northern Ireland) 1994, SR 1994/239. Those regulations revoke and replace, in respect of Northern Ireland, provisions in certain United Kingdom regulations made under s 6 of this Act, which provide for the fees payable for examinations of specified appliances or equipment on offshore installations.

**Northern Ireland.** This Act applies, but see further head (ii) of the preceding note.

## [1 Application of Act

(1) This Act shall apply to any activity mentioned in subsection (2) below which is carried on from, by means of or on an installation which is maintained in the water, or on the foreshore or other land intermittently covered with water, and is not connected with dry land by a permanent structure providing access at all times and for all purposes.

(2) The activities referred to in subsection (1) above are—

- (a) the exploitation or exploration of mineral resources in or under the shore or bed of controlled waters;
- (b) the storage of gas in or under the shore or bed of controlled waters or the recovery of gas so stored;
- (c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of controlled waters; and
- (d) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within paragraph (a), (b) or (c) above or this paragraph.

(3) Her Majesty may by Order in Council provide that, in such cases and subject to such exceptions and modifications as may be prescribed by the Order, this Act shall have effect as if—

- (a) any reference to controlled waters included a reference to waters in any area specified under section 22(5) of the Oil and Gas (Enterprise) Act 1982; and
- (b) in relation to installations which are or have been maintained, or are intended to be established, in controlled waters, any reference in subsection (2) above to controlled waters included a reference to waters in a foreign sector of the continental shelf which are adjacent to such waters.

(4) In this Act—

“controlled waters” means—

- (a) tidal waters and parts of the sea in or adjacent to the United Kingdom up to the seaward limits of territorial waters;
- (b) waters in any area designated under section 1(7) of the Continental Shelf Act 1964; and
- (c) such inland waters as may for the time being be specified for the purposes of this paragraph by Order in Council;

[“foreign sector of the continental shelf” means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;]

“offshore installation” means any installation which is or has been maintained, or is intended to be established, for the carrying on of any activity to which this Act applies.

(5) In this section—

“exploration” means exploration with a view to exploitation;

“inland waters” means waters within the United Kingdom other than tidal waters and parts of the sea;

“installation” includes—

- (a) any floating structure or device maintained on a station by whatever means; and
- (b) in such cases and subject to such exceptions as may be prescribed by Order in Council, any apparatus or works which are by virtue of section 33 of the Petroleum and Submarine Pipe-lines Act 1975 to be treated as associated with a pipe or system of pipes for the purposes of Part III of that Act,

but, subject to paragraph (b) above, does not include any part of a pipe-line within the meaning of that section;

“modifications” includes additions, omissions and alterations.

(6) The fact that an installation has been maintained for the carrying on of an activity falling within subsection (2) above shall be disregarded for the purposes of this section if, since it was so maintained, the installation—

- (a) has been outside controlled waters or, where it was so maintained in a part of a foreign sector of the continental shelf adjacent to those waters, the area consisting of those waters and that part; or
- (b) has been maintained for the carrying on of an activity not falling within that subsection.

(7) Orders in Council made under this section may be varied or revoked by a subsequent Order so made; and any statutory instrument containing an Order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

## NOTES

This section was substituted by the Oil and Gas (Enterprise) Act 1982, s 24.

In sub-s (4), the definition of "foreign sector of the continental shelf" was substituted by the Territorial Sea Act 1987, s 3(1), Sch 1, para 2.

**Sub-s (1): Permanent.** "Permanent is indeed a relative term, and is not synonymous with 'everlasting': *Henrikson v Grafton Hotel Ltd* [1942] 2 KB 184 at 196, CA, per Du Parcq LJ.

**Structure.** In *Hobday v Nicol* [1944] 1 All ER 302 at 303, 304, Humphreys J (with whom the other members of the court agreed) said: "Structure, as I understand it, is anything which is constructed; and it involves the notion of something which is put together, consisting of a number of different things which are so put together or built together, constructed as to make one whole, which then is called a structure." See also the cases cited in 4 Words and Phrases (3rd edn) 241, 242.

**Sub-s (2): Gas.** This expression is not defined for the purposes of this Act but cf the definition in the Gas Act 1986, s 48(1), Vol 19, title Gas.

**Sub-s (3): Adjacent.** This word is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to places adjoining and it includes places close to or near. What degree of proximity would justify the application of the word is entirely a question of circumstances (*Wellington Corpn v Lower Hutt Corpn* [1904] AC 773 at 775, 776, PC). See also *Re Ecclesiastical Comrs for England's Conveyance* [1936] Ch 430, [1934] All ER Rep 118, and *English Clays Lovering Pochin & Co Ltd v Plymouth Corpn* [1974] 2 All ER 239, [1974] 1 WLR 742, CA.

**Sub-s (4): Controlled waters.** Sub-s (4) above provides that the waters to which this Act applies are the waters in or adjacent to the United Kingdom (Great Britain and Northern Ireland) up to the seaward limits of territorial waters, and the waters in any designated area. The Offshore Safety Act 1992, s 1, Vol 19, title Health and Safety at Work, and its Northern Ireland equivalent, the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992, SI 1992/1728 (NI 17), art 3, respectively (i) enable the Health and Safety Executive progressively to replace the provisions of this Act and its subordinate legislation, by regulations providing for the safety, health and welfare of persons on offshore installations (or engaged on related pipe-line work) in waters in or adjacent to Great Britain, and (ii) enable the Department of Economic Development for Northern Ireland progressively to replace this Act and United Kingdom instruments made under this Act, by health and safety regulations covering offshore installations in waters in or adjacent to Northern Ireland (but not in waters in any designated area); see the Introductory Notes to this Act ante.

Jurisdiction over the offshore area (ie tidal waters and parts of the sea adjacent to the United Kingdom up to the seaward limits of territorial waters, waters in any designated area and, in relation to installations maintained in waters falling within either of those waters, waters in a foreign sector of the continental shelf which are adjacent to such waters) of the High Court, the Court of Session and the High Court in Northern Ireland is governed by the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, made under the Continental Shelf Act 1964, ss 6 and 7 ante. The relevant criminal law is applied to territorial waters of the United Kingdom and waters in any designated area by the Criminal Jurisdiction (Offshore Activities) Order 1987, SI 1987/2198, made under the Oil and Gas (Enterprise) Act 1982, s 22(1), (2) post.

**United Kingdom.** ie Great Britain and Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. "Great Britain" means England, Scotland and Wales by virtue of the Union with Scotland Act 1706, preamble, Art I, Vol 10, title Constitutional Law (Pt 1), as read with s 22(1) of, and Sch 2, para 5(a) to, the 1978 Act. Neither the Channel Islands nor the Isle of Man is within the United Kingdom.

**Territorial waters.** As to the extent of the territorial waters (or sea) of the United Kingdom, see the Territorial Sea Act 1987, s 1, Vol 49, title Water (Pt 1), and the Orders in Council made or having effect thereunder.

**Area designated.** The Continental Shelf Act 1964, s 1(1) ante, vests rights to the sea bed and subsoil with their natural resources, except coal, in the Crown. For the areas within which such rights are exercisable, see the note "Order in Council under this section" to s 1 of the 1964 Act ante.

**Offshore installation.** The chartering of an oil rig, defined as any ship that is an offshore installation under this Act, is not a qualifying trade for the purposes of Chapter III (ss 289-312) of Pt VII of the Income and Corporation Taxes Act 1988 (the business expansion scheme); see ss 297(6) and 298(5) of that Act, Vol 44, title Taxation. Construction operations within the scope of Chapter IV (ss 559-567) of Pt XIII of the 1988 Act include the construction, etc, of offshore installations, ie installations maintained, or to be established, for underwater exploitation or exploration to which this Act applies; see s 567(4) of that Act, in the same title.

A trade is not a qualifying trade for the purposes of the capital gains tax roll-over relief on re-investment in unquoted trading companies, if it (or a substantial part of it) consists of letting oil rigs, which are defined as ships which are offshore installations for the purposes of this Act; see the Taxation of Chargeable Gains Act 1992, ss 164I(7), 164N(1), Vol 43, title Taxation, in relation to disposals made after 15 March 1993.

The Secretary of State may by order under the Merchant Shipping Act 1988, s 39, Vol 39, title Shipping and Navigation, prohibit the provision of non-British based shipping services between offshore installations, within the meaning of this Act, in United Kingdom waters.

The definition "offshore installation" is applied by the Prevention of Terrorism (Temporary Provisions) Act 1989, s 20(1), Vol 12, title Criminal Law.

An "offshore installation" within the meaning of this Act is also an "offshore installation" for the purposes of the Offshore Safety Act 1992; see s 1(4) of that Act, Vol 19, title Health and Safety at Work, and, as to the giving of directions by the Secretary of State to an operator of such an installation with regard to security, see s 5 of that Act post.

**Sub-s (7): Varied or revoked.** The express power to vary or revoke orders is necessary because the Interpretation Act 1978, s 14, Vol 41, title Statutes, does not extend to powers to make such instruments contained in Acts passed before 1 January 1979; see s 22(1) of, and Sch 2, para 3 to, that Act.

**Statutory instrument; subject to annulment.** For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes, and as to statutory instruments which are subject to annulment in pursuance of a resolution of either House of Parliament, see ss 5(1), 7(1) of that Act.

**Oil and Gas (Enterprise) Act 1982, s 22(5).** See this title post.

**Continental Shelf Act 1964, s 1(7).** See this title ante.

**Petroleum and Submarine Pipe-Lines Act 1975, Pt III, s 33.** See Vol 36, title Railways, Inland Waterways and Pipelines; Pt III of that Act consists of ss 20–33 thereof and Sch 4 thereto.

**Orders in Council under this section.** The Offshore Installations (Included Apparatus or Works) Order 1989, SI 1989/978 (made under sub-s (5) above).

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes.

## 2 Registration of offshore installations

(1) *The Secretary of State may make regulations for the registration of offshore installations.*

(2) *Regulations under this section may make provision—*

- (a) *for all matters relevant to the maintenance of a register of offshore installations,*
- (b) *without prejudice to paragraph (a) above, for the cases in which an installation is to be or may be exempted from registration, for the period for which any registration or exemption is to remain effective without renewal, the alteration or cancellation in any prescribed circumstances of registration or exemptions or of any conditions attached thereto, the persons by whom and manner in which applications in connection with any registration or exemption are to be made, and the information and evidence to be furnished in connection with any such application,*
- (c) *for the marking or other means of identification of any installation, whether registerable or exempted from registration,*
- (d) *for the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of them,*
- (e) *for requiring the payment of fees in connection with the making of applications under the regulations, the issue of certificates or other matters,*
- (f) *for matters arising out of the termination of any registration or exemption, or any conditions attached thereto,*
- (g) *for any other incidental matters.*

### NOTES

In consequence of the Offshore Safety Act 1992, s 1, and the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992, SI 1992/1728 (NI 17), art 3 (see the Introductory Notes to this Act ante), this section is repealed, with a saving for the regulations made under this section, by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 3(1)(a), 6 (Great Britain), and by the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 3(1)(a), 6 (Northern Ireland).

**Secretary of State.** Is one of Her Majesty's Principal Secretaries of State; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. The Secretary of State here concerned is the Secretary of State for Trade and Industry.

**Fees.** Any receipts of the Secretary of State under this Act are to be paid into the Consolidated Fund; see s 13(2) post.

**Definitions.** For "offshore installation", see s 1(4) ante; for "prescribed", see s 12(1) post.

**Regulations under this section.** The Offshore Installations (Registration) Regulations 1972, SI 1972/702, as amended by SI 1991/679, which are continued in force notwithstanding the repeal of this section as noted above, but references to the Secretary of State in those regulations are to be

construed as references to the Health and Safety Executive or as references to the Department of Economic Development for Northern Ireland, as the case may be; see the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 4(5), 6, Schedule, and the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 4(4), 6, Schedule.

For general provisions as to regulations under this Act, see s 7 post, and note in particular as to the power to exclude or grant exemptions therefrom, sub-ss (4)–(6) thereof.

### 3 Construction and survey regulations for offshore installations

(1) *The Secretary of State may make regulations—*

- (a) *requiring offshore installations or parts of offshore installations to be certified by such persons and in such manner as may be provided by the regulations to be, in respect of such matters affecting safety as may be so provided, fit for the purpose or purposes specified by the regulations,*
- (b) *imposing requirements as to the survey, testing and inspection of installations or parts of installations in respect of matters covered or required to be covered by a certificate of fitness,*
- (c) *imposing any prohibition or restriction as respects installations or parts of installations which, in any respect, fail to comply with any provisions of the regulations.*

(2) *Regulations under this section may make provision—*

- (a) *for the issue of certificates of fitness, and the custody, surrender, production or display of the certificates or copies of them,*
- (b) *for requiring the payment of fees in connection with the making of applications under the regulations, the carrying out of surveys or tests, the issue of certificates or other matters,*
- (c) *for matters arising out of the termination or modification of any certificate of fitness,*
- (d) *for any other incidental matters.*

(3) *The regulations may provide for exempting, or authorising the Secretary of State to exempt, any installation or part of an installation from all or any of the provisions of the regulations, either in a particular case, or in a specified class or description of cases.*

(4) It shall be the duty of the owner of the offshore installation, and of the installation manager and of [every person who, in relation to the installation, is a concession owner], to ensure that the provisions of regulations under this section are complied with, and, if regulations under this section are contravened in any respect in relation to an offshore installation when it is within [controlled waters], the owner of the offshore installation, the installation manager and [every person who, in relation to the installation, is a concession owner] shall each be guilty of an offence under this section and shall be liable—

- (a) on summary conviction to a fine not exceeding [the prescribed sum],
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or both.

#### NOTES

In consequence of the Offshore Safety Act 1992, s 1, and the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992, SI 1992/1728 (NI 17), art 3 (see the Introductory Notes to this Act ante), sub-ss (1)–(3) of this section are repealed, with a saving for regulations made under those subsections, by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 3(1)(b), 6 (Great Britain), and by the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 3(1)(b), 6 (Northern Ireland).

The words in the first, second and third pairs of square brackets in sub-s (4) were substituted by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, paras 7, 8. The reference to the prescribed sum in sub-s (4)(a) is substituted by virtue of the Magistrates' Courts Act 1980, s 32(2), Vol 27, title Magistrates.

**Sub-s (1): Secretary of State.** See the note to s 2 ante.

**Safety.** The regulations made under sub-s (1)(a) above relate to the certification of offshore installations as respects matters affecting safety. Under s 6 and the Schedule post (repealed with savings as noted thereto), regulations have been made as respects the safety, health and welfare of the persons on offshore installations, and generally for the safety, etc of the installations.

**Survey.** See also para 9(c) of the Schedule post (repealed with savings as noted thereto), which provides for regulations empowering inspectors to require, in connection with a survey or inspection, the carrying out of procedures and the conduct of tests by prescribed persons.

**Sub-s (2): Fees.** Any receipts of the Secretary of State under this Act are to be paid into the Consolidated Fund; see s 13(2) post.

**Sub-s (4): Shall be liable, etc.** For the procedure for determining the mode of trial of offences triable either summarily or on indictment, see the Magistrates' Courts Act 1980, ss 18 et seq, Vol 27, title Magistrates.

For general provisions as to offences under this section, see s 9 post, and note as to the defences available in proceedings under this section, sub-s (3) thereof.

**Summary conviction.** Summary jurisdiction and procedure are mainly governed by the Magistrates' Courts Act 1980, Vol 27, title Magistrates, and by rules made under s 144 of that Act.

**Prescribed sum.** In the prescribed sum within the meaning of the Magistrates' Court Act 1980, s 32, Vol 27, title Magistrates. By s 32(9) of the 1980 Act, the prescribed sum is £5,000 but a different amount may be substituted by order under s 143 of that Act.

As to the fixing of fines, see the Criminal Justice Act 1991, s 18, Vol 12, title Criminal Law.

**Conviction on indictment.** All proceedings on indictment are to be brought before the Crown Court; see the Supreme Court Act 1981, s 46(1), Vol 11, title Courts and Legal Services. As to indictments and the trial thereof, see generally 11(2) Halsbury's Laws (4th edn reissue) paras 913 et seq, 942 et seq.

**Fine.** There is no specific limit to the amount of the fine which may be imposed on conviction on indictment, but it has for long been the law that the fine should be within the offender's capacity to pay (see, in particular, *R v Churchill (No 2)* [1967] 1 QB 190, [1966] 2 All ER 215, CCA (revsd on other grounds sub nom *Churchill v Walton* [1967] 2 AC 224, [1967] 1 All ER 497, HL) and *R v Garner* [1986] 1 All ER 78, [1986] 1 WLR 73, CA; and see also the Bill of Rights (1688), s 1, Vol 10, title Constitutional Law (Pt 1)), and it is now provided by the Criminal Justice Act 1991, s 18(3), Vol 12, title Criminal Law, that in fixing the amount of a fine a court shall take into account, inter alia, the financial circumstances of the offender so far as they are known, or appear, to the court. For further provisions as to the fixing of fines, see s 18 of the 1991 Act, Vol 12, title Criminal Law, and as to when a fine may be imposed in addition to imprisonment, see *R v Garner* above.

**Definitions.** For "concession owner", see s 12(2) post; for "contravention", see s 12(5) post; for "controlled waters" and "offshore installation", see s 1(4) ante; for "installation manager", see s 4(8) post.

**Regulations under this section.** The following regulations made under sub-ss (1)–(3) above continue in force, notwithstanding the repeal of those subsections as noted above, but references to the Secretary of State in the regulations (except in reg 19 of the 1976 Regulations) are to be construed as references to the Health and Safety Executive or as references to the Department of Economic Development for Northern Ireland, as the case may be, and the reference in the 1976 Regulations to an inspector appointed under s 6(4) post is to be construed as a reference to an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974, s 19, Vol 19, title Health and Safety at Work, who is authorised to act for the purposes of that provision (see the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 4(5), 5(1), 6, Schedule, and the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 4(4), 5(1), 6, Schedule)—

- (1) the Offshore Installations (Construction and Survey) Regulations 1974, SI 1974/289; and
- (2) the Offshore Installations (Operational Safety, Health and Welfare) Regulations 1976, SI 1976/1019, as amended by SI 1984/419, SI 1989/1672, SI 1992/2932 (partly (in so far as they apply to work equipment provided for use before 1 January 1993), as from 1 January 1997) and by the Offshore Installations and Pipeline Works (First-Aid) Regulations (Northern Ireland) 1993, SR 1993/323, reg 9, Schedule.

For general provisions as to regulations under this Act, see s 7 post, and note as to the general power to exclude or grant exemptions therefrom, sub-ss (4)–(6) thereof. Note in particular as to exemptions from regulations under this section, sub-s (3) above. Note also as to exclusion of regulations in emergencies, s 5(5) post.

#### 4 Managers of offshore installations

(1) Every offshore installation, so long as it is in [controlled waters], shall be under the charge of a person appointed to be or act as manager of the installation, and the owner of the installation shall appoint to be installation manager—

- (a) a person who, to the best of the knowledge and belief of the owner, has the skills and competence suitable for the appointment, and
- (b) another or others to act where necessary in place of the installation manager,

and shall inform *the Secretary of State* of any appointment under this subsection by giving notice in the prescribed form and containing the prescribed particulars.

(2) *The Secretary of State may, if he thinks fit, make regulations prescribing requirements to be fulfilled as respects an installation manager appointed under paragraph (a) or paragraph (b) of subsection (1) above, including requirements as to qualifications, experience, health or age; and the regulations may make different provision for managers of different types of installations or managers whose responsibilities differ in other respects, and different provision for managers appointed under the said paragraphs (a) and (b) respectively.*

(3) The owner may, under subsection (1)(a) above, appoint two or more persons to be managers in rotation, and the persons appointed under subsection (1)(b) above shall act where necessary in place of any of them.

(4) If at any time the owner is satisfied that an installation manager appointed in pursuance of subsection (1) above does not have the requisite skills and competence, he shall terminate the appointment as soon as practicable, and shall give *the Secretary of State* notice in the prescribed form of the action taken by him.

(5) It shall be the duty of the owner, in order to ensure that an installation manager appointed under subsection (1)(a) above is on the installation when it is manned, from time to time place a person so appointed on the installation, and to ensure that he remains there until relieved, or so long as it is manned.

(6) If the owner fails to comply, or to ensure compliance with the provisions of this section, he shall be guilty of an offence under this section, and liable on summary conviction to a fine not exceeding [level 5 on the standard scale].

(7) The operation of this section may be excluded in whole or in part *in relation to any class or description of installation by regulations under this Act, or in relation to any particular installation by directions of the Secretary of State given in such manner and to such persons as he thinks appropriate.*

(8) In this Act references to the manager of an offshore installation or to an installation manager are to be taken, except in so far as the context otherwise requires, as references to the person for the time being in charge of the installation and appointed as required by paragraph (a) or (b) of subsection (1) above.

#### NOTES

The words in square brackets in sub-s (1) were substituted by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, para 8.

In consequence of the Offshore Safety Act 1992, s 1, and the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992, SI 1992/1728 (NI 17), art 3 (see the Introductory Notes to this Act ante), in sub-ss (1), (4), (7), the references to the Secretary of State are to be construed as references to the Health and Safety Executive or to the Department of Economic Development, as the case may be, and sub-s (2), and, in sub-s (7), the words "in relation to any class or description of installation by regulations under this Act, or" are repealed, with a saving for regulations made under sub-s (2), by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 3(1)(c), 4(2), 6 (Great Britain), and by the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 3(1)(c), 4(1), 6 (Northern Ireland).

The reference to level 5 on the standard scale in sub-s (6) is substituted by virtue of the Criminal Justice Act 1982, ss 38, 46, Vol 27, title Magistrates.

**Sub-s (1): Secretary of State.** See the second paragraph of the preceding note.

**Sub-s (2): Secretary of State.** See the note to s 2 ante.

**Thinks fit.** Statutory powers are often conferred in subjective terms, the competent authority being entitled to act, eg, when it "thinks fit", or when it is "satisfied" or it "appears" to it that a prescribed state of affairs exists, but the inherent jurisdiction of the courts to determine whether such powers have been exceeded is not readily ousted by the use of such language. The usual modern approach is for the courts to inquire whether a reasonable person could have come to the decision in

question without misdirecting himself on the law or the facts in a material respect; see further 1(1) Halsbury's Laws (4th edn reissue) para 21.

**Sub-s (4): Practicable.** The meaning of this word and the difference between "practicable" and the less strict standard of "reasonably practicable" have been most often considered judicially in relation to safety legislation; see 20 Halsbury's Laws (4th edn reissue) para 550, and the cases there cited. See also *Hammond v Haigh Castle & Co Ltd* [1973] 2 All ER 289, [1973] ICR 148; *Owen v Crown House Engineering Ltd* [1973] 3 All ER 618, [1973] ICR 511; and *Dedman v British Building and Engineering Appliances Ltd* [1974] 1 All ER 520, [1974] ICR 53, CA.

**Secretary of State.** See the second paragraph of the first note to this section.

**Sub-s (6): Fails to comply.** In *R v Southwark BC, ex p Southwark Borough Market Trustees* (1920) 124 LT 26, Lord Reading, CJ with whom the other judges agreed, said in the Divisional Court: "It is said that we ought to read the words 'fail to exercise their power' as equivalent to 'have not exercised their power' and I think that is their true meaning". On appeal in the same case (1921) 90 LJKB 359, (1921) 124 LT 623, CA, the judgment of the Divisional Court was affirmed, Baubres LJ saying, at 624: "Nobody doubts that the word 'fail' may have different meanings, having regard to the context in which that word is used. The simple meaning is the meaning which the Divisional Court have adopted, and, in my opinion, having regard to the context in which the word is here used, it is the only possible meaning." It seems that the present Act, too, uses the word in this sense, and that accordingly "fails to comply" means here "does not comply"; cf especially, *Re Hughes, Re v Black* [1943] Ch 296, [1943] 2 All ER 269 at 271.

**Summary conviction.** See the note to s 3 ante.

**Offence under this section.** For general provisions as to offences, see s 9 post, and note as to the defences available in proceedings under this section, sub-s (3) thereof.

**Standard scale.** By the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, as amended, and the Criminal Justice Act 1982, s 37(3), Vol 27, title Magistrates, this means the standard scale set out in s 37(2) of the 1982 Act. The scale is: level 1: £200; level 2: £500; level 3: £1,000; level 4: £2,500; and level 5: £5,000, but different amounts may be substituted by order under the Magistrates' Courts Act 1980, s 143, Vol 27, title Magistrates.

As to the fixing of fines, see the Criminal Justice Act 1991, s 18, Vol 12, title Criminal Law.

**Sub-s (7): Secretary of State.** See the second paragraph of the first note to this section.

**Sub-s (8): In charge.** The words already occur inter alia in the Licensing Act 1872, s 12, Vol 24, title Licensing and Liquor Duties, and the Road Traffic Act 1988, ss 4(2), 5(1), Vol 38, title Road Traffic; see the note "In charge of" to the said s 5.

See, in particular, *Leach v Evans* [1952] 2 All ER 264, 116 JP 410; *Haines v Roberts* [1953] 1 All ER 344, [1953] 1 WLR 309, and *Luke v Coultar* [1953] NI 29.

**Power to exclude.** As to the power to exclude the operation of this section, note sub-s (7) above.

**Definitions.** For "controlled waters" and "offshore installation", see s 1(4) ante; for "owner", see s 12(1) post. Note as to "installation manager", sub-s (8) above.

**Regulations under this section.** The Offshore Installations (Managers) Regulations 1972, SI 1972/703, as amended by SI 1991/679, which continue in force notwithstanding the repeal of sub-s (2) as noted above, but references to the Secretary of State therein are to be construed as references to the Health and Safety Executive or as references to the Department of Economic Development for Northern Ireland, as the case may be; see the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 4(5), 6, Schedule, and the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 4(4), 6, Schedule.

For general provisions as to regulations under this Act, see s 7 post, and note as to the power to exclude or grant exceptions therefrom, sub-ss (4)–(6) thereof. Note also as to exclusion of regulations in emergencies, s 5(5) post.

## 5 Managers of offshore installations, further provisions

(1) The manager of an offshore installation shall not be absent from the installation at any time when it is manned, except in case of sudden sickness or other cause beyond his control, or for other sufficient reason, and a person failing to comply with this subsection shall be guilty of an offence under this section, and liable on summary conviction to a fine not exceeding [level 5 on the standard scale].

(2) Except as otherwise provided by this Act, the manager of [an offshore installation] shall have in relation to it general responsibility for matters affecting safety, health or welfare or, where connected with safety, health or welfare, the maintenance of order and discipline, and for the discharge of that responsibility shall exercise authority over all persons in or about the installation:

Provided that this subsection shall not extend to any matters for which another



person is responsible as master, captain or person in charge or any vessel, aircraft or hovercraft.

(3) If a person subject to the authority of the manager of an offshore installation wilfully disobeys a lawful command given him by the manager in exercise of that authority, he shall be liable on summary conviction to a fine not exceeding [level 3 on the standard scale].

(4) The manager of an offshore installation shall not permit the installation to be used in any manner, or permit any operation to be carried out on or from the installation, if the seaworthiness or stability of the installation is likely to be endangered by its use in that manner, or by the carrying out of that operation or by its being carried out in the manner proposed, and it shall be the duty of the owner of the installation to ensure that the provisions of this subsection are complied with by the installation manager.

If an installation manager or owner fails to comply, or ensure compliance, with this subsection he shall be guilty of an offence under this section, and liable—

- (a) on summary conviction, to a fine not exceeding [the prescribed sum],
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or both.

(5) Where at an offshore installation there is an emergency or apprehended emergency endangering the seaworthiness or stability of the installation or otherwise involving a risk of death or serious personal injury, the installation manager may take or require to be taken any such measures as are necessary or expedient to meet or avoid the emergency; and no regulation or condition having effect by virtue of this Act shall apply to prohibit or restrict the taking of any such measures by virtue of this subsection.

(6) If the installation manager has reasonable cause to believe that it is necessary or expedient for the purpose of securing the safety of an offshore installation or persons in or about it, or maintaining order and discipline among those persons, the installation manager may cause any of those persons to be put ashore in the United Kingdom; and where any of those persons has done or is about to do any act endangering or likely to endanger the safety of the installation or persons in or about it or the maintenance of order and discipline among those persons, or the installation manager with reasonable cause suspects him of having done or being about to do any such act, the installation manager may take or cause to be taken such other reasonable measures against him, by restraint of his person or otherwise, as the installation manager thinks necessary or expedient:

Provided that this subsection shall not extend to any matters for which another person is responsible as master, captain or person in charge of any vessel, aircraft or hovercraft.

(7) A person shall not be kept under restraint by virtue of subsection (6) above for longer than twenty-four hours unless—

- (a) the intention is that he shall be put ashore in the United Kingdom in accordance with that subsection at the earliest opportunity; and
- (b) within those twenty-four hours or as soon as practicable afterwards notice of his being kept under restraint and of the reason for it is sent to the prescribed authority in the United Kingdom.

(8) The manager of an offshore installation shall notify the owner as soon as practicable of any event which occurs at the installation and which the owner is by any regulation or condition having effect by virtue of this Act required to notify to the Secretary of State [or the Executive].

If a person fails to comply with the provisions of this subsection he shall be guilty of an offence under this section, and liable on summary conviction to a fine not exceeding [level 3 on the standard scale].

(9) The operation of this section may be excluded in whole or in part in relation to any class or description of installation by regulations under this Act, or *in relation to any class or description of installation by regulations under this Act*, or in relation to any particular installation by directions of *the Secretary of State* given in such manner and to such persons as he thinks appropriate.

#### NOTES

The reference to level 5 on the standard scale in sub-s (1), and the references to level 3 on the standard scale in sub-ss (3), (8), are substituted by virtue of the Criminal Justice Act 1982, ss 38, 46, Vol 27, title Magistrates.

The words in square brackets in sub-s (2) were substituted by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, para 9.

The reference to the prescribed sum in sub-s (4)(a) is substituted by virtue of the Magistrates' Courts Act 1980, s 32(2), Vol 27, title Magistrates.

In consequence of the Offshore Safety Act 1992, s 1, and the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992, SI 1992/1728 (NI 17), art 3 (see the Introductory Notes to this Act ante), this section is amended by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 3(1)(d), 4(2) (Great Britain), and by the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 3(1)(d), 4(1) (Northern Ireland), as follows—

- (i) in sub-s (8), in relation to Great Britain, after the words "the Secretary of State", there are added the words "or the Executive", and, in relation to Northern Ireland, the reference to the Secretary of State in that subsection is to be construed as including a reference to the Department of Economic Development for Northern Ireland;
- (ii) in sub-s (9), the words "in relation to any class or description of installation by regulations under this Act, or" are repealed (Great Britain and Northern Ireland); and
- (iii) in sub-s (9), the reference to the Secretary of State is to be construed as a reference to the Health and Safety Executive or to the Department of Economic Development, as the case may be.

**Sub-s (1): Offence under this section.** For general provisions as to offences, see s 9 post, and note as to the defences available in proceedings under this section, sub-s (3) thereof.

**Summary conviction; shall be ... liable; prescribed sum; conviction on indictment; fine.** See the notes to s 3 ante.

**Standard scale; practicable.** See the notes to s 4 ante.

**Sub-s (2): Safety, health or welfare.** As to the making of regulations for the safety, health or welfare of persons on offshore installations, and generally for the safety etc of such installations, see s 6 and the Schedule post (repealed with savings as noted thereto).

**Vessel.** This is a wider term than "ship" and includes anything beyond a mere boat; see *Gapp v Bond* (1887) 19 QBD 200 at 202, CA per Lord Esher MR. See further 4 Words and Phrases (3rd edn) 388, 389.

**Sub-s (3): Wilfully.** This expression, in the words of Lord Russell of Killowen CJ, in *R v Senior* [1899] 1 QB 283 at 290, 291, [1895–9] All ER Rep 511 at 514, "means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it". See also, in particular, *R v Walker* (1934) 24 Cr App Rep 117; *Eaton v Cobb* [1950] 1 All ER 1016, 114 JP 271; *Arrowsmith v Jenkins* [1963] 2 QB 561, [1963] 2 All ER 210; *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649; *Dibble v Ingleton* [1972] 1 QB 480, sub nom *Ingleton v Dibble* [1972] 1 All ER 275; *Willmott v Atack* [1977] QB 498, [1976] 3 All ER 794; *Wershof v Metropolitan Police Comr* [1978] 3 All ER 540, [1978] Crim LR 424; and *R v Sheppard* [1981] AC 394, [1980] 3 All ER 899, HL.

**Sub-s (4): Seaworthiness.** See the description of Parke B in *Dixon v Sadler* (1839) 5 M & W 405, (1839) 9 LJ Ex 48 at 50: "... seaworthy; by which it is meant that she shall be in a fit state, as to repairs, equipment and crew, and in all other respects, to encounter the ordinary perils of the voyage".

**Sub-s (5): Personal injury.** This expression is not defined for this section, but note the definition given in s 11(7) post. See also as to civil liability for breach of statutory duty, s 11 post, and note particularly sub-s (4) of that section.

**Sub-s (6): Reasonable cause to believe.** It is submitted that these words require not only that the person in question has reasonable cause to believe but also that he does actually believe; see *R v Banks* [1916] 2 KB 621, [1916–17] All ER Rep 356, and *R v Harrison* [1938] 3 All ER 134, 159 LT 95; and see also *Nakkuda Ali v Jayaratne* [1951] AC 66, PC.

The existence of the reasonable cause and of the belief founded on it is ultimately a question of fact to be tried on evidence and the grounds on which the person acted must be sufficient to induce in a reasonable person the required belief; see in particular, *McArdle v Egan* (1933) 150 LT 412, [1933] All ER Rep 611, CA; *Nakkuda Ali v Jayaratne* above; *Registrar of Restrictive Trading Agreements v W H Smith & Son Ltd* [1969] 3 All ER 1065 at 1070, [1969] 1 WLR 1460 at 1468, CA, per Lord Denning MR; and *IRC v Rossminster Ltd* [1980] AC 952, [1980] 1 All ER 80 at 84, 92, 93, 103, 104, HL.

**United Kingdom.** See the note to s 1 ante.

**Thinks necessary or expedient.** See the note "Thinks fit" to s 4 ante.

**Sub-s (7): As soon as practicable.** See the note "Practicable" to s 4 ante.

**Sub-s (8): Regulation or condition having effect by virtue of this Act.** See in particular, ss 3(1), 4(2) ante, and s 6 and the Schedule post (all repealed with savings as noted thereto).

**Secretary of State.** See the note to s 2 ante and head (i) in the first note to this section.

**The Executive.** Is the Health and Safety Executive; see the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 2. As to the establishment and functions of the Health and Safety Executive, see the Health and Safety at Work etc Act 1974, ss 10, 11, Vol 19, title Health and Safety at Work.

**Sub-s (9): Thinks appropriate.** See the note "Thinks fit" to s 4 ante.

**Secretary of State.** See head (iii) in the first note to this section.

**Power to exclude.** As to the power to exclude the operation of this section, note sub-s (9) above.

**Definitions.** For "installation manager", see s 4(8) ante; for "offshore installation", see s 1(3) ante; for "owner" and "prescribed", see s 12(1) post.

**Regulations under this section.** The Offshore Installations (Managers) Regulations 1972, SI 1972/703, as amended by SI 1991/679, which continue in force notwithstanding the partial repeal of sub-s (9) as noted above, but references to the Secretary of State therein are to be construed as references to the Health and Safety Executive or as references to the Department of Economic Development for Northern Ireland, as the case may be; see the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 4(5), 6, Schedule, and the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 4(4), 6, Schedule.

See generally as to regulations under this Act, s 7 post.

## 6 Safety regulations

(1) *The Secretary of State may make regulations for the safety, health and welfare of persons on offshore installations in [controlled waters], and generally, and whether or not by way of supplementing the preceding sections of this Act, for the safety of such installations and the prevention of accidents on or near them.*

(2) *The regulations may have effect as respects—*

- (a) *persons whether or not present in the course of their employment,*
- (b) *the transport of persons and things to or from an installation,*
- (c) *vessels, aircraft or hovercraft in the neighbourhood of an installation . . .*
- [*(cc) vessels on which accommodation is provided for persons who work on or from installations, and*]
- (d) *any operation or work whether on or near an installation, or in the water, or on or below the shore or bed of the sea or other waters.*

(3) *Without prejudice to the generality of the preceding provisions of this section, the regulations may provide for any of the matters set out in the Schedule to this Act, and may contain such supplemental or incidental provisions as appear to the Secretary of State to be expedient.*

(4) *The Secretary of State may appoint as inspectors to discharge the functions conferred by the regulations, and generally to assist the Secretary of State in the execution of this Act, such number of persons appearing to him to be qualified for the purpose as he may from time to time consider necessary or expedient, and may make to or in respect of any person so appointed such payments by way of remuneration, allowance or other payments as the Secretary of State may with the approval of [the Treasury].*

(5) *(Applies to Scotland only.)*

## NOTES

In consequence of the Offshore Safety Act 1992, s 1, and the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992, SI 1992/1728 (NI 17), art 3 (see the Introductory Notes to this Act ante), this section is repealed, with a saving for certain regulations made under it, by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 3(1)(e), 6 (Great Britain), and by the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 3(1)(e), 6.

The words in square brackets in sub-s (1) were substituted, the words omitted from sub-s (2)(c) were repealed, and sub-s (2)(cc) was inserted, by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, paras 8, 10, Sch 4.

The reference to the Treasury in sub-s (4) is substituted by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670.

**Secretary of State.** See the note to s 2 ante.

**Regulations.** The power to make regulations under this section is extended to include power to make regulations (a) providing for an inspector appointed under this section to enter upon any premises or vessel used in connection with an offshore installation, and for an inspector to inspect the premises or vessel, and (b) requiring the payment of fees in connection with any examination or the issue of any certificates in pursuance of regulations under this section; see the Petroleum and Submarine Pipe-lines Act 1975, s 44(5) post.

**Vessels.** See the note "Vessel" to s 5 ante.

**Appear; appearing.** See the note "Thinks fit" to s 4 ante.

**Inspectors.** See further, as to their duties, paras 9 and 10 of the Schedule post (repealed with savings as noted thereto). Any references to an inspector appointed under sub-s (4) above are, unless the contrary intention appears, to be construed as references to an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974, s 19, Vol 19, title Health and Safety at Work, who is authorised to act for the purposes of the provision in question; see the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 5(1) and the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, reg 5(1).

**Definitions.** For "controlled waters" and "offshore installation", see s 1(4) ante.

**Regulations under this section.** The following regulations made under this section continue in force, notwithstanding the repeal of this section as noted above, but references to the Secretary of State in the regulations (except in SI 1976/1019, reg 19) are to be construed as references to the Health and Safety Executive or as references to the Department of Economic Development for Northern Ireland, as the case may be, and the references in SI 1973/1842 and SI 1976/1019 to an inspector appointed under sub-s (4) above are to be construed as references to an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974, s 19, Vol 19, title Health and Safety at Work, who is authorised to act for those purposes (see the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 4(5), 5(1), 6, Schedule, and the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 4(4), 5(1), 6, Schedule)—

the Offshore Installations (Managers) Regulations 1972, SI 1972/703, as amended by SI 1991/679;  
the Offshore Installations (Logbooks and Registration of Death) Regulations 1972, SI 1972/1542, as amended by SI 1991/679;

the Offshore Installations (Inspectors and Casualties) Regulations 1973, SI 1973/1842, as amended by SI 1991/679;

the Offshore Installations (Construction and Survey) Regulations 1974, SI 1974/289;

the Offshore Installations (Application of the Employers' Liability (Compulsory Insurance) Act 1969) Regulations 1975, SI 1975/1289;

the Offshore Installations (Operational Safety, Health and Welfare) Regulations 1976, SI 1976/1019, as amended by SI 1984/419, SI 1989/1672, SI 1992/2932 (partly (in so far as they apply to work equipment provided for use before 1 January 1993), as from 1 January 1997), and by the Offshore Installations and Pipeline Works (First-Aid) Regulations (Northern Ireland) 1993, SR 1993/323, reg 9, Schedule;

the Offshore Installations (Emergency Procedures) Regulations 1976, SI 1976/1542, as amended by SI 1984/419;

the Offshore Installations (Life-saving Appliances) Regulations 1977, SI 1977/486, as amended by SI 1984/419, SI 1989/1672, the Offshore Installations and Pipeline Works (First-Aid) Regulations (Northern Ireland) 1993, SR 1993/323, reg 9, Schedule, the Health and Safety (Fees) Regulations 1994, SI 1994/397 and the Offshore Installations (Life-Saving Appliances and Fire-Fighting Equipment) (Fees) Regulations (Northern Ireland) 1994, SR 1994/239, reg 4, Sch 2;

the Offshore Installations (Fire-fighting Equipment) Regulations 1978, SI 1978/611, as amended by SI 1984/419, the Health and Safety (Fees) Regulations 1994, SI 1994/397 and the Offshore Installations (Life-Saving Appliances and Fire-Fighting Equipment) (Fees) Regulations (Northern Ireland) 1994, SR 1994/239, reg 4, Sch 2;

the Offshore Installations (Well Control) Regulations 1980, SI 1980/1759, as amended by SI 1991/308;

the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, as amended by the Offshore Installations (Safety Case) Regulations 1992, SI 1992/2885, reg 16, Sch 8, and the Offshore Installations (Safety Case) Regulations (Northern Ireland) 1993, SR 1993/221, reg 15, Sch 8; and

the Offshore Installations (Emergency Pipe-line Valve) Regulations 1989, SI 1989/1029.

See generally, as to regulations under this Act, s 7 post, and note as to the power to exclude or grant exemptions therefrom, sub-ss (4)–(6) thereof. Note also as to exclusion of regulations in emergencies, s 5(5) ante.

## 7 Regulations: general provisions

(1) *Before making regulations under this Act the Secretary of State shall consult with organisations in the United Kingdom appearing to him to be representative of those persons who will be affected by the regulations.*

(2) *Subject to subsection (3) below, regulations under this Act—*

- (a) *may provide for the creation of offences and for their punishment on summary conviction or on conviction on indictment, and*
- (b) *may afford, in respect of any description of offence created by the regulations, such defence, if any, as may be specified in the regulations.*

(3) *The punishment for an offence created by regulations under this Act shall be—*

- (a) *on summary conviction a fine not exceeding [the prescribed sum],*
- (b) *on conviction on indictment imprisonment for a term not exceeding two years, or a fine, or both,*

but without prejudice to any further restriction on the punishments which can be awarded contained in the regulations, and without prejudice to the exclusion of proceedings on indictment by the regulations.

(4) *The operation of any regulations made under this Act may be excluded in whole or in part in relation to any class or description of installation by the regulations, or in relation to any particular installation by directions of the Secretary of State given in such manner and to such persons as he thinks appropriate.*

(5) *Any exemption or exclusion by regulations under this Act, or by directions of the Secretary of State under this Act, may be made subject to the imposition of conditions specified by the regulations or directions.*

(6) *Where in pursuance of this section a person is exempted or excluded from the requirements of any provision of this Act, or of regulations under this Act, but subject to a condition, and the condition is not observed, the exemption or exclusion shall not have effect, and proceedings may be brought in respect of any breach of duty as if the exemption or exclusion had not had effect.*

(7) *Regulations made under this Act may make different provision for different circumstances, and in particular—*

- (a) *may make provision as respects installations which are registered vessels which is different from that made for other installations, and*
- (b) *may make provision for installations in transit which is different from provisions made for installations on station.*

(8) *Regulations made under this Act shall be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.*

## NOTES

In consequence of the Offshore Safety Act 1992, s 1, and the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992, SI 1992/1728 (NI 17), art 3 (see the Introductory Notes to this Act ante), this section is amended by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 3(1)(f), 4(2), 6 (Great Britain), and by the Offshore Safety (Repeals and Modifications) Regulations (Northern Ireland) 1993, SR 1993/384, regs 3(1)(f), 4(1), 6 (Northern Ireland), as follows—

- (i) sub-ss (1), (2), (7), (8), in sub-s (4), the words "in relation to any class or description of installation by the regulations, or", and, in sub-s (5), the words "by regulations under this Act, or" and the words "regulations or", are repealed, with a saving for regulations made under this section; and
- (ii) in sub-ss (4), (5), the references to the Secretary of State are to be construed as references to the Health and Safety Executive or to the Department of Economic Development, as the case may be.

The reference to the prescribed sum in sub-s (3)(a) is substituted by virtue of the Magistrates' Courts Act 1980, s 32(7), Vol 27, title Magistrates, but see the note "Without prejudice, etc" below.

**Sub-s (1): Regulations under this Act.** See, in particular, ss 2(1), 3(1), 4(2), 5(9), 6(1) ante (all repealed, or partially repealed, with savings as noted thereto). Regulations made under other sections of this Act are generally also made under this section, and are continued in force, notwithstanding the repeal of their enabling powers, by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 6(1).

**Secretary of State.** See the note to s 2 ante.

**Consult.** On what constitutes consultation, see, in particular, *Fletcher v Minister of Town and Country Planning* [1947] 2 All ER 496, (1947) 111 JP Jo 542; *Rollo v Minister of Town and Country Planning* [1948] 1 All ER 13, [1948] LJR 817, CA; *Re Union of Whippingham and East Cowes Benefices, Derham v Church Comrs for England* [1954] AC 245, [1954] 2 All ER 22, PC; *Agricultural, Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd* [1972] 1 All ER 280, [1972] 1 WLR 190; and *R v Secretary of State for Social Services, ex p Association of Metropolitan Authorities* [1986] 1 All ER 164, [1986] 1 WLR 1.

**United Kingdom.** See the note to s 1 ante.

**Appearing.** See the note "Thinks fit" to s 4 ante.

**Sub-s (2): Summary conviction; conviction on indictment.** See the notes to s 3 ante.

**Sub-s (3): Prescribed sum; fine.** See the notes to s 3 ante.

**Defence.** Defences afforded by regulations made in pursuance of sub-s (2)(b) of this section do not afford a defence in civil proceedings; see s 11(4) post.

**Without prejudice, etc.** In the case of proceedings on indictment being excluded by regulations, the offence is triable summarily only, and the maximum fine is level 5 on the standard scale (as to which, see the note to s 4 ante), rather than the prescribed sum.

**Sub-s (4): May be excluded.** See further as to exclusion of regulations in times of emergency, s 5(5) ante. See also as to exemption from regulations under s 3 ante, sub-s (3) thereof (repealed with savings as noted thereto).

**Secretary of State.** See head (ii) in the first note to this section.

**Thinks appropriate.** See the note "Thinks fit" to s 4 ante.

**Sub-s (5): Secretary of State.** See head (ii) in the first note to this section.

**Sub-s (8): Statutory instrument; subject to annulment.** See the note to s 1 ante.

## 8 (Repealed by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 4.)

### 9 Offences: general provisions

(1) Where an offence under this Act 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.

In this subsection "director", in relation to a body corporate established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

(2) In proceedings for an offence under this Act an averment in any process of the fact that anything was done or situated within [controlled waters] shall, until the contrary is proved, be sufficient evidence of that fact as stated in the averment.

(3) In proceedings for an offence under section 3, section 4 or section 5 of this Act, it shall be a defence for the accused to prove—

- (a) that he has used all due diligence to enforce the execution of this Act, and of any relevant regulation made under this Act, and
- (b) that any relevant contravention was committed without his consent, connivance or wilful default.

(4) Proceedings for any offence under this Act may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(5) ...

NOTES

The words in square brackets in sub-s (2) were substituted by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, para 8.

Sub-s (5) was repealed by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 4.

**Offence . . . committed by a body corporate.** Except when the penalty is inappropriate or where, by the nature of the offence, it must be committed by an individual, a corporation may be convicted for the criminal acts (including those requiring mens rea) of the directors and managers who represent the directing mind and will of the corporation and control what it does (*DPP v Kent & Sussex Contractors Ltd* [1944] KB 146, [1944] 1 All ER 119; *R v ICR Haulage Ltd* [1944] KB 551, [1944] 1 All ER 691, CCA; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL), but it cannot be convicted for the criminal acts of its inferior employees or agents unless the offence is one for which an employer or principal may be vicariously liable (*John Henshall (Quarries) Ltd v Harvey* [1965] 2 QB 233, [1965] 1 All ER 725; *Tesco Supermarkets Ltd v Natrass* above; *R v Andrews-Weatherfoil Ltd* [1972] 1 All ER 65, [1972] 1 WLR 118, CA). See further, on the criminal liability of corporations, 9 Halsbury's Laws (4th edn) para 1379 and 11(1) Halsbury's Laws (4th edn reissue) para 35, and as to vicarious liability, 11(1) Halsbury's Laws (4th edn reissue) paras 52 et seq.

Note as to liability of bodies corporate, s 12(4) post.

**Consent.** There is authority for saying that this presupposes knowledge; see *Re Caughey, ex p Ford* (1876) 1 Ch D 521 at 528, CA, per Jessel MR, and *Lamb v Wright & Co* [1924] 1 KB 857 at 864, [1924] All ER Rep 220 at 223. It is thought, however, that actual knowledge is not necessary; cf *Knox v Boyd* 1941 JC 82 at 86; *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449, 450, [1951] WN 383, per Devlin J; *James & Son Ltd v Smees* [1955] 1 QB 78 at 91, [1954] 3 All ER 273 at 278 per Parker J; and *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847.

**Connivance.** Though there are many decisions on the meaning of this word in matrimonial law (see *Godfrey v Godfrey* [1965] AC 444, [1964] 3 All ER 154, HL, especially the speech of Lord Guest in which earlier decisions are reviewed), there is little authority as to its meaning in the context in which it appears in this section (see *Gregory v Walker* (1912) 77 JP 55, 29 TLR 51, and *Glanville Williams, Criminal Law: The General Part*, para 222). It is thought that the word implies knowledge of, and acquiescence in, the offence committed. Yet it seems that here again positive knowledge is not necessary and that suspicion is enough although mere negligence or inattention is not; see *Rogers v Rogers* (1830) 3 Hag Ecc 57 (but note the express reference to neglect in this section).

**Neglect.** This word implies failure to perform a duty of which the person knows or ought to know; see *Re Hughes, Rea v Black* [1943] Ch 296 at 298, [1943] 2 All ER 269 at 271 per Simonds J. For circumstances in which an offence was held to be attributable to neglect on the part of a director, see *Crickitt v Kursaal Casino Ltd (No 2)* [1968] 1 All ER 139 at 146, 147, [1968] 1 WLR 53, HL, and for circumstances in which the opposite was held, see *Huckerby v Elliott* [1970] 1 All ER 189, (1969) 113 Sol Jo 1001.

**Controlled waters.** For meaning, see s 1(4) ante.

**Sufficient evidence.** This is not the same as conclusive evidence; see *Re Duce & Boots Cash Chemists (Southern) Ltd's Contract* [1937] Ch 642 at 649, 650 per Bennett J. It usually means no more than prima facie evidence (*Barracough v Greenhough* (1867) LR 2 QB 612 at 619, 620), but the matter is always one of interpretation.

**It shall be a defence . . . to prove.** The burden of proof resting on the accused is not so onerous as that which is, in general, laid on the prosecutor as regards proving an offence and may be discharged by satisfying the court of the probability, or rather the preponderance of probability, of what the accused is called on to prove; see *R v Carr-Briant* [1943] KB 607, [1943] 2 All ER 156; *R v Dunbar* [1958] 1 QB 1, [1957] 2 All ER 737; and *R v Hudson* [1966] 1 QB 448, [1965] 1 All ER 721.

The defences mentioned in sub-s (3) above are not available in any civil proceedings; see s 11(4) post.

**Wilful.** See the note "Wilfully" to s 5 ante.

**United Kingdom.** See the note to s 1 ante.

**Consent to proceedings.** As to the consents that are necessary before proceedings are taken in the case of any offence under this Act alleged to have been committed elsewhere than in the United Kingdom, see the Oil and Gas Enterprise Act 1982, s 27 post.

10 (Repealed by the Oil and Gas (Enterprise) Act 1982, ss 27(7), 37, Sch 4.)

11 Civil liability for breach of statutory duty

(1) This section has effect as respects—

- (a) a duty imposed on any person by any provision of this Act, or
- (b) a duty imposed on any person by any provision of regulations made under this Act which expressly applies the provisions of this section.

(2) Breach of any such duty shall be actionable so far, and only so far, as it causes personal injury, and references in section 1 of the Fatal Accidents Act 1846, as it applies in England and Wales, and [in Article 3(1) of the Fatal Accidents (Northern Ireland) Order 1977], to a wrongful act, neglect or default shall include references to any breach of a duty which is so actionable.

(3) Subsection (2) above is without prejudice to any action which lies apart from the provisions of this Act.

(4) Neither section 9(3) of this Act, nor any defences afforded by regulations made in pursuance of section 7(2)(b) of this Act, shall afford a defence in any civil proceedings, whether brought by virtue of this section or not.

(5) So far as the provisions of this section impose a liability on a concession owner, those provisions and the other provisions of this Act to which they relate shall bind the Crown, and accordingly, for the purposes of those provisions, and of any regulations or conditions having effect under any of those provisions, persons in the service of the Crown shall be taken to be employed whether or not they would be so taken apart from this subsection:

Provided that this subsection shall not give any right of action to a person as being a member of the armed forces of the Crown.

(6) Nothing in the last preceding subsection shall authorise proceedings to be brought against Her Majesty in her private capacity, and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

(7) In this section "personal injury" includes any disease and any impairment of a person's physical or mental condition and includes any fatal injury.

#### NOTES

The words in square brackets in sub-s (2) were substituted by the Fatal Accidents (Northern Ireland) Order 1977, SI 1977/1251.

**Regulations made under this Act.** See the note "Regulations under this Act" to s 7 ante.

**England; Wales.** For meanings, see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Shall bind the Crown.** The Crown is not bound by an Act of Parliament unless the contrary is expressly stated or there is a necessary implication that it was intended to be bound (*Thomas v Pritchard* [1903] 1 KB 209 at 212) (and see further *Lord Advocate v Dumbarton DC* [1990] 1 All ER 1, HL, as to the principles to be applied in determining whether the Crown is bound by a particular statute). The Crown for this purpose includes the great departments of State (*Cooper v Hawkins* [1904] 2 KB 164 at 172) and servants or agents of the Crown or similar persons when acting within the scope of their authority or in pursuance of Crown purposes (*Chare v Hart* (1918) LJKB 833; *London County Territorial and Auxiliary Forces Association v Nichols* [1949] 1 KB 35, [1948] 2 All ER 432, CA). However, statutory corporations and similar bodies created for a purpose of a commercial nature are not servants or agents of the Crown for this purpose, though controlled by the State, if it is not expressly provided that the corporation shall act on behalf of the Crown (*Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA; *BBC v Johns (Inspector of Taxes)* [1965] Ch 32, [1964] 1 All ER 923, CA).

It appears that the Crown is entitled to the benefit of an Act (*Willion v Berkley* (1561), 1 Plowd 223 at 243; and note the saving in the Crown Proceedings Act 1947, s 31(1), Vol 13, title Crown Proceedings), unless this is expressly or impliedly prohibited (*R v Cruise* (1852) 21 Ch R 65).

See, generally, as to the application of statutes to the Crown, 8 Halsbury's Laws (4th edn) para 958.

**Armed forces of the Crown.** The Crown is liable in tort by virtue of the Crown Proceedings Act 1947, s 2, Vol 13, title Crown Proceedings, subject to savings summarised in the Introductory Note "Limits of operation of Act" thereto. The ordinary law as to indemnity and contribution applies by virtue of s 4(1) of that Act, and the Law Reform (Contributory Negligence) Act 1945, Vol 31, title Negligence, binds the Crown by virtue of s 4(3) of the 1947 Act. By s 10(2) of the 1947 Act, no proceedings in tort lay against the Crown for death or personal injury due to anything suffered by a member of the armed forces consequent upon the nature or condition of any land, premises, ship, aircraft or vehicle used for the purposes of the armed forces, or the nature or condition of any equipment or supplies so used if the Secretary of State certified that it was or would be treated as attributable to service for the purposes of an award under the Royal Warrant, Order in Council or Order of Her Majesty relating to disablement or death of members of the force. There was also an exclusion of liability for death or personal injury caused by anything done or omitted by a member of the armed forces on duty contained in s 10(1) and that exemption extended both to the Crown and



to the member of the armed forces. The said s 10 was repealed by the Crown Proceedings (Armed Forces) Act 1987, s 1, Vol 13, title Crown Proceedings, except in relation to anything suffered by a person in consequence of an act or omission committed before 15 May 1987. At any time after that date, however, the Secretary of State may revive the said s 10 by order made under s 2 of the 1987 Act.

**Her Majesty in her private capacity.** As to the liability of the Crown in tort, see the last note. The Crown Proceedings Act 1947, s 40(1), Vol 13, title Crown Proceedings, provides that nothing in that Act shall apply to proceedings by or against, or authorise proceedings in tort to be brought against, Her Majesty in Her private capacity which includes, by virtue of s 38(3) of that Act, Her Majesty in right of Her Duchy of Lancaster and the Duke of Cornwall.

**Definitions.** For "concession owner", see s 12(2) post. Note as to "personal injury", sub-s (7) above.

**Fatal Accidents Act 1846, s 1.** The whole Act was repealed and replaced by the Fatal Accidents Act 1976, s 6, Sch 2, Vol 31, title Negligence. By s 6(2) of, and Sch 1 to, that Act, references in sub-s (2) above, to s 1 of the 1846 Act include references to the 1976 Act.

**Fatal Accidents (Northern Ireland) Order 1977.** SI 1977/1251.

**Crown Proceedings Act 1947, s 38(3).** See Vol 13, title Crown Proceedings.

## 12 Interpretation

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

["controlled waters" has the meaning given by section 1(4) of this Act.]

"designated area" has the same meaning as in the Continental Shelf Act 1964,

["foreign sector of the continental shelf" has the meaning given by section 1(4) of this Act]

"installation manager" has the meaning given by section 4(8) of this Act,

"offence under this Act" includes an offence under regulations made under this Act,

["offshore installation" has the meaning given by section 1(4) of this Act]

"owner", in relation to an offshore installation, means the person who has registered the installation pursuant to regulations under section 2 of this Act or, if there is no such person, the person for the time being having the management of the installation, or of its main structure,

"prescribed" means prescribed by regulations under this Act,

[(2) A person who has the right to exploit or explore mineral resources in any area, or to store gas in any area and to recover gas so stored, shall be a concession owner for the purposes of this Act in relation to any offshore installation at any time if, at that time, there is carried on from, by means of or on the installation any of the following activities, namely—

- (a) the exploitation or exploration of mineral resources, or the storage or recovery of gas, in the exercise of that right;
- (b) the conveyance in that area by means of a pipe or system of pipes, of minerals gotten, or gas being stored or recovered, in the exercise of that right; and
- (c) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within paragraph (a) or (b) above or this paragraph.

(3) The fact that an installation has been maintained for the carrying on of an activity falling within subsection (2) above shall be disregarded for the purposes of paragraph (c) of that subsection if, since it was so maintained, the installation—

- (a) has been outside controlled waters or, where it was so maintained in a part of a foreign sector of the continental shelf adjacent to those waters, the area consisting of those waters and that part; or

(b) has been maintained for the carrying on of an activity not falling within that subsection.]

(4) It is hereby declared that, notwithstanding that this Act may affect individuals or bodies corporate outside the United Kingdom, it applies to any individual whether or not he is a British subject, and to any body corporate whether or not incorporated under the law of any part of the United Kingdom.

(5) Any reference in this Act to a contravention of a provision of this Act or of regulations made under this Act includes a reference to a failure to comply with such a provision.

(6) Any reference in this Act to any enactment or Act of Parliament includes a reference to an enactment or Act of the Parliament of Northern Ireland.

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

#### NOTES

In sub-s (1), the definitions of "controlled waters" and "offshore installation" were substituted, the definition of "foreign sector of the continental shelf" was inserted, and the definitions omitted from that subsection were repealed, by the Oil and Gas (Enterprise) Act 1982, s 37, Sch 3, para 11(1), Sch 4. Sub-ss (2), (3) were substituted by s 37 of, and Sch 3, para 11(2) to, that Act.

**Offshore installation; gas; adjacent; United Kingdom.** See the notes to s 1 ante.

**Person.** Unless the contrary intention appears this includes a body of persons corporate or unincorporate; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**It is hereby declared.** The use of the words "it is hereby declared" in a statute does not necessarily import that the Act is merely declaratory of existing law and therefore retrospective (*Harding v Queensland Stamp Comrs* [1898] AC 769), but an Act may be held to be retrospective where it corrects an error in an earlier statute (*A-G v Pougett* (1816) 2 Price 381) or explains a former Act (*R v Dursley Inhabitants* (1832) 3 B & Ad 465; *Jones v Bennett* (1890) 63 LT 705). There is a presumption that a statute does not apply to aliens outside the jurisdiction; see *Ex p Blain*, *Re Sawers* (1879) 12 Ch D 522; [1874-80] All ER Rep 708, CA; *Re Dulles Settlement Trusts*, *Dulles v Vidler* [1951] Ch 265 at 269, [1950] 2 All ER 1013 at 1014. Sub-s (4) above provides that this Act is not limited to British subjects or to United Kingdom bodies corporate. Quære whether it does so retrospectively. As to the rule that criminal statutes are construed strictly (this Act creates criminal liability), see 44 Halsbury's Laws (4th edn) para 910.

**Failure to comply.** See the note "Fails to comply" to s 4 ante.

**Continental Shelf Act 1964.** As to designated areas, see s 1(7) of that Act ante.

### 13 Financial provisions

(1) There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State under this Act, and
- (b) any increase in money so payable under any other Act which is an increase attributable to this Act.

(2) Any receipts of the Secretary of State under this Act shall be paid into the Consolidated Fund.

#### NOTES

**Secretary of State.** See the note to s 2 ante.

**Receipts.** Ie fees paid under ss 2 and 3 ante (repealed, or partially repealed, with savings as noted thereto).

**Consolidated Fund.** Ie the Consolidated Fund of the United Kingdom which was established by the Consolidated Fund Act 1816, s 1, Vol 30, title Money (Pt 1). By the Finance Act 1954, s 34(3), Vol 30, title Money (Pt 1), any charge on the Fund extends to the growing produce thereof. See also, as to payment out of the Fund, the Exchequer and Audit Departments Act 1866, s 13, in conjunction with the Exchequer and Audit Departments Act 1957, s 2, both Vol 30, title Money (Pt 1), and the Finance Act 1975, s 56, Vol 30, title Money (Pt 3).

**14 Short title, commencement and saving**

(1) This Act may be cited as the Mineral Workings (Offshore Installations) Act 1971.

(2) This Act shall come into force on such date as the Secretary of State may by order in a statutory instrument appoint, and an order under this subsection may appoint different dates for different provisions of this Act, or for different purposes.

(3) ...

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**NOTES**

Sub-s (3) was repealed by the Northern Ireland Constitution Act 1973, s 41(1), Sch 6, Pt I.

**Secretary of State.** See the note to s 2 ante.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes.

**Order under this section.** The Mineral Workings (Offshore Installations) Act 1971 (Commencement) Order 1972, SI 1972/644 (bringing this Act, except ss 4, 5, into force on 1 May 1972, and bringing ss 4, 5 into force on 31 August 1972).

OIL AND GAS (ENTERPRISE) ACT 1982  
(1982 c 23)

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*An Act to make further provision with respect to the British National Oil Corporation to abolish the National Oil Account; to make further provision with respect to British Gas Corporation; to make provision for and in connection with the supply of gas through pipes by persons other than the Corporation; to amend the Petroleum (Production) Act 1934 and to make further provision about licences to search and get petroleum; to repeal and re-enact with amendments sections 2 and 3 of the Continental Shelf Act 1964; to extend the application of the Mineral Workings (Offshore Installations) Act 1971 and the Offshore Petroleum Development (Scotland) Act 1975; to amend the Miscellaneous Financial Provisions Act 1975, the Petroleum and Submarine Pipe-lines Act 1975 and the Participation Agreements Act 1978; and for connected purposes* [28 June 1982]

**Commencement.** This Act came into force on various dates appointed by orders made under s 38(2) post, except for certain paras of Sch 3 post, which are still to be brought into force; see post, the orders noted thereto and the "Commencement" notes throughout the Act.

**Northern Ireland.** The provisions of this Act, except Pt III (ss 19, 20) and Sch 2, extend to Northern Ireland; see s 38(3) post. As respects Northern Ireland, s 27(4) of this Act, so far as it relates to prosecutions for offences under the Mineral Workings (Offshore Installations) Act 1971 and the Petroleum Act 1987, s 23 post, is repealed by the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992, SI 1992/1728 (NI 17), art 5(1)(b).

PART I  
OIL

*1–7 (Repealed by the Oil and Pipelines Act 1985, s 7(4), (5), Sch 4, Pt I, with saving for any scheme made under s 2 of this Act before 1 December 1985.)*

## PART IV

## OFFSHORE ACTIVITIES

21 (*Repealed, together with any orders made under it, by the Petroleum Act 1987, ss 24(4), 30, Sch 3 (but without prejudice to the anticipatory exercise, by virtue of the Interpretation Act 1978, s 13, of any power conferred by that Act).)*)

**22 Application of criminal law etc**

(1) Her Majesty may by Order in Council provide that, in such cases and subject to such exceptions as may be prescribed by the Order, any act or omission which—

- (a) takes place on, under or above an installation in waters to which this section applies or any waters within five hundred metres of any such installation; and
- (b) would, if taking place in any part of the United Kingdom, constitute an offence under the law in force in that part,

shall be treated for the purposes of that law as taking place in that part.

(2) Her Majesty may by Order in Council provide that, in such cases and subject to such exceptions as may be prescribed by the Order, a constable shall on, under or above any installation in waters to which this section applies or any waters within five hundred metres of such an installation have all the powers, protection and privileges which he has in the area for which he acts as constable.

This subsection is without prejudice to any other enactment or rule of law affording any power, protection or privilege to constables.

[(3) Where a body corporate is guilty of an offence by virtue of an Order in Council under this section and that offence 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 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.]

(3A) Where the affairs of a body corporate are managed by its members, subsection (3) shall apply in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3B) Proceedings for anything that is an offence by virtue of an Order in Council under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, at any place in the United Kingdom.]

(4) The waters to which this section applies are—

- (a) territorial waters of the United Kingdom;
- (b) waters in any area designated under section 1(7) of the 1964 Act; and
- (c) waters in any area specified under subsection (5) below.

(5) Her Majesty may from time to time by Order in Council specify any area which—

- (a) is in a foreign sector of the continental shelf; and
- (b) comprises any part of a cross-boundary field,

as an area as respects which the powers conferred by this section and section 23 below are exercisable.

(6) In this section—

["cross-boundary field" means a field that extends across the boundary between waters falling within paragraph (a) or (b) of subsection (4) above and a foreign sector of the continental shelf;]

"field" means a geological structure identified as such by Order in Council under subsection (5) above.

(7) This section and section 23 below shall apply to installations notwithstanding that they are for the time being in transit.

(8) Section 3 of the 1964 Act (which is superseded by this section and section 23 below) shall cease to have effect.

#### NOTES

Sub-s (3), (3A), (3B) were substituted for the original sub-s (3) by the Petroleum Act 1987, s 24(5). In sub-s (6), the definition of "cross-boundary field" was substituted by the Territorial Sea Act 1987, s 3(1), Sch 1, para 7(1).

**Commencement.** This section was brought into force on 1 February 1988 by the Oil and Gas (Enterprise) Act 1982 (Commencement No 4) Order 1987, SI 1987/2272, made under s 38(2) post.

**Waters to which this section applies.** See sub-s (4) above.

**United Kingdom.** ie Great Britain and Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. "Great Britain" means England, Scotland and Wales by virtue of the Union with Scotland Act 1706, preamble, Art I, Vol 10, title Constitutional Law (Pt 1), as read with s 22(1) of, and Sch 2, para 5(a) to, the 1978 Act. Neither the Channel Islands nor the Isle of Man is within the United Kingdom.

**Constable.** This means any person holding the office of constable (as to which, see 36 Halsbury's Laws (4th edn) paras 201 et seq), not a member of a police force holding the rank of constable. As to the attestation of constables, see the Police Act 1964, s 18, Sch 2, Vol 33, title Police, and as to their jurisdiction, see s 19 of that Act.

**Body corporate is guilty of an offence.** Except when the penalty is inappropriate or where, by the nature of the offence, it must be committed by an individual, a corporation may be convicted for the criminal acts (including those requiring mens rea) of the directors and managers who represent the directing mind and will of the corporation and control what it does (*DPP v Kent & Sussex Contractors Ltd* [1944] KB 146, [1944] 1 All ER 119; *R v ICR Haulage Ltd* [1944] KB 551, [1944] 1 All ER 691, CCA; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL), but it cannot be convicted for the criminal acts of its inferior employees or agents unless the offence is one for which an employer or principal may be vicariously liable (*John Henshall (Quarries) Ltd v Harvey* [1965] 2 QB 233, [1965] 1 All ER 725; *Tesco Supermarkets Ltd v Natrass* above; *R v Andrews-Weatherfoil Ltd* [1972] 1 All ER 65, [1972] 1 WLR 118, CA). See further, on the criminal liability of corporations, 9 Halsbury's Laws (4th edn) para 1379 and 11(1) Halsbury's Laws (4th edn reissue) para 35, and as to vicarious liability, 11(1) Halsbury's Laws (4th edn reissue) paras 52 et seq.

**Consent.** There is authority for saying that this presupposes knowledge; see *Re Caughey, ex p Ford* (1876) 1 Ch D 521 at 528, CA, per Jessel MR, and *Lamb v Wright & Co* [1924] 1 KB 857 at 864, [1924] All ER Rep 220 at 223. It is thought, however, that actual knowledge is not necessary; cf *Knox v Boyd* 1941 JC 82 at 86; *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449, 450, [1951] WN 383, per Devlin J; *James & Son Ltd v Smeed* [1955] 1 QB 78 at 91, [1954] 3 All ER 273 at 278 per Parker J; and *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847.

**Connivance.** Though there are many decisions on the meaning of this word in matrimonial law (see *Godfrey v Godfrey* [1965] AC 444, [1964] 3 All ER 154, HL, especially the speech of Lord Guest in which earlier decisions are reviewed), there is little authority as to its meaning in the context in which it appears in this section (see *Gregory v Walker* (1912) 77 JP 55, 29 TLR 51, and Glanville Williams, *Criminal Law: The General Part*, para 222). It is thought that the word implies knowledge of, and acquiescence in, the offence committed. Yet it seems that here again positive knowledge is not necessary and that suspicion is enough although mere negligence or inattention is not; see *Rogers v Rogers* (1830) 3 Hag Ecc 57 (but note the express reference to neglect in this section).

**Neglect.** This word implies failure to perform a duty of which the person knows or ought to know; see *Re Hughes, Re v Black* [1943] Ch 296 at 298, [1943] 2 All ER 269 at 271 per Simonds J. For circumstances in which an offence was held to be attributable to neglect on the part of a director, see *Crickitt v Kursaal Casino Ltd (No 2)* [1968] 1 All ER 139 at 146, 147, [1968] 1 WLR 53, HL, and for circumstances in which the opposite was held, see *Huckerby v Elliott* [1970] 1 All ER 189, (1969) 113 Sol Jo 1001.

**Purporting to act.** The reference to any person who was purporting to act in any such capacity is introduced in view of *Dean v Hiesler* [1942] 2 All ER 340, where a director who had not been duly appointed was held not liable for an offence committed by the company.

**Territorial waters of the United Kingdom.** As to the extent of the territorial waters (or sea) of the United Kingdom, see the Territorial Sea Act 1987, s 1, Vol 49, title Water (Pt 1), and the Orders in Council made or having effect thereunder.

**Extension.** Her Majesty may, by Order in Council, extend the application of the Sex

Discrimination Act 1975, Pt II, and the Race Relations Act 1976, Pt II, Vol 6, title Civil Rights and Liberties (which Parts concern discrimination in the employment field) to include any area specified under sub-s (5) above; see s 10(5) of the 1975 Act, as amended by s 37(1), Sch 3, para 24 post, as from a day to be appointed under s 38(2) post, and s 8(5) of the 1976 Act, as amended by s 37(1), Sch 3, para 36 post, as from a day to be appointed under s 38(2) post.

Note also that the Patents Act 1977 extends to any area specified by order made under sub-s (5) above; see s 132(4) of that Act, Vol 33, title Patents and Designs.

**Prosecutions.** For provisions relating to prosecutions for offences under this section, see s 27 post.

**Definitions.** For "foreign sector of the continental shelf" and "installation", see s 28(1) post. Note also "cross-boundary field" and "field", sub-s (6) above.

**1964 Act.** In the Continental Shelf Act 1964 ante; see s 36 post. S 3 of that Act is also repealed by s 37(2) and Sch 4 post.

**Order in Council under this section.** The Criminal Jurisdiction (Offshore Activities) Order 1987, SI 1987/2198, made under sub-ss (1), (2) above.

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes. As to such Orders in Council, see also s 32(2) post.

## 23 Application of civil law

(1) Her Majesty may by Order in Council—

- (a) provide that, in such cases and subject to such exceptions as may be prescribed by the Order, questions arising out of acts or omissions taking place on, under or above waters to which this section applies in connection with any activity mentioned in subsection (2) below shall be determined in accordance with the law in force in such part of the United Kingdom as may be specified in the Order; and
- (b) make provision for conferring jurisdiction with respect to such questions on courts in any part of the United Kingdom so specified.

(2) The activities referred to in subsection (1) above are—

- (a) activities connected with the exploration of, or the exploitation of the natural resources of, the shore or bed of waters to which this section applies or the subsoil beneath it; and
- (b) without prejudice to the generality of paragraph (a) above, activities carried on from, by means of or on, or for purposes connected with, installations to which subsection (3) below applies.

(3) This subsection applies to any installation which is or has been maintained, or is intended to be established, for the carrying on of any of the following activities, namely—

- (a) the exploitation or exploration of mineral resources in or under the shore or bed of waters to which this section applies;
- (b) the storage of gas in or under the shore or bed of such waters or the recovery of gas so stored;
- (c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of such waters; and
- (d) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within paragraph (a), (b) or (c) above or this paragraph.

(4) The fact that an installation has been maintained for the carrying on of an activity falling within subsection (3) above shall be disregarded for the purposes of that subsection if, since it was so maintained, it has been outside waters to which this section applies or has been maintained for the carrying on of an activity not falling within that subsection.

(5) Any jurisdiction conferred on any court under this section shall be without



prejudice to any jurisdiction exercisable apart from this section by that or any other court.

- (6) The waters to which this section applies are—
- (a) tidal waters and parts of the sea in or adjacent to the United Kingdom up to the seaward limits of territorial waters;
  - (b) waters in any area designated under section 1(7) of the 1964 Act;
  - (c) waters in any area specified under section 22(5) above; and
  - (d) in relation to installations which are or have been maintained, or are intended to be established, in waters falling within paragraph (a), (b) or (c) above, waters in a foreign sector of the continental shelf which are adjacent to such waters.

#### NOTES

**Commencement.** Sub-ss (2)–(4), (6) above, so far as was necessary for the purposes of the amendments made by s 37(1) of, and Sch 3, paras 21, 39, 44 to, this Act, were brought into force on 31 December 1982 by the Oil and Gas (Enterprise) Act 1982 (Commencement No 3) Order 1982, SI 1982/1431, made under s 38(2) post. This section, so far as not already in force, was brought into force on 1 February 1988 by the Oil and Gas (Enterprise) Act 1982 (Commencement No 4) Order 1987, SI 1987/2272, made under s 38(2) post.

**Sub-s (1): Questions arising out of acts or omissions . . . shall be determined in accordance with the law in force, etc.** Compensation may be payable under the Criminal Justice Act 1988, Pt VII (the relevant provisions of which are ss 108–117 and Schs 6, 7), for a criminal injury sustained on, under or above any waters in respect of which an Order in Council made under this section provides that questions arising from acts or omissions on, under or above such waters are to be determined in accordance with the law of England and Wales or Scotland; see s 110(2)(e) of that Act, Vol 12, title Criminal Law, as from a day to be appointed under s 171(1) of that Act.

**Conferring jurisdiction . . . on courts in any part of the United Kingdom.** Note that by the Civil Jurisdiction and Judgments Act 1982, s 17(1), Sch 5, para 9, Vol 11, title Courts and Legal Services, the provisions of Sch 4 to the 1982 Act relating to the allocation between courts in the United Kingdom of jurisdiction in certain civil proceedings do not apply to proceedings brought in any court in pursuance of an Order in Council under this section.

Provision may be made by Order in Council under this section, for treating, for the purposes of the Telecommunications Act 1984 and subordinate legislation made thereunder, any installation in waters to which this section applies and with respect to which provision is made under this section and any waters within five hundred metres of such an installation, as if they were situated in such part of the United Kingdom as may be specified in the order; see the Telecommunications Act 1984, s 107(1), Vol 45, title Telecommunications and Broadcasting. (For transitional provision before this section came into force, see s 107(3) of that Act.)

By the Food Safety Act 1990, s 58(2)–(4), Vol 18, title Food, provision may be made by Order in Council under this section for treating, for the purposes of food safety legislation, any installation which is in waters to which this section applies and any safety zone around any such installation as if they were situated in such part of the United Kingdom as may be specified in the order, and for modifying such legislation in its application to such installations and safety zones, and such an order may also confer on specified persons the right to require, for the purpose of facilitating the exercise of specified powers under food safety legislation, conveyance to and from any such installation, including conveyance of any equipment required by them, and the provision of reasonable accommodation and means of subsistence while they are on any installation.

**Sub-s (2).** This subsection is applied by the Sex Discrimination Act 1975, s 10(5), Vol 6, title Civil Rights and Liberties, as amended by s 37(1), Sch 3, para 24 post, as from a day to be appointed under s 38(2) post, the Race Relations Act 1976, s 8(5), Vol 6, title Civil Rights and Liberties, as amended by s 37(1), Sch 3, para 36 post, as from a day to be appointed under s 38(2) post, the Patents Act 1977, s 132(4), Vol 33, title Patents and Designs, the Employment Protection (Consolidation) Act 1978, s 137(2), Vol 16, title Employment, as substituted by s 37(1), Sch 3, para 40 post, as from a day to be appointed under s 38(2) post, the Social Security Contributions and Benefits Act 1992, s 120(2), Vol 40, title Social Security, the Trade Union and Labour Relations (Consolidation) Act 1992, s 287(1)(b), Vol 16, title Employment, as substituted by s 37(1), Sch 3, para 45 post, as from a day to be appointed under s 38(2) post, the Pension Schemes Act 1993, s 165(8), Vol 40, title Social Security, and the Pension Schemes (Northern Ireland) Act 1993, s 161(7) (not printed in this work).

**Sub-s (6): Adjacent.** This word is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to places adjoining and it includes places close to or near. What degree of proximity would justify the application of the word is entirely a question of circumstances (*Wellington Corpn v Lower Hutt Corpn* [1904] AC 773 at 775, 776, PC). See also *Re Ecclesiastical Comrs for England's Conveyance* [1936] Ch 430, [1934] All ER Rep 118, and *English Clays Lovering Pochin & Co Ltd v Plymouth Corpn* [1974] 2 All ER 239, [1974] 1 WLR 742, CA.

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(1995 c 21)

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*An Act to consolidate the Merchant Shipping Acts 1894 to 1994 and other enactments relating to merchant shipping* [19 July 1995]

**Consolidation of the enactments relating to merchant shipping.** This Act and the Shipping and Trading Interests (Protection) Act 1995 post consolidate the majority of the enactments relating to merchant shipping, including provisions of the Merchant Shipping Act 1894, the Merchant Shipping (Mercantile Marine Fund) Act 1898, the Merchant Shipping (Liability of Shipowners and Others) Act 1900, the Merchant Shipping Act 1906, the Maritime Conventions Act 1911, the Merchant Shipping (Load Lines) Act 1967, the Fishing Vessels (Safety Provisions) Act 1970, the Merchant Shipping Act 1970, the Merchant Shipping (Oil Pollution) Act 1971, the Prevention of Oil Pollution Act 1971, the Merchant Shipping Act 1974, the Merchant Shipping Act 1979, the Merchant Shipping Act 1981, the Merchant Shipping Act 1984, the Prevention of Oil Pollution Act 1986, the Safety at Sea Act 1986, the Merchant Shipping Act 1988, the Merchant Shipping (Registration, etc) Act 1993 and the Merchant Shipping (Salvage and Pollution) Act 1994.

A table showing the destination of the enactments repealed by this Act is printed immediately after the text of the Act.

**Transfer of functions.** The derivation notes to this Act do not take account of the successive transfer of ministerial functions from the Board of Trade or its successors to the Secretary of State for Transport.

**Extent.** This Act applies in relation to Northern Ireland, the Isle of Man, the Channel Islands and the colonies in accordance with s 315 post.

**Application.** For the application of this Act in relation to non-United Kingdom ships, government ships, ships chartered by demise to the Crown, hovercraft and structures, see ss 307, 308, 309, 310, 311, respectively post. See also s 294 post (general power to dispense).

**Power to repeal or modify.** The Secretary of State may by regulations repeal or modify provisions of the Merchant Shipping Acts 1894 to 1977 re-enacted in this Act, and of any instruments made thereunder, in consequence of or in anticipation of the making of safety regulations under s 85 post; see s 86(2) post.

PART VI  
PREVENTION OF POLLUTION

CHAPTER I  
POLLUTION GENERALLY

**128 Prevention of pollution from ships etc**

(1) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of any of the following which have been ratified by the United Kingdom—

- (a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2nd November 1973;
- (b) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil which constitutes attachment 2 to the final act aforesaid;
- (c) the Protocol relating to the said Convention which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th February 1978;
- (d) the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (including the Final Act of the Conference and the attached resolutions) signed in London on 30th November 1990;
- (e) any international agreement not mentioned in paragraphs (a) to (d) above which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships;

and in paragraph (e) above the reference to an agreement includes an agreement which provides for the modification of another agreement, including the modification of an agreement mentioned in paragraphs (a) to (c) above.

(2) The powers conferred by subsection (1) above to make provision for the purpose of giving effect to an agreement include power to provide for the provision to come into force although the agreement has not come into force.

(3) Without prejudice to the generality of subsection (1) above, an Order under that subsection may in particular include provision—

- (a) for applying for the purpose mentioned in that subsection any enactment or instrument relating to the pollution of the sea or other waters and also any of sections 87, 268, 269 and 270;
- (b) with respect to the carrying out of surveys and inspections for the purpose aforesaid and the issue, duration and recognition of certificates for that purpose;
- (c) for repealing the provisions of any enactment or instrument so far as it appears to Her Majesty that those provisions are not required having regard to any provision made or proposed to be made by virtue of this section;
- (d) with respect to the application of the Order to the Crown and the extra-territorial operation of any provision made by or under the Order;
- (e) for the extension of any provisions of the Order, with or without modifications, to any relevant British possession;
- (f) that a contravention of a provision made by or under the Order shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years and a fine;
- (g) that any such contravention shall be an offence punishable only on summary conviction by a maximum fine of an amount not exceeding level 5 on the standard scale or such less amount as is prescribed by the Order;
- (h) in connection with offences created by or under the Order, corresponding to that made in connection with offences under section 131 by section 143(6), 144 and 146 (whether by applying, or making provision for the application of, any of those sections, subject to such modifications as may be specified by or under the Order, or otherwise);
- (i) for detaining any ship in respect of which such a contravention is suspected to have occurred and, in relation to such a ship, for applying section 284 with such modifications, if any, as are prescribed by the Order;

and nothing in any of the preceding provisions of this subsection shall be construed as prejudicing the generality of any other of those provisions and in particular neither paragraph (f) nor (g) above shall prejudice paragraph (a) above.

(4) An Order under subsection (1) above may—

- (a) make different provision for different circumstances;
- (b) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time;
- (c) provide for exemptions from any provisions of the Order;
- (d) provide for the delegation of functions exercisable by virtue of the Order;
- (e) include such incidental, supplemental and transitional provisions as appear to Her Majesty to be expedient for the purposes of the Order;
- (f) authorise the making of regulations and other instruments for any of the purposes of this section (except the purposes of subsection (3)(a) and (c) above) and apply the Statutory Instruments Act 1946 to instruments made under the Order; and
- (g) provide that any enactment or instrument applied by the Order shall have effect as so applied subject to such modifications as may be specified in the Order.

(5) Where an Order in Council under subsection (1) above authorises the making of regulations for the purpose of giving effect to an agreement mentioned in paragraphs (a) to (d) or falling within paragraph (e) of that subsection the Order also authorises the making of regulations for the purpose of giving effect to an agreement which provides for the modification of such an agreement.

This subsection applies in relation to Orders in Council and international agreements whenever made.

(6) Regulations made by virtue of paragraph (f) of subsection (4) above may make provision corresponding to the provision authorised for an Order by paragraphs (a) to (e) of subsection (4) above.

(7) An Order in Council in pursuance of subsection (1)(b) or (e) above may apply to areas of land or sea or other United Kingdom waters notwithstanding that the agreement in question does not relate to those areas.

(8) A draft of an Order in Council proposed to be made by virtue of subsection (1) above shall not be submitted to Her Majesty in Council unless—

- (a) the draft has been approved by a resolution of each House of Parliament;
- (b) the Order is to contain a statement that it is made only for any of the purposes specified in subsection (9) below; or
- (c) the Order extends only to a possession mentioned in subsection (3)(e) above.

(9) The purposes referred to in subsection (8)(b) above are—

- (a) giving effect to an agreement mentioned in subsection (1)(a) to (d) above;
- (b) providing as authorised by subsection (2) above in relation to such an agreement and the purposes of subsection (5) above;

and a statutory instrument containing an Order which contains a statement that it is made only for any of those purposes shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### NOTES

Sub-s (1) contains provisions formerly in the Merchant Shipping Act 1979, s 20(1), as amended by the Merchant Shipping (Salvage and Pollution) Act 1994, s 2(1). Sub-s (2) contains provisions formerly in s 20(2) of the 1979 Act. Sub-s (3) contains provisions formerly in s 20(3) of the 1979 Act (as amended by the Criminal Justice Act 1982, s 49(2)(a),(b), as amended by the Merchant Shipping Act 1988, s 57(4), Sch 6, and as repealed in part by the Merchant Shipping (Registration, etc) Act 1993, s 8(4), Sch 5, Pt II, and formerly in the Environmental Protection Act 1990, s 148(2). Sub-s (4) contains provisions formerly in s 20(4) of the 1979 Act, as amended by s 3(3) of the 1994 Act. Sub-s (5) contains provisions formerly in s 20(4A) of the 1979 Act, as inserted by s 3(4) of the 1994 Act. Sub-s (6) contains provisions formerly in s 20(4B)(a) of the 1979 Act, as inserted by s 3(4) of the 1994 Act. Sub-s (7) contains provisions formerly in s 20(5) of the 1979 Act, as read with s 8(3) of, Sch 4, para 2(3)(a) to, the 1993 Act. Sub-ss (8), (9) contain provisions formerly in s 20(6) of the 1979 Act, as amended by s 2(2) of the 1994 Act.

**Sub-s (1): United Kingdom.** Ie Great Britain and Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Sub-s (3): Summary conviction.** Summary jurisdiction and procedure are mainly governed by the Magistrates' Courts Act 1980, Vol 27, title Magistrates, and by rules made under s 144 of that Act.

**Statutory maximum.** Ie the prescribed sum within the meaning of the Magistrates' Courts Act 1980, s 32, Vol 27, title Magistrates; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. By s 32(9) of the 1980 Act, the prescribed sum is £5,000 but a different sum may be substituted by order under s 143 of the 1980 Act.

As to the fixing of fines, see the Criminal Justice Act 1991, s 18, Vol 12, title Criminal Law.

**Conviction on indictment.** All proceedings on indictment are to be brought before the Crown Court; see the Supreme Court Act 1981, s 46(1), Vol 11, title Courts and Legal Services. As to indictments and the trial thereof, see generally 11(2) Halsbury's Laws (4th edn reissue) paras 913 et seq, 942 et seq.

**Fine.** There is no specific limit to the amount of the fine which may be imposed on conviction on indictment, but it has for long been the law that the fine should be within the offender's capacity to pay (see, in particular, *R v Churchill (No 2)* [1967] 1 QB 190, [1966] 2 All ER 215, CCA (revsd on other grounds sub nom *Churchill v Walton* [1967] 2 AC 224, [1967] 1 All ER 497, HL) and *R v Gamer* [1986] 1 All ER 78, [1986] 1 WLR 73, CA; and see also the Bill of Rights (1688), s 1, Vol 10, title Constitutional Law (Pt 1)), and it is now provided by the Criminal Justice Act 1991, s 18(3), Vol 12, title Criminal Law, that in fixing the amount of a fine a court shall take into account, inter alia, the financial circumstances of the offender so far as they are known, or appear, to the court. For further provisions as to the fixing of fines, see s 18 of the 1991 Act, Vol 12, title Criminal Law, and as to when a fine may be imposed in addition to imprisonment, see *R v Gamer* above.

**Standard scale.** By the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, and the Criminal Justice Act 1982, s 37(3), Vol 27, title Magistrates, this means the standard scale set out in s 37(2) of the 1982 Act. The scale is: level 1: £200; level 2: £500; level 3: £1,000; level 4: £2,500; and level 5: £5,000, but different amounts may be substituted by order under the Magistrates' Courts Act 1980, s 143, Vol 27, title Magistrates.

As to the fixing of fines, see the Criminal Justice Act 1991, s 18, Vol 12, title Criminal Law.

**Detaining any ship.** See further s 284 post as to the enforcement of the detention of a ship.

**Sub-s (4): Document.** For the power of the Secretary of State to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document, see s 302 post.

**Secretary of State.** See the note to s 1 ante.

**Sub-s (9): Statutory instrument; subject to annulment.** For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes, and as to statutory instruments which are subject to annulment in pursuance of a resolution of either House of Parliament, see ss 5(1), 7(1) of that Act.

**Application.** An Order in Council under s 129(1) post (further provision for prevention of pollution from ships, etc) may include provision corresponding to any provision that is authorised for the purpose of this section by sub-ss (3), (4) above; see s 129(2)(a) post.

**Improvement notices and prohibition notices.** For the powers of inspectors appointed under s 256(6) post to serve improvement notices or prohibition notices where this section (and the provisions of any instrument of a legislative character having effect thereunder) are being contravened, or where activities to which this section applies are carried on so as to involve serious personal injury or serious pollution, see ss 261–266 post.

**Definitions.** For “contravention”, “relevant British possession” and “ship”, see s 313(1) post; for “United Kingdom waters”, see s 313(2)(a) post.

**Statutory Instruments Act 1946.** See Vol 41, title Statutes.

**Orders in Council under this section.** Up to 1 September 1995 no Orders in Council had been made under this section, but by virtue of the Interpretation Act 1978, s 17(2)(b), Vol 41, title Statutes, the following orders have effect as if so made: the Merchant Shipping (Prevention of Pollution) (Intervention) Order 1980, SI 1980/1093; the Merchant Shipping (Prevention of Pollution) (Intervention) (Overseas Territories) Order 1982, SI 1982/1666; the Merchant Shipping (Prevention of Oil Pollution) Order 1983, SI 1983/1106, as amended by SI 1984/1153, SI 1985/2002, SI 1988/788, SI 1989/1350, SI 1991/2885, SI 1993/1580; the Prevention of Pollution (Reception Facilities) Order 1984, SI 1984/862; the Merchant Shipping (Prevention and Control of Pollution) Order 1987, SI 1987/470, as amended by SI 1987/664, SI 1990/2595, SI 1992/2668; the Merchant Shipping (Prevention of Pollution by Garbage) Order 1988, SI 1988/2252, as amended by SI 1992/2668, SI 1993/1581; the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1988, SI 1988/2292, as amended by SI 1989/1350, SI 1993/1681; the Merchant Shipping (Prevention and Control of Pollution) Order 1990, SI 1990/2595, as amended by SI 1992/2668; the Merchant Shipping (Prevention and Control of Pollution) (Bermuda) Order 1992, SI 1992/2668.

In addition, the Merchant Shipping (Prevention of Oil Pollution) Regulations 1983, SI 1983/1398, as amended by SI 1985/2040, SI 1987/470, SI 1989/1350, SI 1992/98, SI 1993/1680, SI 1994/2085, were made under SI 1983/1106, art 3; the Merchant Shipping (IBC Code) Regulations 1987, SI 1987/549, as amended by SI 1990/2602, SI 1994/2082; the Merchant Shipping (BCH Code) Regulations 1987, SI 1987/550, as amended by SI 1990/2603, SI 1994/2084; the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations 1987, SI 1987/551, as amended by SI 1990/2604, SI 1994/2083, were all made under SI 1987/470; and the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1988, SI 1988/2292, as amended by SI 1989/1350, SI 1993/1681; Merchant Shipping (Reception Facilities for Garbage) Regulations 1988, SI 1988/2293, as amended by SI 1989/1350, SI 1990/2594, were both made under SI 1988/2252, art 2.

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes. See also as to Orders in Council, s 306(3) post.

## 129 Further provision for prevention of pollution from ships

(1) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) for the protection and preservation of the marine environment from pollution by matter from ships.

(2) Without prejudice to the generality of subsection (1) above, an Order under that subsection may in particular include provision—

- (a) corresponding to any provision that is authorised for the purposes of section 128 by subsections (3) and (4) of that section; and

- (b) specifying areas of sea above any of the areas for the time being designated under section 1(7) of the Continental Shelf Act 1964 as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of that Convention for the protection and preservation of the marine environment;

and provision authorising the making of regulations authorises the amendment or revocation of regulations made by virtue of paragraph (f) of the said subsection (4).

(3) A draft of an Order in Council proposed to be made by virtue of subsection (1) above shall not be submitted to Her Majesty in Council unless the draft has been approved by resolution of each House of Parliament.

#### NOTES

Sub-s (1) contains provisions formerly in the Merchant Shipping Act 1979, s 20A(1), as inserted by the Merchant Shipping (Salvage and Pollution) Act 1994, s 4. Sub-s (2) contains provisions formerly in s 20A(2) of the 1979 Act, as so inserted. Sub-s (3) contains provisions formerly in s 20A(3) of the 1979 Act, as so inserted.

**United Kingdom.** Cf the note to s 128 ante.

**Improvement notices and prohibition notices.** For the powers of inspectors appointed under s 256(6) post to serve improvement notices or prohibition notices where this section (and the provisions of any instrument of a legislative character having effect thereunder) are being contravened, or where activities to which this section applies are carried on so as to involve serious personal injury or serious pollution, see ss 261–266 post.

**Continental Shelf Act 1964, s 1(7).** See Vol 29, title Mines, Minerals and Quarries.

**Orders in Council under this section.** Up to 1 September 1995 no Orders in Council had been made under this section, and none have effect thereunder by virtue of the Interpretation Act 1978, s 17(2)(b), Vol 41, title Statutes.

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes. See also as to Orders in Council, s 306(3) post.

### 130 Regulation of transfers between ships in territorial waters

(1) The Secretary of State may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within United Kingdom waters, such provision as he considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.

(2) Regulations under this section may, in particular, do any of the following things—

- (a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;
- (b) make provision about—
  - (i) the design of, and standards to be met by, ships and equipment,
  - (ii) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board, and
  - (iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary thereto;
- (c) provide for proposed transfers to be notified to and approved by persons appointed by the Secretary of State or another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
- (d) provide—
  - (i) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations, and



- (ii) for references in the regulations to any document so specified to operate as references to that document as revised or re-issued from time to time;
  - (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
  - (f) provide for the granting by the Secretary of State or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the Secretary of State or that other person may specify, and for altering or cancelling exemptions;
  - (g) limit any provision of the regulations to specified cases or kinds of case.
- (3) Regulations under this section may provide—
- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding £25,000 and on conviction on indictment by imprisonment for a term not exceeding two years or a fine or both;
  - (b) that any such contravention shall be an offence punishable only on summary conviction by a fine not exceeding £25,000 or such lower amount as is prescribed by the regulations;
  - (c) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (a) or (b) above.
- (4) Regulations under this section may—
- (a) make different provision for different classes or descriptions of ships and for different circumstances; and
  - (b) make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient.

#### NOTES

Sub-s (1) contains provisions formerly in the Merchant Shipping Act 1988, s 35(1), as read with the Merchant Shipping (Registration, etc) Act 1993, s 8(3), Sch 4, para 2(3)(a). Sub-s (2) contains provisions formerly in s 35(2)(a)–(e), (g), (h) of the 1988 Act. Sub-s (3) contains provisions formerly in s 35(3) of the 1988 Act. Sub-s (4) contains provisions formerly in s 53(2) of the 1988 Act.

**Secretary of State.** See the note to s 1 ante.

**Regulations.** For the power of the Secretary of State to appoint committees for the purpose of advising him when considering the making or alteration of any regulations, etc, see s 301 post.

**Ships and Equipment.** Cf s 85(3)(a) ante.

**Manning of ships.** For other provisions relating to manning, see ss 47 et seq ante and ss 94 et seq ante (unsafe ships).

**Person.** Unless the contrary intention appears this includes a body of persons corporate or unincorporate; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Certificates.** For the power of the Secretary of State to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document, see s 302 post.

**Summary conviction; conviction on indictment; fine.** See the notes to s 128 ante.

**Improvement notices and prohibition notices.** For the powers of inspectors appointed under s 256(6) post to serve improvement notices or prohibition notices where this section (and the provisions of any instrument of a legislative character having effect thereunder) are being contravened, or where activities to which this section applies are carried on so as to involve serious personal injury or serious pollution, see ss 261–266 post.

**Definitions.** For “contravention” and “ship”, see s 313(1) post; for “United Kingdom waters”, see s 313(2)(a) post.

**Regulations under this section.** Up to 1 September 1995 no regulations had been made under this section, and none have effect thereunder by virtue of the Interpretation Act 1978, s 17(2)(b), Vol 41, title Statutes.

For general provisions as to regulations under this Act, see s 306(1), (2), (4) post.

**1996 No. 2154**

**MERCHANT SHIPPING**

**The Merchant Shipping (Prevention of Oil Pollution)  
Regulations 1996**

<i>Made</i> - - - -	<i>19th August 1996</i>
<i>Laid before Parliament</i>	<i>27th August 1996</i>
<i>Coming into force</i>	<i>17th September 1996</i>

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[DOT 10519]

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34. Power to inspect
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PART X—PROCEEDING FOR POLLUTION OFFENCES COMMITTED OUTSIDE UK WATERS

38. Restriction on jurisdiction over offences outside United Kingdom limits.
39. Suspensions of proceedings at flag state request
40. Supplementary

The Secretary of State for Transport, in exercise of the powers conferred by Article 3 of the Merchant Shipping (Prevention of Oil Pollution) Order 1983(a) and by Article 2 of the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996(b) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

- 
- (a) S.I. 1983/1106, amended by S.I. 1985/2002, S.I. 1991/2885 and S.I. 1993/1580. The provisions that can be made under the Order were extended by section 128(6) of the Merchant Shipping Act 1995 (c.21).
- (b) S.I. 1996/282.

## PART III

### REQUIREMENTS FOR CONTROL OF OPERATIONAL POLLUTION— CONTROL OF DISCHARGE OF OIL

#### General exceptions

11. The provisions of regulations 12, 13 and 16 shall not apply to—
- (a) any discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of a ship or saving life at sea; or
  - (b) any discharge into the sea of oil or oily mixture which results from damage to a ship or its equipment provided that—
    - (i) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and
    - (ii) the owner or the master did not act either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or
  - (c) any approved discharge into the sea of substances containing oil, when being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will be made.

#### Ships other than oil tankers and machinery space bilges of oil tankers

- 12.—(1) Subject to regulation 11 this regulation applies to—
- (a) (i) United Kingdom ships other than oil tankers; and
  - (ii) United Kingdom oil tankers in relation to discharges from their machinery space bilges (unless mixed with oil cargo residue) but excluding cargo pump room bilges;  
wherever they may be, and—
  - (b) subject to regulation 38, to—
    - (i) other ships, other than oil tankers; and
    - (ii) other oil tankers, in relation to discharges from their machinery space bilges (unless mixed with oil cargo residue) but excluding cargo pump room bilges, wherever they may be.
- (2) Subject to paragraph (3), a ship to which this regulation applies shall not discharge oil or oily mixture into any part of the sea unless all the following conditions are satisfied—
- (a) the ship is proceeding on a voyage;
  - (b) the ship is not within a special area;
  - (c) the oil content of the effluent does not exceed 15ppm; and
  - (d) the ship has in operation the filtering equipment and the oil discharge and monitoring and control system, required by regulation 14.
- (3) In the case of a ship referred to in regulation 14(7) (that is to say, a ship delivered before 6th July 1993) which by virtue of that regulation is for the time being not required to be fitted and is not in fact fitted with the equipment required by regulation 14(1), (2) or (3), paragraph (2) shall not apply until—
- (a) 6th July 1998; or
  - (b) the date on which the vessel is so fitted;  
whichever is earlier. Even so, until that date (that is to say, the earlier of the two said dates) the ship shall not discharge oil or oily mixture into the sea unless all the following conditions are satisfied—
    - (i) the ship is not within a special area;
    - (ii) the ship is more than 12 miles from the nearest land;
    - (iii) the ship is proceeding on a voyage;
    - (iv) the oil content of the effluent is less than 100ppm; and
    - (v) the ship has in operation approved oily-water separating equipment of a design which is approved in accordance with the specification set out in the Recommendations on International Performance and Test Specifications for Oily Water Separating Equipment and Oil Content Meters.

(4) No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or contain chemicals or other substances introduced for the purpose of circumventing the conditions of discharge prescribed by this regulation.

(5) Insofar as any oil or oily mixture has not been unloaded as cargo and may not be discharged into the sea in compliance with paragraphs (2) or (3), it shall be retained on board and discharged into reception facilities.

(6) Subject to paragraph (7), this regulation does not apply to discharges which occur landward of the line which for the time being is the baseline for measuring the breadth of the territorial waters of the United Kingdom.

(7) Notwithstanding paragraph (6), discharges prohibited by paragraph (4) shall continue to be prohibited when made in the sea on the landward side of the line referred to in paragraph (6).

### Oil Tankers

13.—(1) Subject to regulation 11 this regulation applies to—

- (a) every United Kingdom oil tanker; and
- (b) subject to regulation 38, every other oil tanker wherever it may be.

(2) Subject to paragraph (3) an oil tanker to which this regulation applies shall not discharge any oil or oily mixture (except those for which provision is made in regulation 12) into any part of the sea unless all the following conditions are satisfied—

- (a) the tanker is proceeding on a voyage;
- (b) the tanker is not within a special area;
- (c) the tanker is more than 50 miles from the nearest land;
- (d) the instantaneous rate of discharge of oil content does not exceed 30 litres per mile;
- (e) the total quantity of oil discharged into the sea does not exceed  $\frac{1}{30,000}$  of the total quantity of the particular cargo of which the residue formed a part, or, in the case of existing tankers, the total quantity of oil discharged does not exceed  $\frac{1}{15,000}$  of the total quantity of the particular cargo of which the residue formed a part; and
- (f) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by regulation 15.

(3) The provisions of paragraph (2) shall not apply to the discharge of clean or segregated ballast or unprocessed oily mixture which without dilution has an oil content not exceeding 15 ppm and which does not originate from cargo pump room bilges and is not mixed with oil cargo residues.

(4) No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or contain chemicals or other substances introduced for the purposes of circumventing the conditions of discharge prescribed by this regulation.

(5) Insofar as any oil or oily mixture has not been unloaded as cargo and may not be discharged into the sea in compliance with paragraph (2), it shall be retained on board and shall be discharged into reception facilities.

(6) Subject to paragraph (7), this regulation does not apply to discharges which occur landward of the line which for the time being is the baseline for measuring the breadth of the territorial waters of the United Kingdom.

(7) Notwithstanding paragraph (6), discharges prohibited by paragraph (4) shall continue to be prohibited when made in the sea on the landward side of the line referred to in paragraph (6).

**PART X**  
**PROCEEDINGS FOR POLLUTION OFFENCES COMMITTED**  
**OUTSIDE UK WATERS**

**Restriction on jurisdiction over offences outside UK limits**

38.—(1) No proceedings for an offence of contravening regulation 12, 13 or 16 by a ship which is not a United Kingdom ship, which relates to a discharge in the internal waters, territorial waters or exclusive economic zone of another State shall be instituted unless—

- (a) that State, the flag state or a State damaged or threatened by the discharge requests that proceedings be taken; or
- (b) the discharge has caused or is likely to cause pollution in the internal waters, territorial sea or controlled waters of the United Kingdom.

(2) Where proceedings for an offence of contravening regulation 12, 13 or 16 by a ship which is not a United Kingdom ship which relates to a discharge in the internal waters, territorial sea or exclusive economic zone of another State have been instituted but not concluded, and that State requests suspension of the proceedings, then—

- (a) proceedings shall be suspended; and
- (b) the Secretary of State shall transmit all the evidence and court records and documents relating to the case, together with any sum paid or security given pursuant to regulation 37 (3)(c), to that State.

(3) It shall be a defence to a person charged with contravening regulation 12, 13 or 16 for the defendant to show—

- (a) that the ship is not a United Kingdom ship; and
- (b) the discharge took place outside the United Kingdom, its territorial waters and the controlled waters of the United Kingdom; and
- (c) the ship was in a port in the United Kingdom at the time of institution of proceedings by reason only of stress of weather or other reason beyond the control of the master or owner or charterer.

**Suspension of proceedings at flag state request**

39.—(1) This regulation relates to an alleged offence of contravening regulation 12, 13 or 16 by a ship which is not a United Kingdom ship, in relation to a discharge outside the United Kingdom or its territorial waters.

- (2)(a) Any proceedings for such an offence shall be stayed if the Court is satisfied that the flag state has instituted proceedings corresponding to the proceedings in United

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(a) S.I. 1981/1657 (N.I.26).

(b) 1969 c.15(N.I.).

Kingdom in respect of the discharge, within six months of the institution of proceedings in the United Kingdom.

(b) Subparagraph (a) above does not apply—

- (i) where the discharge resulted in major damage to the United Kingdom; or
- (ii) the Secretary of State certifies that the flag state has repeatedly disregarded its obligation to enforce effectively the requirements of the Convention in respect of its ships.

(3) Where proceedings instituted by the flag state have been brought to a conclusion, the suspended proceedings shall be terminated.

(4) Where the costs of the Secretary of State incurred in respects of proceedings suspended under paragraph (2) have been paid, any money paid or security given under regulation 37(3)(c) shall be released.

#### **Supplementary**

40. For the purposes of regulations 38 and 39, proceedings for an offence are to be treated as being instituted in the United Kingdom in the circumstances set out in regulation 37(6), (7) or (8) as the case may be.

Signed by the authority of the Secretary of State for Transport

19th August 1996

*Goschen*  
Parliamentary Under-Secretary of State,  
Department of Transport

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations consolidate the Merchant Shipping (Prevention of Oil Pollution) Regulations 1983 and subsequent amendments.
2. Technical details are now included in a Merchant Shipping Notice (No. 1643/MARPOL 1).
3. In addition the Regulations include a number of new provisions:
  - (a) the Regulations incorporate the most recent amendments to Annex I of the International Convention for the Prevention of Pollution by Sea 1973, as amended by the Protocol of 1978 to that Convention (MARPOL), which were adopted at the 36th session of the Marine Environmental Committee (MEPC) to the International Maritime Organisation (IMO) in November 1994. The amendments which enter into force on 3 March 1996 provide a legal basis for port states to carry out inspections of shipboard operational procedures (regulation 34(1)(b) and (c)).
  - (b) Certain extensions permitted by the United Nations Law of the Sea Convention 1982 (Cmnd 8941) are introduced, in particular—
    - (i) discharges by non-United Kingdom ships into the United Kingdom's controlled waters beyond the territorial sea and, subject to certain restrictions on institution of proceedings contained in regulation 38, elsewhere, are prohibited; but
    - (ii) where proceedings for a discharge of type mentioned in paragraph (i) are instituted, they may be suspended if the flag state institutes proceedings (regulation 39);

Merchant Shipping Notices referred to in the Regulations may be obtained from Eros Marketing Support Services Ltd, Unit B, Imber Court Trading Estate, Orchard Lane, East Molesley, Surrey KT8 0BN. The MARPOL Convention and Protocol, and amendments and resolutions and other publications of IMO and MEPC referred to in regulation 1(2) can be obtained from IMO, 4 Albert Embankment, London SE1 75R.



## ENVIRONMENTAL PROTECTION ACT 1990

(1990 c 43)

*An Act to make provision for the improved control of pollution arising from certain industrial and other processes; to re-enact the provisions of the Control of Pollution Act 1974 relating to waste on land with modifications as respects the functions of the regulatory and other authorities concerned in the collection and disposal of waste and to make further provision in relation to such waste; to restate the law defining statutory nuisances and improve the summary procedures for dealing with them, to provide for the termination of the existing controls over offensive trades or businesses and to provide for the extension of the Clean Air Acts to prescribed gases; to amend the law relating to litter and make further provision imposing or conferring powers to impose duties to keep public places clear of litter and clean; to make provision conferring powers in relation to trolleys abandoned on land in the open air; to amend the Radioactive Substances Act 1960; to make provision for the control of genetically modified organisms; to make provision for the abolition of the Nature Conservancy Council and for the creation of councils to replace it and discharge the functions of that Council and, as respect Wales, of the Countryside Commission; to make further provision for the control of the importation, exportation, use, supply or storage of prescribed substances and articles and the importation or exportation of prescribed descriptions of waste; to confer powers to obtain information about potentially hazardous substances; to amend the law relating to the control of hazardous substances on, over or under land; to amend section 107(6) of the Water Act 1989 and sections 31(7)(a), 31A(2)(c)(i) and 32(7)(a) of the Control of Pollution Act 1974; to amend the provisions of the Food and Environment Protection Act 1985 as regards the dumping of waste at sea; to make further provision as respects the prevention of oil pollution from ships; to make provision for and in connection with the identification and control of dogs; to confer powers to control the burning of crop residues; to make provision in relation to financial or other assistance for purposes connected with the environment; to make provision as respects*

*superannuation of employees of the Groundwork Foundation and for remunerating the chairman of the Inland Waterways Amenity Advisory Council; and for purposes connected with those purposes* [1 November 1990]

**Commencement.** The provisions of this Act printed in this part of this title came into force, or have yet to be brought into force, in accordance with s 164 post as noted in the Commencement notes throughout.  
**Northern Ireland.** The provisions of this Act printed in this title apply; see s 164(4) post.

**1-139** ((Pts I-VII) For ss 1-4, 6-52, 55, 57, 59-82, 84, 106-127, see Vol 35, title Public Health; ss 5, 53, 54, 56, 58, 83 apply to Scotland only; s 85 inserts the Clean Air Act 1968, s 7A, Vol 35, title Public Health; for ss 86-99, 128-139, see Vol 32, title Open Spaces and Historic Buildings; s 100 inserts the Radioactive Substances Act 1960, s 11A, and amends ss 1, 2(3), (4), (6), 3, 4(2), 5, 6(5), 8(1)-(3), 9, 10, 12(2), (5), 13(3), 15, 18(6) of that Act, Vol 47, title Trade and Industry (Pt 2(b)); s 101 inserts s 15A of that Act, in the same title; s 102 inserts ss 11B, 11C of that Act, in the same title; s 103 repeals ss 2(1), 4(1), 7(3)(a) of that Act; s 104 substitutes s 14 of that Act, in the same title; for s 105, see Vol 47, title Trade and Industry.)

## PART VIII

### MISCELLANEOUS

**140-145** (For ss 140-144, see Vol 35, title Public Health; s 145(1) repealed by the Water Consolidation (Consequential Provisions) Act 1991, s 3, Sch 3, Pt I; s 145(2) applies to Scotland only.)

#### *Pollution at sea*

**146, 147** (S 146 amends the Food and Environment Protection Act 1985, ss 5, 6(1), 9(5), 11(2), (3), 21, 24(1), Sch 2, para 3(3), this part of this title ante; s 147 substitutes s 14 of that Act, this part of this title ante.)

#### **148 Oil pollution from ships**

(1) Schedule 14 to this Act (which amends the provisions of the Prevention of Oil Pollution Act 1971) shall have effect.

(2) Without prejudice to the generality of subsections (1), (3) and (4) of section 20 of the Merchant Shipping Act 1979, an Order under subsection (1) of that section may make in connection with offences created by or under any such Order provision corresponding to that made in connection with offences under section 2(2A) of the Prevention of Oil Pollution Act 1971 by any provision of—

- (a) section 19(4A) of that Act, and
- (b) sections 19A and 20 of that Act,

and may do so whether by applying (or making provision for the application of) any of those provisions, subject to such modifications as may be specified by or under the Order, or otherwise.

(3) This section (and Schedule 14) shall not apply in relation to any offence committed before this section comes into force.

#### NOTES

**Commencement.** 1 January 1991; see s 164(2) post and the note "Two months beginning with, etc" thereto.

**Prevention of Oil Pollution Act 1971.** See this part of this title ante.

**Merchant Shipping Act 1979, s 20.** See Vol 39, title Shipping and Navigation.

**Orders.** Up to 1 September 1991 no Order in Council had been made under the Merchant Shipping Act 1979, s 20(1), Vol 39, title Shipping and Navigation, for the purposes of sub-s (2) above.

CRIMINAL JUSTICE (INTERNATIONAL  
CO-OPERATION) ACT 1990

(1990 c.5)

ARRANGEMENT OF SECTIONS

PART I

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

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*Mutual provision of evidence*

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PART II  
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(For ss 12, 13, 19, 21(3), Sch 2, see Vol 28, title Medicine and Pharmacy (Pt 2).)

*An Act to enable the United Kingdom to co-operate with other countries in criminal proceedings and investigations; to enable the United Kingdom to join with other countries in implementing the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and to provide for the seizure, detention and forfeiture of drug trafficking money imported or exported in cash* [5 April 1990]

**Rules of court.** For rules of court in connection with this Act, see RSC Ord 115, Pt I, the Crown Court Rules 1982, SI 1982/1109, rr 30–33, as inserted by SI 1991/1288 and as amended in the case of r 33 by SI 1995/2618, and the Magistrates' Courts (Criminal Justice (International Co-operation)) Rules 1991, SI 1991/1074.

**Northern Ireland.** This Act applies: see s 32(3) post.

PART II  
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12–17 (For ss 12, 13, see Vol 28, title Medicine and Pharmacy (Pt 2); s 14 repealed subject to savings and transitional provisions, in relation to England and Wales, by the Drug Trafficking Act 1994, ss 66, 67(1), 68(7), Schs 2, 3, and replaced as noted in the destination table thereto post, and, in relation to Northern Ireland, by the Proceeds of Crime (Northern Ireland) Order 1996, SI 1996/1299 (NI 9), art 57(3), Sch 5; s 15 (which ceased to have effect as regards England and Wales by virtue of the Drug Trafficking Act 1994, ss 65(1), 67(1), Sch 1, para 27, Sch 3) repealed, subject to savings and transitional provisions, by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, ss 4, 6(1), Sch 3, Sch 5; s 16 repealed, subject to savings and transitional provisions, by ss 66, 67(1) of, and Schs 2, 3 to, the 1994 Act, and replaced as noted in the destination table to that Act post; s 17 repealed by the Criminal Justice (Scotland) Act 1995, s 117, Sch 6, Pt II, para 190(3), Sch 7, Pt II.)

*Offences at sea*

**18 Offences on British ships**

Anything which would constitute a drug trafficking offence if done on land in any part of the United Kingdom shall constitute that offence if done on a British ship.

**NOTES**

**General Note.** See the General Note to s 12 of this Act, Vol 28, title Medicine and Pharmacy (Pt 2). This section and ss 20, 21 and Sch 3 post and s 19 of this Act, Vol 28, title Medicine and Pharmacy (Pt 2), are designed to give effect to the requirements in the Vienna Convention that parties to the Convention co-operate to the fullest extent possible to suppress illicit drug trafficking by sea.

**United Kingdom.** See the note to s 1 ante.

**Further provisions.** See also s 20 and Sch 3 post (powers of an enforcement officer which may be exercised in relation to any ship to which this section applies); s 21 post (jurisdiction and prosecutions); and s 22 post (extradition).

**Definitions.** For “British ship”, see s 24(1) post; by virtue of s 24(2) post, for “drug trafficking offence” see the Drug Trafficking Act 1994, s 1(3) post; for “drug trafficking offence” in relation to Scotland, see s 24(3) post.

19 (See Vol 28, title Medicine and Pharmacy (Pt 2).)

**20 Enforcement powers**

(1) The powers conferred on an enforcement officer by Schedule 3 to this Act shall be exercisable in relation to any ship to which section 18 or 19 above applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

(2) Those powers shall not be exercised outside the landward limits of the territorial sea of the United Kingdom in relation to a ship registered in a Convention state except with the authority of the [Commissioners of Customs and Excise]; and [they] shall not give [their] authority unless that state has in relation to that ship—

- (a) requested the assistance of the United Kingdom for the purpose mentioned in subsection (1) above; or
- (b) authorised the United Kingdom to act for that purpose.

(3) In giving [their] authority pursuant to a request or authorisation from a Convention state the [Commissioners of Customs and Excise] shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that state.

(4) The [Commissioners of Customs and Excise] may, either of [their] own motion or in response to a request from a Convention state, authorise a Convention state to exercise, in relation to a British ship, powers corresponding to those conferred on enforcement officers by Schedule 3 to this Act but subject to such conditions or limitations, if any, as [they] may impose.

(5) Subsection (4) above is without prejudice to any agreement made, or which may be made, on behalf of the United Kingdom whereby the United Kingdom undertakes not to object to the exercise by any other state in relation to a British ship of powers corresponding to those conferred by that Schedule.

(6) The powers conferred by that Schedule shall not be exercised in the territorial sea of any state other than the United Kingdom without the authority of the [Commissioners of Customs and Excise] and [they] shall not give his authority unless that state has consented to the exercise of those powers.

#### NOTES

The words in square brackets in sub-ss (2)–(4), (6) were substituted by the Criminal Justice Act 1993, s 23(2)(a).

**General Note.** See the General Note to s 18 ante.

**Sub-s (2): Commissioners of Customs and Excise.** See the note to s 7 ante.

**United Kingdom.** See the note to s 1 ante.

**Definitions.** For “British ship”, “Convention state”, “ship” and “the territorial sea of the United Kingdom”, see s 24(1) post.

## 21 Jurisdiction and prosecutions

(1) Proceedings under this Part of this Act or Schedule 3 in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(2) No such proceedings shall be instituted—

- (a) in England or Wales except by or with the consent of the Director of Public Prosecutions or the Commissioners of Customs and Excise;
- (b) in Northern Ireland except by or with the consent of the Director of Public Prosecutions for Northern Ireland or those Commissioners.

(3) (*See Vol 28, title Medicine and Pharmacy (Pt 2).*)

#### NOTES

**General Note.** See the General Note to s 18 ante.

**This Part of this Act.** I.e Pt II (ss 12–24 and Schs 2, 3).

**Ship.** For meaning, see s 24(1) post.

**United Kingdom.** See the note to s 1 ante.

**England; Wales.** See the note to s 4 ante.

**Consent of the Director of Public Prosecutions.** Provision for the appointment of the Director of Public Prosecutions is made by the Prosecution of Offences Act 1985 ante. See also, in particular s 25 of that Act, as to arrest, remand, etc, where the consent of the Director has not yet been given and s 26, as to evidence of such consent.

As to the constitution and functions of the Crown Prosecution Service, see Pt I of the 1985 Act ante. The Service is headed by the Director of Public Prosecutions and also includes Crown Prosecutors who enjoy all the powers of the Director as to the institution and conduct of proceedings, but they exercise those powers under his direction; see s 1(1), (6) of that Act.

**Commissioners of Customs and Excise.** See the note to s 7 ante.

**Consent of the Director of Public Prosecutions for Northern Ireland.** Provision for the appointment of the Director of Public Prosecutions for Northern Ireland and a deputy Director is made by the Prosecution of Offences (Northern Ireland) Order 1972, SI 1972/538, art 4, as amended by the Northern Ireland Constitution Act 1973, s 34, Vol 31, title Northern Ireland (Pt 2). As to

arrest, remand, etc, where the consent of the Director has not yet been given, see the Criminal Jurisdiction Act 1975, s 12, Vol 31, title Northern Ireland (Pt 2); and as to evidence of such consent, see art 7(6) of the 1972 Order.

*Supplementary*

**22 Extradition**

(1) The offences to which an Order in Council under section 2 of the Extradition Act 1870 can apply shall include drug trafficking offences.

(2), (3) . . .

**NOTES**

Sub-s (2) amends the Extradition Act 1989, Sch 1, para 15, and sub-s (3) amends s 22(2), (4) of that Act, Vol 17, title Extradition and Fugitive Offenders.

**General Note.** See the General Note to s 12 of this Act, Vol 28, title Medicine and Pharmacy (Pt 2). The purpose of this section is to give effect to Article 6 of the Vienna Convention, the essential elements of which are that: first, criminal offences under national laws which give effect to the Convention are deemed to be extraditable offences in any extradition treaty between parties to the Convention; secondly where a party's extradition law depends on the existence of a treaty and there is no such treaty with another party, the convention may serve as a legal basis for extradition in respect of offences covered by it; and thirdly, a party in whose territory an alleged offender is found shall itself extradite or prosecute.

**Drug trafficking offences.** By virtue of s 24(2) post, for meaning see the Drug Trafficking Act 1994, s 1(3) post; and for the meaning of that expression in relation to Northern Ireland and Scotland, see s 24(2), (3) respectively post.

**Extradition Act 1870, s 2.** That Act was repealed by the Extradition Act 1989, s 37(1), Sch 2; but see, as respects Orders in Council under s 2 of the 1870 Act, s 37(3) of the 1989 Act, Vol 17, title Extradition and Fugitive Offenders.

**23, 23A** (*S 23 amends the Misuse of Drugs Act 1971, ss 12(1), 21, and inserts 23(3A) of that Act, Vol 28, title Medicine and Pharmacy (Pt 2); s 23A (inserted by the Criminal Justice Act 1993, s 77, Sch 4, paras 1, 5) repealed subject to savings and transitional provisions, in relation to England and Wales, by the Drug Trafficking Act 1994, ss 66, 67(1), 68(7), Schs 2, 3, and replaced as noted in the destination table thereto post, and in relation to Northern Ireland by the Proceeds of Crime (Northern Ireland) Order 1996, SI 1996/1299 (NI 9), art 57(3), Sch 5.*)

**24 Interpretation of Part II**

(1) In this Part of this Act—

“British ship” means a ship registered in the United Kingdom or a colony;

“Convention state” has the meaning given in section 19(1) above;

“ship” includes any vessel used in navigation;

“the territorial sea of the United Kingdom” includes the territorial sea adjacent to any of the Channel Islands, the Isle of Man or any colony;

“the Vienna Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988.

(2) Any expression used in this Part of this Act which is also used in the [Drug Trafficking Act 1994] has the same meaning as in that Act [and, in section 22(1), “drug trafficking offences” includes drug trafficking offences within the meaning of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990].

(3) In relation to Scotland, any expression used in this Part of this Act which is also used in the Criminal Justice (Scotland) Act 1987 has the same meaning as in

that Act and "drug trafficking offence" means an offence to which section 1 of that Act relates.

(4) If in any proceedings under this Part of this Act any question arises whether any country or territory is a state or is a party to the Vienna Convention, a certificate issued by or under the authority of the Secretary of State shall be conclusive evidence on that question.

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**NOTES**

The definition omitted from sub-s (1) is printed in Vol 28, title Medicine and Pharmacy (Pt 2).

The words in the first pair of square brackets in sub-s (2) were substituted by the Drug Trafficking Act 1994, s 65(1), Sch 1, para 28, and the words in the second pair of square brackets in that subsection were added by the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588, art 38(1), Sch 2.

**This Part of this Act.** Ie Pt II (ss 12-24 and Schs 2, 3).

**United Kingdom; Secretary of State.** See the notes to s 1 ante.

**Colony.** For meaning, see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Territorial sea of the United Kingdom.** As to the extent of the territorial sea (or waters) of the United Kingdom, see the Territorial Sea Act 1987, s 1, Vol 49, title Water (Pt 1), and the Orders in Council made or having effect thereunder.

**Channel Islands.** Ie the islands of Jersey, Guernsey, Alderney and Sark and their respective dependencies.

**United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.** Cm 804; September 1989.

**Drug Trafficking Act 1994.** See this title post.

**Criminal Justice (Confiscation) (Northern Ireland) Order 1990.** SI 1990/2588 (NI 17)

**Criminal Justice (Scotland) Act 1987.** 1987 c 41; not printed in this work.

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*25-29 (Repealed, subject to savings and transitional provisions, by the Drug Trafficking Act 1994, ss 66, 67(1), Schs 2, 3, and replaced as noted in the destination table thereto post.)*





フ ラ ン ス 編



## **LOI n° 71-1060 du 24 décembre 1971**

**relative à la délimitation des eaux territoriales françaises.**

L'Assemblée nationale et la Sénat ont adopté,

Le Président de la République promulgue la loi dont la teneur suit :

**Art.1<sup>er</sup>.** - Les eaux territoriales françaises s'étendent jusqu'à une limite fixée à 12 milles marins à partir des lignes de base.

Les lignes de base sont la laisse de basse mer ainsi que les lignes de base droites et les lignes de fermeture des baies qui sont déterminées par décret.

La souveraineté de l'Etat français s'étend à l'espace aérien ainsi qu'au lit et au sous-sol de la mer dans la limite des eaux territoriales.

**Art.2.** - Sauf convention particulière, la largeur des eaux territoriales ne s'étend pas au-delà d'une ligne médiane dont tous les points sont équidistants des points les plus proches des lignes de base des côtes françaises et des côtes des pays étrangers qui font face aux côtes françaises ou qui leur sont limitrophes.

**Art.3.** - Lorsque la distance entre les lignes de base des côtes françaises et celles des côtes d'un Etat étranger qui leur font face est égale ou inférieure à 24 milles ou ne permet plus l'existence d'une zone de haute mer suffisante pour la navigation, des dispositions pourront être prises en vue d'assurer la libre navigation maritime et aérienne, dans le respect des conventions internationales et, s'il y a lieu, après accord avec les Etats intéressés.

**Art.4.** - Les dispositions de la présente loi ne portent pas atteinte à l'exercice des droits de pêche accordés à certains navires étrangers dans les conditions prévues par les accords internationaux et le droit interne français.

**Art.5.** - La présente loi est applicable aux territoires d'outre-mer.

La présente loi sera exécutée comme loi de l'Etat.

Fait à Paris, le 24 décembre 1971.

**6 février 1985**

DECRET n. 85-185 portant réglementation du passage des navires étrangers dans les eaux territoriales françaises (JO 9 fév. 1985).

Art.1. - Les navires étrangers jouissent du droit de passage dans les eaux territoriales françaises suivant les règles du passage inoffensif telles qu'elles sont définies par le présent décret.

Art.2. - On entend par « passage » le fait de naviguer dans les eaux territoriales aux fins de : a) les traverser sans entrer dans les eaux intérieures ni faire escale dans une rade ou une installation portuaire située en dehors des eaux intérieures; b) se rendre dans les eaux intérieures ou les quitter, ou de faire escale dans une telle rade ou installation portuaire ou de la quitter.

Le passage doit être continu et rapide. Toutefois, le passage comprend l'arrêt et le mouillage, mais seulement s'ils constituent des incidents ordinaires de navigation, s'imposent par suite d'un cas de force majeure ou de détresse pour porter secours à des personnes, des navires ou des aéronefs en danger ou en détresse.

Art.3. - Le passage est inoffensif aussi longtemps qu'il ne porte pas atteinte à la paix, au bon ordre ou à la sécurité de l'Etat.

Le passage d'un navire étranger est considéré comme portant atteinte à la paix, au bon ordre ou à la sécurité de l'Etat si, dans les eaux territoriales, ce navire se livre à toute activité sans rapport direct avec le passage, notamment:

1. Menace ou emploi de la force contre la souveraineté, l'intégralité territoriale ou l'indépendance politique de l'Etat ou de toute autre manière contraire aux principes du droit international énoncés par la charte des Nations unies;
2. Exercice ou manœuvre avec armes de tout type;
3. Collecte de renseignements au détriment de la défense ou de la sécurité de l'Etat;
4. Propagande visant à nuire à la défense ou à la sécurité de l'Etat;
5. Lancement, appontage ou embarquement d'aéronefs;
6. Lancement, appontage ou embarquement d'engins militaires;
7. Embarquement ou débarquement de marchandises, de fonds ou de personnes en contravention aux lois et règlements en vigueur;
8. Pollution délibérée et grave;
9. Pêche;

10. Recherches ou levés;
11. Perturbation du fonctionnement de tout système de communication ou de tout autre équipement ou installation situés sur le territoire français ou dans les eaux territoriales françaises.

Art.4. - Dans les eaux territoriales, les sous-marins et autres véhicules submersibles sont tenus de naviguer en surface et d'arborer leur pavillon.

Art.5. - Le préfet maritime en métropole et le délégué du Gouvernement dans les départements d'outre-mer, les territoires d'outre-mer et la collectivité territoriale de Mayotte prennent, dans les eaux territoriales, les mesures de police nécessaires pour empêcher ou interrompre tout passage qui n'est pas inoffensif.

En ce qui concerne les navires étrangers qui se rendent dans les eaux intérieures ou dans une installation portuaire située en dehors de ces eaux, les autorités citées ci-dessus prennent également les mesures de police nécessaires pour prévenir toute violation des conditions auxquelles est subordonnée l'admission de ces navires dans ces eaux ou cette installation portuaire.

Art.6. - Les autorités visées à l'article 5 ci-dessus peuvent, lorsque la sécurité de la navigation le requiert, imposer aux navires étrangers qui exercent le droit de passage inoffensif dans les eaux territoriales françaises, d'emprunter les voies de circulation qu'elles désigneront, et de respecter les dispositifs de séparation du trafic prescrits, notamment s'il s'agit de navires-citernes, de navires à propulsion nucléaire, de navires transportant des substances ou matières radioactives ou autres substances intrinsèquement dangereuses ou nocives. Les voies de circulation et les dispositifs de séparation du trafic sont indiqués sur des cartes maritimes qui reçoivent la publicité voulue.

Ces mêmes autorités peuvent, sans établir aucune discrimination de droit ou de fait entre les navires étrangers, suspendre temporairement, dans des zones déterminées des eaux territoriales, l'exercice du droit de passage inoffensif des navires étrangers, si cette mesure est indispensable pour assurer la sécurité de l'Etat, entre autres pour permettre de procéder à des exercices d'armes. La suspension ne prend effet qu'après avoir été dûment publiée.

Art.7. - Les dispositions du présent décret sont applicables aux territoires d'outre-mer et à la collectivité territoriale de Mayotte.

16 juillet 1976

LOI n. 76-655 relative à la zone économique au large des côtes du territoire de la République (J.O. 18 juill. 1976).

**Art. 1<sup>er</sup>.** - La République exerce, dans la zone économique pouvant s'étendre depuis la limite des eaux territoriales jusqu'à 188 milles marins au-delà de cette limite, des droits souverains en ce qui concerne l'exploration et l'exploitation des ressources naturelles, biologiques ou non biologiques, du fond de la mer, de son sous-sol et des eaux surjacentes. Ces droits sont exercés dans les conditions et selon les modalités prévues aux articles ci-après.

**Art. 2.** - Les dispositions de la loi n. 68-1181 du 30 décembre 1968 relative à l'exploration du plateau continental et à l'exploitation de ses ressources naturelles sont applicables, à l'exception de l'article 1<sup>er</sup>, au fond de la mer et à son sous-sol dans la zone économique définie à l'article 1<sup>er</sup> ci-dessus.

**Art. 3.**<sup>(1)</sup> - Les dispositions du décret modifié du 9 janvier 1852 sur l'exercice de la pêche maritime et celles de la loi modifiée du 1<sup>er</sup> mars 1888 ayant pour objet d'interdire la pêche aux étrangers dans les eaux territoriales sont applicables dans la zone économique définie à l'article 1<sup>er</sup> ci-dessus.

Toutefois, en ce qui concerne les infractions commises dans cette zone:

1° Les peines prévues au premier alinéa de l'article 6 du décret précité du 9 janvier 1852 sont remplacées par une amende de 1 800 à 36 000 F et celles prévues aux deuxième, troisième et cinquième alinéas du même article par une amende de 720 à 14 400 F;

2° Les peines prévues au troisième alinéa de l'article 2 de la loi précitée du 1<sup>er</sup> mars 1888 sont remplacées par une amende de 80 000 à 160 000 F.

En outre, les peines prévues aux articles 4, 5, 6, 7, 8 et 9 de la loi n. 66-4000 du 18 juin 1966 sur l'exercice de la pêche maritime et l'exploitation des produits de la mer dans les Terres australes et antarctiques françaises sont remplacées, pour les infractions commises dans la zone économique au large de ce territoire, par les amendes suivantes:

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<sup>(1)</sup> Amendes : *pour calculer les variations de taux, consultez la fiche orange en tête de chaque volume.* - N.D.L.R.

Article 4: 4 000 F à 20 000 F;

Article 5: 2 000 F à 60 000 F;

Article 6: 20 000 F à 60 000 F;

Article 7: 2 000 F à 60 000 F;

Article 8: 2 000 F à 10 000 F;

Article 9: double de l'amende la plus forte prévue ci-dessus pour chacun des articles 5 à 8.

**Art. 4.** - Dans la zone économique définie à l'article 1<sup>er</sup> ci-dessus, les autorités françaises exercent les compétences reconnues par le droit international en matière de protection de l'environnement marin.



**15 juillet 1994**

**LOI n° 94-589 relative aux modalités de l'exercice par l'État de ses pouvoirs de contrôle en mer (JO 16 juill. 1994).**

**Art. 1<sup>er</sup>.** - Les commandants des bâtiments de l'État et les commandants de bord des aéronefs de l'État, chargés de la surveillance en mer, sont habilités, pour assurer le respect des dispositions qui s'appliquent en mer en vertu du droit international ainsi que des lois et règlements de la République, à exercer et à faire exécuter les mesures de contrôle et de coercition prévues par le droit international, la législation et la réglementation française.

**Art. 2.** - La présente loi s'applique :

- aux navires français dans tous les espaces maritimes, sous réserve des compétences reconnues aux États par le droit international ;

- aux navires étrangers dans les espaces maritimes relevant de la souveraineté ou de la juridiction de la République française ainsi qu'en haute mer conformément au droit international.

Elle ne s'applique ni aux navires de guerre étrangers ni aux autres navires d'État étrangers utilisés à des fins non commerciales.

**Art. 3.** - Pour l'exécution de la mission définie à l'article 1<sup>er</sup>, le commandant ou le commandant de bord peut procéder à la reconnaissance du navire, en invitant son capitaine à en faire connaître l'identité et la nationalité.

**Art. 4.** - Le commandant ou le commandant de bord peut ordonner la visite du navire. Celle-ci comporte l'envoi d'une équipe pour contrôler les documents de bord et procéder aux vérifications prévues par le droit international ou par les lois et règlements de la République.

La constatation des infractions est faite par les agents habilités par les textes particuliers applicables et selon les procédures prévues par ces textes.

**Art. 5.** - Lorsque l'accès à bord a été refusé ou s'est trouvé matériellement impossible, le commandant ou le commandant de bord peut ordonner le déroutement du navire vers la position ou le port appropriés.

Le commandant ou le commandant de bord peut également ordonner le déroutement

du navire vers une position ou un port appropriés dans les cas suivants:

- soit en application du droit international;
- soit en vertu de dispositions législatives ou réglementaires particulières ;
- soit pour l'exécution d'une décision de justice ;
- soit à la demande d'une autorité qualifiée en matière de police judiciaire.

Le commandant ou le commandant de bord désigne la position ou le port de déroutement en accord avec l'autorité de contrôle des opérations.

**Art. 6.** - Le commandant ou le commandant de bord peut exercer le droit de poursuite du navire étranger dans les conditions prévues par le droit international.

**Art. 7.** - Si le capitaine refuse de faire connaître l'identité et la nationalité du navire, d'en admettre la visite ou de le dérouter, le commandant ou le commandant de bord peut, après sommations, recourir à l'encontre de ce navire à des mesures de coercition comprenant, si nécessaire, l'emploi de la force.

Les modalités de recours à la coercition et de l'emploi de la force en mer sont définies par décret en Conseil d'État.

**Art. 8.** - Le refus d'obtempérer aux injonctions faites en vertu des articles 3, 4 et 5 de la présente loi est puni de 1 000 000 F d'amende, sans préjudice des poursuites, qui pourront être engagées en application des dispositions pénales.

Outre les officiers et les agents de police judiciaire agissant conformément au Code de procédure pénale, les commandants, les commandants en second et les officiers en second des aéronefs de l'État sont habilités à constater l'infraction visée au présent article.

Le procès-verbal est transmis dans les quinze jours au procureur de la République de la juridiction compétente.

**Art. 9.**- Les mêmes peines sont applicables soit au propriétaire, soit à l'exploitant du navire, lorsqu'ils auront été à l'origine de la décision de refus d'obtempérer aux injonctions visées à l'article 8 de la présente loi.

**Art. 10.** - Les mesures prises à l'encontre des navires étrangers en application de la présente loi sont notifiées à l'État du pavillon par la voie diplomatique.

**Art. 11.** - La présente loi est applicable dans les territoires d'outre-mer et à la

collectivité territoriale de Mayotte.

**15 juillet 1994**

**LOI n° 94-589 relative aux modalités de l'exercice par l'État de ses pouvoirs de contrôle en mer.**

**TITRE I<sup>er</sup>**

**DISPOSITIONS GÉNÉRALES**

(Inséré avant l'article 1<sup>er</sup>, L. n° 96-359, 29 avr. 1996, art. 1<sup>er</sup>.)

Art.11 (Abrogé, L. n° 96-359, 29 avr. 1996, art. 13).

**TITRE II**

**DISPOSITIONS PARTICULIÈRES PORTANT ADAPTATION DE LA  
LÉGISLATION FRANÇAISE À L'ARTICLE 17 DE LA CONVENTION DES  
NATIONS UNIES CONTRE LE TRAFIC ILLICITE DES STUPEFIANTS ET  
SUBSTANCES PSYCHOTROPES FAITE A VIENNE LE 20 DECEMBRE 1988.**

(Inséré après 11, L. n° 96-359, 29 avr. 1996, art. 2.)

**Art. 12** (Inséré, L. n° 96-359, 29 avr. 1996, art. 3).-La recherche, la constatation, la poursuite et le jugement des infractions constitutives de trafic de stupéfiants et commises en mer sont régis par les dispositions du titre I<sup>er</sup> de la présente loi et par les dispositions ci-après. Ces dernières s'appliquent, outre aux navires battant pavillon français :

- aux navires battant pavillon d'un État partie à la convention de Vienne contre le trafic illicite des stupéfiants et substances psychotropes autre que la France, ou régulièrement immatriculés dans un de ces États, à la demande ou avec l'accord de l'État du pavillon ;
- aux navires n'arborant aucun pavillon ou sans nationalité.

**Art. 13** (Inséré, L. n° 96-359, 29 avr. 1996, art. 4). - Lorsqu'il existe des motifs raisonnables de soupçonner qu'un trafic de stupéfiants se commet à bord de l'un des navires visés à l'article 12 et se trouvant en dehors des eaux territoriales, les commandants des bâtiments de l'État et les commandants de bord des aéronefs de l'État, chargés de la surveillance en mer, sont habilités à exécuter ou à faire exécuter, sous l'autorité du préfet maritime, qui en avise le procureur de la République, les mesures de contrôle et de coercition prévues par le droit international et la présente

loi.

## CHAPITRE I<sup>er</sup>

### DES MESURES PRISES À LA DEMANDE OU AVEC L'ACCORD D'UN ÉTAT PARTIE À LA CONVENTION PRÉCITÉE FAITE À VIENNE LE 20 DÉCEMBRE 1988.

(Inséré après l'article 13, L. n° 96-359, 29 avr. 1996, art. 5.)

**Art. 14** (Inséré, L. n° 96-359, 29 avr. 1996, art. 6). - I . - Lorsqu'il décide la visite du navire, à la demande ou avec l'accord d'un État partie à la convention précitée, le commandant peut faire procéder à la saisie des produits stupéfiants découverts et des objets ou documents qui paraissent liés à un trafic de stupéfiants.

Ils sont placés sous scellés en présence du capitaine du navire ou de toute personne se trouvant à bord de celui-ci.

II . - Le commandant peut ordonner le déroutement du navire vers une position ou un port appropriés lorsque des investigations approfondies qui ne peuvent être effectuées en mer doivent être diligentées à bord.

Le déroutement peut également être ordonné vers un point situé dans les eaux internationales lorsque l'État du pavillon en formule expressément la demande, en vue de la prise en charge du navire.

III . - Le compte rendu d'exécution des mesures prises en application de l'article 17 de la convention de Vienne ainsi que les produits, objets ou documents placés sous scellés sont remis aux autorités de l'État du pavillon lorsque aucune suite judiciaire n'est donnée sur le territoire français.

## CHAPITRE II

### DE LA COMPÉTENCE DES JURIDICTIONS FRANÇAISES

(Inséré après l'article 14, L. n° 96-359, 29 avr. 1996, art. 7.)

**Art. 15** (Inséré, L. n° 96-359, 29 avr. 1996, art. 8). - Les auteurs ou complices d'infractions de trafic de stupéfiants commises en haute mer peuvent être poursuivis et jugés par les juridictions françaises lorsque des accords bilatéraux ou multilatéraux ou des arrangements particuliers sont conclus entre les États parties à la convention de Vienne.

Les arrangements particuliers sont transmis par la voie diplomatique aux autorités françaises, accompagnés des éléments permettant de soupçonner qu'un trafic de stupéfiants est commis sur un navire.

Une copie de ces documents est transmise par tout moyen et dans les plus brefs délais au procureur de la République.

**Art. 16** (Inséré, L. n° 96-359, 29 avr. 1996, Art. 9). - Outre les officiers de police judiciaire agissant conformément aux dispositions du Code de procédure pénale, les agents des douanes ainsi que lorsqu'ils sont spécialement habilités dans des conditions fixées par décret en Conseil d'État, les commandants des bâtiments de l'État, les officiers de la marine nationale embarqués sur ces bâtiments et les commandants de bord des aéronefs de l'État, chargés de la surveillance en mer, peuvent constater les infractions en matière de trafic de stupéfiants et en rechercher les auteurs selon les modalités suivantes :

I . - Le procureur de la République compétent est informé préalablement et par tout moyen des opérations envisagées en vue de la recherche et de la constatation des infractions.

Les infractions sont constatées par des procès-verbaux qui font foi jusqu'à preuve du contraire. Ces procès-verbaux sont transmis au procureur de la République dans les plus brefs délais et au plus tard dans les quinze jours qui suivent les opérations. Copie en est remise à la personne intéressée.

II . - Il peut être procédé avec l'autorisation , sauf extrême urgence, du procureur de la République, à des perquisitions et à la saisie des produits stupéfiants ainsi que des objets ou documents qui paraissent provenir de la commission d'une infraction à la législation sur les stupéfiants, ou qui paraissent servir à la commettre. Cette autorisation est transmise par tout moyen.

Les produits, objets ou documents saisis sont placés immédiatement sous scellés.

Les perquisitions et saisies peuvent être opérées à bord du navire en dehors des heures prévues à l'article 59 du Code de procédure pénale.

**Art. 17** (Inséré, L. n° 96-359, 29 avr. 1996, art. 10). - En France métropolitaine, le tribunal compétent est soit le tribunal de grande instance situé au siège de la préfecture maritime, soit le tribunal de grande instance du port vers lequel le navire a été dérouté.

Dans les départements et territoires d'outre-mer et dans les collectivités territoriales de Mayotte et de Saint-Pierre-et-Miquelon, le tribunal compétent est la juridiction de

première instance en matière correctionnelle située au siège du délégué du Gouvernement.

En matière criminelle, les dispositions de l'article 706-27 du Code de procédure pénale sont applicables.

### TITRE III

#### DISPOSITIONS DIVERSES

(Inséré après l'article 17, L. n° 96-359, 29 avr. 1996, art. 11.)

**Art. 18** (Inséré, L. n° 96-359, 29 avr. 1996, art. 12). - La présente loi est applicable dans les territoires d'outre-mer et à la collectivité territoriale de Mayotte.

**19 avril 1995**

**DÉCRET n°- 95-411 relatif aux modalités de recours à la coercition et de l'emploi de la force en mer (JO 21 avr. 1995).**

**Art. 1<sup>er</sup>.** - Les mesures de coercition prévues à l'article 7 de la loi n°- 94-589 du 15 juillet 1994 susvisée comportent, d'une part, les tirs d'avertissement et, d'autre part, l'emploi de la force qui consiste en actions de vive force et en tirs au but.

**Art. 2.** - Les tirs d'avertissement sont autorisés par le préfet maritime ou le délégué du Gouvernement outre-mer au sens du décret n°- 79-413 du 25 mai 1979 susvisé. Ceux-ci informent sur-le-champ les ministres concernés des autorisations qu'ils donnent.

Les tirs d'avertissement sont le tir de semonce puis trois tirs d'arrêt dirigés en avant de l'étrave. Cette séquence est précédée de sommations demandant au navire de stopper ou de se dérouter et transmises par tous moyens visuels, radioélectriques ou acoustiques.

**Art. 3.** - Dans le cas où le capitaine du navire n'obtempère pas aux sommations, suivies éventuellement des tirs d'avertissement, le préfet maritime ou le délégué du Gouvernement outre-mer peut ordonner une action de vive force qui a pour but d'exercer contrainte sur le capitaine du navire. L'action de vive force peut conduire à la prise de contrôle du navire.

Il est rendu compte immédiatement au Premier ministre, au ministre responsable des moyens et personnels utilisés ainsi qu'aux autres ministres concernés.

**Art. 4.** - Dans le cas où les tirs d'avertissement et, si elle a été déclenchée, l'action de vive force sont restés sans effet, le préfet maritime ou le délégué du Gouvernement outre-mer peut demander au Premier ministre d'autoriser l'ouverture du tir au but à l'encontre du navire. Cette autorisation est donnée après qu'aura été recueilli, dans toute la mesure possible, l'avis du ministre des affaires étrangères.

Le tir au but est précédé de nouvelles sommations. Mention en est portée au journal de bord.

En aucun cas, il n'est dirigé contre des personnes.



Il n'est pas utilisé de projectiles explosifs.

Il est rendu compte de l'action menée dans les mêmes conditions qu'à l'article 3.

**Art. 5.** - Les dispositions du présent décret s'appliquent sans préjudice de l'exercice de la légitime défense et ne font pas obstacle à l'exercice des compétences particulières des agents des administrations disposant de pouvoirs spécifiques en matière d'emploi de la force.

**Art. 6.** - Le présent décret est applicable dans les territoires d'outre-mer et à la collectivité territoriale de Mayotte.

## 5 juillet 1983

**LOI n. 83-582 relative au régime de la saisie et complétant la liste des agents habilités à constater les infractions dans le domaine des pêches maritimes (J.O. 6 juill. 1983).**

**Art. 1<sup>er</sup>.** - La présente loi est applicable à la recherche, à la constatation et à la poursuite des infractions aux dispositions :

- du décret du 9 janvier 1852 modifié sur l'exercice de la pêche maritime ;
- de la loi du 1<sup>er</sup> mars 1888 modifiée ayant pour objet d'interdire la pêche dans les eaux territoriales françaises ;
- de la loi du 28 mars 1928 instituant un régime spécial de pénalités à appliquer aux chalutiers à propulsion mécanique surpris à pêcher en deçà des limites réglementaires ;
- de la loi n. 66-471 du 5 juillet 1966 portant interdiction de la vente des produits de la pêche sous-marine ;
- de la loi n. 70-616 du 10 juillet 1970 relative à la pratique de la pêche à bord des navires ou embarcations de plaisance et des navires assujettis à l'obligation d'un permis de circulation et portant interdiction de la vente et de l'achat des produits de cette pêche ;
- de la loi n. 76-655 du 16 juillet 1976 relative à la zone économique au large des côtes du territoire de la République ;
- des règlements de la Communauté économique européenne ;
- des textes pris pour l'application du décret, des lois et des règlements mentionnés ci-dessus.

**Art. 2.** - L'autorité maritime compétente opère la saisie des filets, engins et instruments de pêche prohibés en tout temps et en tous lieux dont la recherche peut être faite dans les locaux de vente et de fabrication ; le tribunal en ordonne la destruction.

Lorsqu'ils ont servi à pêcher en infraction aux dispositions législatives ou réglementaires, les filets, les engins, les matériels, les équipements utilisés en plongée et en pêche sous-marines, d'une manière générale tous instruments utilisés à des fins de pêche qui ne sont pas visés au premier alinéa du présent article peuvent être saisis par l'autorité maritime compétente ; le tribunal peut prononcer leur confiscation et ordonner qu'ils seront vendus, remis aux institutions spécialisées aux fins de l'enseignement maritime, ou décider leur restitution.

**Art. 3.** - L'autorité maritime compétente peut saisir le navire ou l'embarcation qui a servi à pêcher en infraction aux dispositions législatives ou réglementaires.

L'autorité maritime conduit ou fait conduire le navire ou l'embarcation au port qu'elle aura désigné ; elle dresse procès-verbal de la saisie et le navire ou l'embarcation est consigné entre les mains du service des affaires maritimes.

Dans un délai qui ne peut excéder soixante-douze heures à compter de la saisie, l'autorité maritime adresse au juge d'instance du lieu de la saisie une requête accompagnée du procès-verbal de saisie que celui-ci confirme, par ordonnance prononcée dans un délai qui ne peut excéder soixante-douze heures, la saisie du navire ou de l'embarcation ou décide de sa remise en libre circulation.

En tout état de cause, l'ordonnance doit être rendue dans un délai qui ne peut excéder six jours, à compter de l'appréhension visée à l'article 7 ou à compter de la saisie.

La mainlevée de la saisie du navire ou de l'embarcation est décidée par le juge d'instance du lieu de la saisie contre le dépôt d'un cautionnement dont il fixe le montant et les modalités de versement dans les conditions fixées à l'article 142 du Code de procédure pénale.

**Art. 4.** - Les produits des pêches réalisées en infraction aux dispositions législatives ou réglementaires sont saisis par l'autorité maritime compétente qui décide de leur destination. Cette destination peut être soit la vente aux enchères publiques ou de gré à gré, au mieux des conditions du marché, soit la remise à un établissement scientifique, industriel ou de bienfaisance, soit la destruction, soit, lorsqu'il s'agira de produits vivants, la réimmersion. La remise au bénéfice d'un établissement industriel est faite à titre onéreux.

Quelle que soit cette destination, le contrevenant ou son commettant supporte les frais résultant de l'opération correspondante et peut être tenu d'en assurer, sous le contrôle de l'autorité maritime compétente, la réalisation matérielle même s'il s'agit d'une vente ou d'une remise à titre gratuit ou onéreux. Dans le cas de vente aux enchères publiques, l'autorité maritime compétente peut assigner le gestionnaire de la halle à procéder à l'opération. Le tribunal peut confirmer la destination donnée aux produits et ordonner leur confiscation ou leur restitution, ou celle des valeurs correspondantes.

Lorsque les produits des pêches ont été vendus sans avoir fait l'objet d'une saisie, l'autorité maritime compétente peut saisir les sommes provenant de la vente ; le tribunal peut en prononcer la confiscation ou la restitution.

**Art. 5.** - La recherche des produits des pêches réalisées en infraction aux dispositions législatives ou réglementaires peut être opérée de jour en tout lieu public, à bord des navires ou embarcations, dans tous les locaux et à bord des moyens de transport utilisés pour l'exercice de leur profession, que ce soit à titre principal ou accessoire, par les pêcheurs, les mareyeurs, les industriels de la transformation du poisson, les marchands de poissons, les hôteliers et les restaurateurs, dans les halles à marée où s'effectuent les ventes aux enchères publiques ainsi que dans tous les autres lieux de vente.

Cette recherche peut être également opérée de nuit dans ces mêmes lieux lorsque ceux-ci sont ouverts au public ou lorsqu'à l'intérieur de ceux-ci sont en cours des activités de transformation, de conditionnement, de transport ou de commercialisation, ainsi qu'à bord des navires ou embarcations. Lorsque ces lieux sont également à usage d'habitation, ces contrôles ne peuvent être effectués que de jour et avec l'autorisation du procureur de la République si l'occupant s'y oppose.

**Art. 6.** - Les infractions aux dispositions des textes visés à l'article 1<sup>er</sup> de la présente loi sont recherchées et constatées, outre les officiers et agents de police judiciaire, par les administrateurs des affaires maritimes, les officiers du corps technique et administratif des affaires maritimes, les officiers et officiers mariniers commandant les bâtiments de l'Etat, les contrôleurs des affaires maritimes visés à l'article 5 du décret n. 79-97 du 25 janvier 1979 relatif au statut particulier du corps des contrôleurs des affaires maritimes, les syndicats des gens de mer, les personnels embarqués d'assistance et de surveillance des affaires maritimes, les techniciens du contrôle des établissements de pêche, les agents des douanes, les gardes jurés et les prud'hommes pêcheurs.

Cette énumération complète, en tant que de besoin, la liste des officiers et agents énumérés à l'article 16 du décret du 9 janvier 1852 modifié, au premier alinéa de l'article 4 de la loi du 1<sup>er</sup> mars 1888, à l'article 2 de la loi n.66-471 du 5 juillet 1966 et à l'article 3 de la loi n. 70-616 du 10 juillet 1970.

**Art. 7.** - L'autorité maritime compétente pour opérer la saisie est l'administrateur des affaires maritimes chef du quartier des affaires maritimes territorialement compétent.

Les officiers et agents autres que l'autorité maritime désignée au premier alinéa du présent article qui sont habilités à constater les infractions ont qualité pour procéder à l'appréhension des filets, des engins, des matériels, des équipements utilisés en

plongée et en pêche sous-marines, de tous instruments utilisés à des fins de pêche, des navires ou embarcations ayant servi à pêcher en infraction ainsi que des produits des pêches et de leur valeur qui sont susceptibles de saisie, en vue de leur remise à l'autorité maritime compétente pour les saisir. Cette remise doit intervenir dans un délai qui ne peut excéder soixante-douze heures à compter de l'appréhension. L'appréhension donne lieu à l'établissement d'un procès-verbal.

**Art. 8.** - Les officiers et agents mentionnés à l'article 6 ont le droit de requérir directement la force publique pour la recherche et la constatation des infractions en matière de pêche maritime, pour la saisie et l'appréhension des filets, des engins, des matériels, des équipements utilisés en plongée et en pêche sous-marines, de tous instruments utilisés à des fins de pêche, des navires ou embarcations ayant servi à pêcher en infraction aux dispositions législatives ou réglementaires ainsi que des produits des pêches et de leur valeur.

**Art. 9<sup>(1)</sup>** - Quiconque aura détruit, détourné ou tenté de détruire ou détourner les engins, matériels, équipements, instruments, navires, embarcations ou produits de pêche saisis et confiés à sa garde sera puni d'un emprisonnement de deux mois à deux ans et d'une amende de 3 600 F à 2 500 000 F ou de l'une de ces deux peines seulement.

Ces mêmes peines seront applicables à quiconque aura fait obstacle à la saisie ou à l'appréhension des engins, matériels, équipements, instruments, navires, embarcations utilisés pour les pêches en infraction aux dispositions législatives ou réglementaires ainsi que des produits de ces pêches ou des sommes provenant de leur vente.

Elles seront, en outre, applicables à celui qui aura omis de donner aux produits saisis la destination décidée par l'autorité maritime compétente ou le tribunal.

Dans les cas prévus aux deuxième et troisième alinéas du présent article, lorsque le prévenu aura agi en qualité de préposé, le tribunal pourra, compte tenu des circonstances de fait ou des conditions de travail du préposé, décider que le paiement des amendes prononcées et des frais de justice sera mis en totalité ou en partie à la charge du commettant.

**Art. 10.** - Un décret en Conseil d'Etat précisera les conditions et les formalités

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<sup>(1)</sup> Amendes : *pour calculer les variations de taux, consultez le fascicule orange en tête de chaque volume.* - N.D.L.R.

relatives au déroulement de la saisie, à la désignation d'un gardien de la saisie, au choix de la destination des engins, matériels, instruments, navires, embarcations, produits, montants des ventes et sommes saisis ainsi que les modalités de leur restitution lorsque le tribunal n'en aura pas ordonné la confiscation ou la vente. Le même décret précisera les conditions et les formalités relatives à l'appréhension par les personnels autres que l'autorité maritime désignée au premier alinéa de l'article 7<sup>(2)</sup>

**Art. 11.** - Les dispositions des articles 13 et 14 du décret du 9 janvier 1852, du deuxième alinéa de l'article 2 et des articles 6 et 10 de la loi du 1<sup>er</sup> mars 1888, du deuxième alinéa de l'article 2 de la loi du 28 mars 1928 et de l'article 4 de la loi n. 70-616 du 10 juillet 1970 sont abrogées.

**Art. 12.** - Les armateurs ou les patrons de navires ne peuvent, du fait de la saisie du navire ou de l'embarcation, de la saisie ou de la confiscation des produits des pêches, se soustraire à l'exécution des obligations des contrats d'engagement des équipages, notamment en matière de rémunération lorsque la responsabilité de ces derniers n'est pas engagée dans la commission de l'infraction à l'origine de la mesure de saisie ou de la peine de confiscation.

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<sup>(2)</sup> *V.D.n. 84-846, 12 sept. 1984.*

5 juillet 1983

LOI n° 83-582 relative au régime de la saisie et complétant la liste des agents habilités à constater les infractions dans le domaine des pêches maritimes.

**Art. 1<sup>er</sup>**(*Alinéa inséré après le quatrième alinéa, L. n° 96-609, 5 juill. 1996, art. 5- I*).  
- De la loi n° 66-400 du 18 juin 1966 sur l'exercice de la pêche maritime et l'exploitation des produits de la mer dans les Terres australes et antarctiques françaises ;

**Art. 3**(*Premier alinéa remplacé, L. n° 91-627, 3 juill. 1991, art. 11*). - L'autorité maritime compétente peut saisir le navire ou l'embarcation qui a servi à pêcher en infraction aux dispositions législatives ou réglementaires, quel que soit le mode de constatation de l'infraction.

**Art. 6**(*Après les mots «les administrateurs des affaires maritimes,» sont ajoutés les mots «les inspecteurs des affaires maritimes,» ; les mots «les officiers et officiers mariniers commandant les bâtiments de l'État» sont remplacés par les mots «les commandants, commandants en second ou officiers en second des bâtiments et les chefs de bord des aéronefs de la marine nationale» ; les mots «visés à l'article 5 du décret n° 79-97 du 25 janvier 1979 relatif au statut particulier du corps des contrôleurs des affaires maritimes» sont supprimés, L. n° 96-151, 26 févr. 1996, art. 12- I*).

(*Second alinéa : les mots «, au premier alinéa de l'article 4 de la loi du 1<sup>er</sup> mars 1888» sont supprimés, L. n° 96-609, 5 juill. 1996, art. 5- II*).

**Art. 7**(*Premier alinéa : les mots «l'administrateur des affaires maritimes chef du quartier» sont remplacés par les mots «l'officier ou l'inspecteur des affaires maritimes, chef du service» , L. n° 96-151, 26 févr. 1996, art. 12- II*)<sup>(1)</sup> .

(*Alinéas ajoutés in fine, L.n° 91-627, 3 juill. 1991, art. 12.*) Ils ont également qualité pour procéder à l'apposition des scellés et conserver les documents de bord en vue de leur remise à l'autorité maritime compétente.

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<sup>(1)</sup> V. L. n° 96-609, 5 juill. 1996, art. 5- III pour l'adaptation du premier alinéa dans les territoires d'outre-mer et dans les collectivités territoriales de Mayotte et de Saint-Pierre-et Miquelon.

Toutefois, le délai de soixante-douze heures prévu à l'article 3 et au deuxième alinéa du présent article pour la remise des biens appréhendés à l'autorité maritime compétente pour opérer la saisie peut être dépassé en cas de force majeure ou à la demande expresse du contrevenant. Dans ce cas, le délai de six jours entre l'appréhension du navire ou de l'embarcation et l'ordonnance de confirmation de la saisie prononcée par le juge d'instance mentionné à l'article 3 peut être dépassé de la même durée.

**Art. 9**(*Premier alinéa remplacé, L. n° 91-627, 3 juill. 1991, art. 13*). - Quiconque aura détruit, détourné ou tenté de détruire ou détourner les engins, matériels, équipements, instruments, navires, embarcations ou produits de la pêche appréhendés ou saisis et confiés à sa garde sera puni d'un emprisonnement de deux mois à deux ans et d'une amende de 3 600 F à 2 500 000 F ou de l'une de ces deux peines seulement.

(*Demier alinéa : les mots «et des frais de justice» sont supprimés à compter du 1<sup>er</sup> mars 1993, L. n° 93-2, 4 janv. 1993, art. 120-IV et 226-III. - V. ce texte.*)

**Art. 13**(*Ajouté, L. n° 91-627, 3 juill. 1991, art. 14 ; modifié, L. n° 96-609, 5 juill. 1996, art. 5-IV puis L. n° 96-1240, 30 déc. 1996, art. 25-II*). - Les dispositions de la présente loi sont applicables aux eaux sous souveraineté ou juridiction française s'étendant au large de la collectivité territoriale de Mayotte, des territoires de la Polynésie française, de la Nouvelle-Calédonie, des îles Wallis et Futuna et des Terres australes et antarctiques françaises, à l'exception, dans les territoires d'outre-mer, des articles 6 et 11.

Toutefois, pour ces zones, le délai de soixante-douze heures entre l'appréhension et la remise à l'autorité maritime compétente pour les saisies, tel que fixé par l'article 7, est augmenté du temps de navigation nécessaire pour rejoindre le port de conduite désigné par l'autorité maritime compétente.

De même, le délai de six jours entre l'appréhension d'un navire ou d'une embarcation et de l'ordonnance de confirmation de la saisie prononcée par le juge d'instance mentionnée à l'article 3 est augmenté de la même durée.

**Art. 14**(*Ajouté, L. n° 91-627, 3 juill. 1991, art. 14 puis modifié, L. n° 96-609, 5 juill. 1996, art. 5-V*). - Dans les territoires d'outre-mer, les infractions aux dispositions des textes visés à l'article 1<sup>er</sup> de la présente loi sont recherchées et constatées par les agents énumérés à l'article 3 de la loi du 1<sup>er</sup> mars 1888 relative à l'exercice de la pêche dans les eaux sous souveraineté ou juridiction française s'étendant au large des côtes



des territoires d'outre-mer.

Dans les Terres australes et antarctiques françaises, l'autorité maritime compétente pour opérer la saisie est le directeur départemental des affaires maritimes de la Réunion.

9 janvier 1852

DÉCRET sur l'exercice de la pêche maritime<sup>(1)</sup> .

**Art. 1<sup>er</sup>**(Remplacé, L. n° 91-627, 3 juill. 1991, art. 1<sup>er</sup>). - L'exercice de la pêche maritime, c'est-à-dire la capture des animaux et la récolte des végétaux marins, en mer et dans la partie des fleuves, rivières, étangs et canaux où les eaux sont salées, est soumis aux dispositions suivantes qui s'appliquent également à l'élevage des animaux et à la culture des végétaux marins.

**Art. 2**(Remplacé, L. n° 91-627, 3 juill. 1991, art. 2). - Aucun établissement d'élevage des animaux marins de quelque nature qu'il soit, aucune exploitation de cultures marines ni dépôt de coquillages ne peuvent être implantés sur le rivage de la mer, le long des côtes ni dans la partie des fleuves, rivières, étangs et canaux où les eaux sont salées sans une autorisation spéciale délivrée par l'autorité administrative.

Un décret en Conseil d'État détermine les formes suivant lesquelles cette autorisation est accordée ou retirée.

**Art. 3**(Ainsi rédigé, L. n° 85-542, 22 mai 1985, art. 1<sup>er</sup>). - La pêche maritime s'exerce conformément aux règlements de la Communauté économique européenne et notamment ceux relatifs au régime de conservation et de gestion des ressources.

Toutefois, lorsque la mise en application effective de ces règlements l'exige ou le permet ou lorsque la pêche s'exerce dans des eaux ou par des activités ne relevant pas du champ d'application de ces règlements, des décrets en Conseil d'État fixent les conditions dans lesquelles peuvent être prises les mesures suivantes :

1° L'interdiction permanente ou temporaire ou la réglementation de l'exercice de la pêche de certaines espèces dans certaines zones ;

2° Pour certaines espèces ou certains groupes d'espèces, la limitation du volume des captures et leur répartition par navire ;

3° (Remplacé, L. n° 91-627, 3 juill. 1991, art. 3- I.) La détermination des espèces pour lesquelles un arrêté du ministre chargé des pêches maritimes fixe la taille ou le poids minimal des captures au-dessous desquels celles-ci doivent être aussitôt rejetées ;

4° (Remplacé, L. n° 91-627, 3 juill. 1991, art. 3- II.) La détermination des règles

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<sup>(1)</sup> V. D. n° 89-273, 26 avr. 1989 et D. n° 89-1018, 22 dec. 1989.

relatives à la dimension du maillage des filets et aux caractéristiques techniques des navires ainsi que la définition des engins, instruments et appareils utilisés à des fins de pêche et des modes de pêche ;

5° L'autorisation de certains types ou procédés de pêche et la limitation du nombre de leurs bénéficiaires en vue d'une gestion rationnelle de la ressource de pêche ;

6° La définition du pourcentage de prises accessoires de certaines espèces pour certains types de pêche ou avec certains engins ;

7° La réglementation de l'emploi des appâts ;

8° L'énoncé des conditions d'exécution d'opérations accessoires de la pêche à bord des navires ;

9° La prohibition de la mise en vente, de l'achat et du transport des produits dont la pêche est interdite ;

10° Le classement des gisements naturels coquilliers et la définition de leurs conditions d'exploitation ;

11° La définition des conditions de récolte des végétaux marins ;

12° (*Remplacé, L. n° 91-627, 3 juill. 1991, art. 3-III.*) Les conditions de limitation des réserves ou des cantonnements interdits à toute pêche ou la définition des restrictions de pêche destinées à favoriser l'implantation des structures artificielles aux fins d'exploitation et de mise en valeur des ressources biologiques ou à protéger les exploitations de cultures marines ;

13° (*Remplacé, L. n° 91-627, 3 juill. 1991, art. 3-IV.*) La détermination des conditions générales d'installation et d'exploitation des établissements de cultures marines, y compris de ceux alimentés en eau de mer provenant de forages ainsi que des établissements permanents de capture et des structures artificielles ;

14° (*Remplacé, L. n° 86-2, 3 janv. 1986, art. 12.*) La détermination des conditions de conservation, de reproduction, de reconstitution des ressources de pêche et d'enrichissement ou de repeuplement des fonds ;

15° (*Ajouté, L. n° 91-627, 3 juill. 1991, art. 3-V.*) La détermination des mesures propres à prévenir l'apparition, à enrayer le développement et à favoriser l'extinction des maladies affectant les animaux ou végétaux marins ;

16° (*Ajouté, L. n° 91-627, 3 juill. 1991, art. 3-V.*) La détermination des mesures permettant d'adapter les capacités de capture de la flotte de pêche aux ressources halieutiques disponibles ;

Enfin, et généralement, toutes mesures d'ordre et de précaution propres à assurer la conservation des ressources et à régler l'exercice de la pêche.

**Art.3-1**(*Inséré, L. n° 91-627, 3 juill. 1991, art. 4*). - Après concertation avec le ou les conseils régionaux et avec les organisations professionnelles intéressés, un programme d'adaptation des capacités de capture de la flotte de pêche professionnelle maritime aux ressources halieutiques disponibles est fixé par décret. Celui-ci précise, par région ou par groupe de régions d'une même façade maritime et éventuellement par type de pêche, les objectifs à atteindre.

La mise en exploitation des navires est soumise à une autorisation préalable dite permis de mise en exploitation des navires de pêche professionnelle qui précise, s'il y a lieu, les zones d'exploitation autorisées. Les conditions d'attribution des permis de mise en exploitation des navires de pêche professionnelle, qui en aucun cas ne seront cessibles, sont fixées par décret en Conseil d'État. Ce décret détermine, en fonction des objectifs prévus au premier alinéa et de la situation effective des capacités de capture de la flotte, les critères de délivrances des permis qui peuvent tenir compte des réductions de capacité réalisées par les demandeurs. Il peut aussi prévoir des exemptions pour les navires dont l'exploitation n'a pas d'effet notable sur les ressources halieutiques. Le décret détermine également la procédure d'examen des demandes qui doit comporter, notamment, la consultation des professionnels de la pêche.

Le permis de mise en exploitation des navires de pêche professionnelle est exigé pour tout navire de pêche professionnelle maritime avant la construction, l'importation, l'armement à la pêche, la modification de capacité de capture ou le réarmement à l'issue d'une période d'inactivité d'au moins six mois.

La délivrance du rôle d'équipage est subordonnée à la présentation d'un permis de mise en exploitation des navires de pêche professionnelle lorsque celui-ci est exigible. Il est procédé au retrait du rôle d'équipage dans le cas d'une modification de capacité de capture du navire faite sans qu'ait été obtenu le permis de mise en exploitation de navires de pêche professionnelle correspondant.

**Art. 4**(*Ainsi rédigé, L. n° 85-542, 22 mai 1985, art. 1<sup>er</sup> puis L. n° 91-627, 3 juill. 1991, art. 5*). - Lorsque la mise en application effective des règlements de la Communauté économique européenne relatifs au régime de conservation et de gestion des ressources de la pêche ou à l'organisation des marchés des produits de la mer l'exige ou le permet, ou lorsque la pêche s'exerce dans des eaux ou par des activités ne relevant pas du champ d'application de ces règlements, des décrets en Conseil d'État fixent les conditions dans lesquelles peuvent être prises les mesures suivantes :

1° La détermination par l'autorité administrative des lieux et conditions de

débarquement des produits de la pêche destinés à être mis sur le marché ;

2° La définition des obligations incombant aux producteurs en ce qui concerne le pesage, le tri par espèce, par taille et par qualité ainsi que le mode de présentation de ces produits ;

3° La fixation des règles relatives à la communication aux services et organismes compétents, par les producteurs, leurs organisations reconnues dans le cadre de la réglementation communautaire et les organismes gestionnaires de halles à marée, d'informations relatives à leur activité.

**Art. 5**(*Ainsi rédigé, L. n° 85-542, 22 mai 1985, art. 1<sup>er</sup> puis modifié, L. n° 91-627, 3 juill. 1991, art. 6*) - Les conditions dans lesquelles l'exercice, professionnel ou non, de la pêche sous-marine, avec ou sans l'aide d'un appareil permettant de respirer sans revenir à la surface, est réglementé et, le cas échéant, soumis à autorisation sont fixées par décret en Conseil d'État. L'exercice, professionnel ou non, de la pêche à pied peut être réglementé et autorisé dans les mêmes conditions.

(*Alinéa ajouté, L. n° 86-2, 3 janv. 1986, art.13.*) La souscription d'un contrat d'assurance en responsabilité civile pour la pratique de la pêche sous-marine de loisirs est obligatoire. L'attestation d'assurance doit être présentée à toute demande des autorités chargées de la police de cette activité.

**Art. 6**(*Ainsi rédigé, L. n° 85-542, 22 mai 1985, art. 1<sup>er</sup>*). - Sera puni d'une amende de 3 000 F à 150 000 F quiconque aura, en infraction aux règlements de la Communauté économique européenne, aux dispositions du présent texte et aux règlements pris pour son application :

1° Détenu à bord ou utilisé pour la pêche des explosifs, des armes à feu, des substances soporifiques ou toxiques de nature à détruire ou altérer les animaux, les végétaux marins et leur milieu ;

2° Mis en vente, vendu, colporté, stocké, transporté, exposé ou acheté en connaissance de cause les produits des pêches pratiquées dans les conditions visées au 1° ci-dessus ;

3° (*Remplacé, L. n° 91-627, 3 juill. 1991, art. 7- I .*) Pêché avec un engin ou utilisé à des fins de pêche tout instrument ou appareil dont l'usage est interdit ou pratiqué tout mode de pêche interdit ;

4° Fabriqué, détenu à bord ou mis en vente un engin dont l'usage est interdit ;

5° (*Remplacé, L. n° 91-627, 3 juill. 1991, art. 7- II .*) Pratiqué la pêche avec un engin, ou utilisé à des fins de pêche tout instrument ou appareil dans une zone ou à une

période où son emploi est interdit ;

6° Praticué la pêche dans une zone où elle est interdite ;

7° Pêché certaines espèces dans une zone ou à une période où leur pêche est interdite ;

8° (*Remplacé, L. n° 91-627, 3 juill. 1991, art. 7-III.*) Pêché, transbordé, débarqué, transporté, exposé, vendu, stocké ou, en connaissance de cause, acheté des produits de la mer en quantité ou en poids supérieur à celui autorisé ou dont la pêche est interdite ou qui n'ont pas la taille ou le poids requis ;

9° Immergé des espèces marines dans des conditions irrégulières ;

10° (*Remplacé, L. n° 91-627, 3 juill. 1991, art. 7-IV.*) Colporté, exposé à la vente, vendu sous quelque forme que ce soit ou, en connaissance de cause, acheté les produits de la pêche provenant des navires ou embarcations non titulaires d'un rôle d'équipage de pêche ;

11° Colporté, exposé à la vente, vendu sous quelque forme que ce soit, acheté en connaissance de cause les produits de la pêche sous-marine ou à pied pratiquée à titre non professionnel ;

12° Formé ou immergé sans autorisation une exploitation de cultures marines, un établissement permanent de capture ou une structure artificielle; ces exploitations, établissements ou structures formés ou immergés sans autorisation seront détruites aux frais du condamné ;

13° (*Ajouté, L. n° 86-2, 3 janv. 1986, art. 14.*) Jeté, déversé ou laissé écouler, directement ou indirectement en mer ou dans la partie des cours d'eau, canaux ou plans d'eau où les eaux sont salées, des substances ou organismes nuisibles pour la conservation ou la reproduction des mammifères marins, poissons, crustacés, coquillages, mollusques ou végétaux, ou de nature à les rendre impropres à la consommation ;

14° (*Ajouté, L. n° 91-627, 3 juill. 1991, art. 7-V.*) Pêché sans les autorisations prévues aux articles 3, 3-1 et 5 du présent décret ;

15° (*Ajouté, L. n° 91-627, 3 juill. 1991, art. 7-V.*) Détenu à bord ou utilisé un nombre d'engins ou d'appareils destinés à la pêche supérieur à celui autorisé ;

16° (*Ajouté, L. n° 91-627, 3 juill. 1991, art. 7-V.*) Exploité un établissement de cultures marines en infraction à la réglementation générale des cultures marines, aux prescriptions des schémas des structures des exploitations de cultures marines ou aux clauses du cahier des charges annexé à l'acte de concession ;

17° (*Ajouté, L. n° 91-627, 3 juill. 1991, art. 7-V.*) Enfreint les mesures arrêtées en

vue de prévenir l'apparition, d'enrayer le développement ou de favoriser l'extinction des maladies affectant les animaux ou végétaux marins.

**Art.7**(Ainsi rédigé, L. n° 85-542, 22 mai 1985, art. 1<sup>er</sup> puis L. n° 91-627,3 juill. 1991, art. 8) - Sera puni d'une amende de 50 000 F à 500 000 F tout capitaine de navire qui, en mer, se sera soustrait ou aura tenté de se soustraire aux contrôles des officiers et agents chargés de la police des pêches et tout capitaine d'un navire dont les éléments d'identification auront été dissimulés ou falsifiés.

**Art. 8**(Ainsi rédigé, L. n° 85-542, 22 mai 1985, art. 1<sup>er</sup>). - Sera puni d'une amende de 10 000 F à 100 000 F toute personne qui aura refusé de laisser les officiers et les agents chargés de la police des pêches procéder aux contrôles et aux visites des exploitations de cultures marines, des établissements permanents de capture ou des structures artificielles, aux contrôles et aux visites à bord des navires ou embarcations de pêche, ainsi qu'à l'intérieur des installations, des locaux et des véhicules à usage professionnel.

**Art. 9**(Ainsi rédigé, L. n° 85-542, 22 mai 1985, art.1<sup>er</sup>) - Dans les eaux maritimes placées sous souveraineté ou juridiction française, les activités de pêche maritime sont, sous réserve des dispositions du traité instituant la Communauté économique européenne et des textes pris pour son application, interdites aux navires battant pavillon d'un État étranger.

Par dérogation au premier alinéa du présent article, des autorisations de pêche à bord des navires battant pavillon d'États non membres de la Communauté économique européenne peuvent être délivrées dans les conditions prévues par le traité instituant la Communauté économique européenne et les règlements pris pour son application ainsi que par des accords internationaux passés par la Communauté économique européenne dans les limites de leur application.

Dans les eaux dont l'accès en matière de pêche ne relève pas de la Communauté économique européenne, les activités de pêche pratiquées par des navires battant pavillon d'un État étranger peuvent être autorisées en vertu d'un accord international passé avec l'État du pavillon de ces navires, aux conditions fixées par cet accord.

**Art. 10**(Ainsi rédigé, L. n° 85-542, 22 mai 1985, art. 1<sup>er</sup>). - Seront punis d'une amende de 50 000 F à 5000 000 F :

1° Les capitaines de navires battant pavillon d'un État n'appartenant pas à la Communauté économique européenne qui pêchent en l'absence d'autorisation ou en

méconnaissance des termes de l'autorisation accordée dans les eaux maritimes sous souveraineté ou juridiction française et dans la partie des fleuves, rivières, canaux, étangs où les eaux sont salées ;

2° Les capitaines des navires battant pavillon d'un autre État membre de la Communauté économique européenne qui pêchent en infraction avec des règlements de la Communauté ou avec les dispositions nationales définissant les modalités d'accès, dans les eaux maritimes sous souveraineté ou juridiction française et dans la partie des fleuves, rivières, canaux, étangs où les eaux sont salées.

**Art. 11**(*Remplacé, L. n° 85-542, 22 mai 1985, art. 2).* - Quiconque ayant été condamné en application des dispositions des articles 6, 7, 8 ou 10 aura, dans un délai de cinq ans après l'expiration ou la prescription de cette peine, commis le même délit sera condamné au double de la peine encourue.

**Art. 12**(*Premier alinéa modifié, L. n° 91-627, 3 juill. 1991, art. 9).* - Pourront être déclarés responsables des amendes prononcées en application des dispositions du présent décret les armateurs de bateaux de pêche, qu'ils en soient ou non propriétaires, à raison des faits des patrons et équipages de ce bateau, ceux qui exploitent les établissements de cultures marines et dépôts de coquillages, à raison des faits de leurs agents ou employés.

(*Deuxième alinéa : deuxième phrase abrogée, L. n° 85-542, 22 mai 1985, art. 6.*)

(*Troisième alinéa abrogé, L. n° 85-542, 22 mai 1985, art. 6.*)

**Art. 13<sup>(1)</sup>** (*Rétabli dans la rédaction suivante, L. n° 85-542, 22 mai 1985, art. 3).* - Lorsqu'une infraction aux dispositions des articles 6, 7 et 8 a été constatée, le ministre chargé des pêches maritimes et des cultures marines peut suspendre, pour une durée maximum de trois mois, les droits et prérogatives afférents aux brevets, diplômes ou certificats des capitaines, patrons ou de ceux qui en remplissent les fonctions, dans les conditions qui seront fixées par un décret en Conseil d'État.

**Art. 14**(*Rétabli dans la rédaction suivante, L. n° 85-542, 22 mai 1985, art. 3).* - Les officiers et agents chargés de la police des pêches peuvent donner à tout navire de pêche l'ordre de stopper et de relever son matériel de pêche.

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<sup>(1)</sup> V. D. n° 86-1014, 27 août 1986.



Ils peuvent monter à bord du navire et procéder à tout examen des captures, matériels de pêche, installations de stockage ou de traitement et de tous documents de bord, notamment ceux qui sont relatifs à l'enregistrement des captures.

( *Alinéa ajouté, L. n° 91-627, 3 juill. 1991, art. 10.*) Ils peuvent, avec l'accord du capitaine, conduire le navire au port désigné par l'autorité maritime compétente en vue des contrôles ou vérifications à faire et procéder alors à la pose de scellés et conserver les documents de bord jusqu'à leur remise à l'autorité compétente.

**Art. 15**(*Rétabli dans la rédaction suivante, L. n° 86-2, 3 janv. 1986, art. 15.*) - En cas de condamnation pour infraction aux dispositions du 13° de l'article 6, le tribunal fixe, s'il y a lieu, les mesures à prendre pour faire cesser l'infraction ou en éviter la récurrence et le délai dans lequel ces mesures devront être exécutées ainsi qu'une astreinte de 100 F à 2 000 F par jour de retard dans l'exécution des mesures ou obligations imposées. L'astreinte cesse de courir le jour où ces dernières sont complètement exécutées. Elle est alors liquidée par le tribunal à la demande de l'intéressé et recouvrée par le comptable du Trésor comme une amende pénale. Elle ne donne pas lieu à contrainte par corps. Le présent article ne s'applique qu'aux rejets, déversements ou écoulements provenant de dépôts ou d'installations fixes.

**Art. 16**(*Après les mots «les administrateurs des affaires maritimes» sont ajoutés les mots «les inspecteurs des affaires maritimes» . Les mots «les officiers et officiers mariniers commandant les bâtiments de l'État» sont remplacés par les mots «les commandants, commandants en second ou officiers en second des bâtiments et les chefs de bord des aéronefs de la marine nationale» , L. n° 96-151, 26 févr. 1996, art. 11-I).*

**Art. 18**(*Remplacé L. n° 85-542, 22 mai 1985, art. 4.*) - Les délits et contraventions en matière de pêche maritime sont jugés :

1° Pour les navires français, par le tribunal du port où le navire a été conduit, ou, s'il n'a pas été conduit au port, par le tribunal du port d'immatriculation ;

2° Pour les navires étrangers, par le tribunal du port où le navire a été conduit ou, s'il n'a pas été conduit au port, par le tribunal de la résidence administrative de l'agent qui a constaté l'infraction.

**Art. 19**(*Les mots «administrateurs des affaires maritimes» sont remplacés par les mots «administrateurs des affaires maritimes officiers du corps technique et*

administratif des affaires maritimes et inspecteurs des affaires maritimes» . Après le mot «officiers» sont ajoutés les mots «et inspecteurs» , L. n° 96-151, 26 févr. 1996, art. 11- II).

**Art. 17**(L. n. 70-1302, 31 déc. 1970, art. 6). - Les procès-verbaux et rapports devront être signés. Lorsqu'ils émaneront des gardes jurés ou des prud'hommes pêcheurs, ils devront être, à peine de nullité, affirmés dans les trois jours de leur clôture devant le juge d'instance dans le ressort duquel est située la commune de résidence de l'agent de constatation ou devant le maire ou l'adjoint de la commune où l'infraction a été commise.

**Art. 21**(L. n. 70-1302, 31 déc. 1970, art. 10). - Les citations, actes de procédure et jugements sont dispensés du timbre et enregistrés gratis.

Les citations et significations seront faites et remises sans frais par les syndics des gens de mer, les gardes jurés, les gardes maritimes et les gendarmes de la marine. Si la contravention a été constatée par des officiers et agents de police judiciaire ou des agents des douanes, les significations pourront être aussi remises par des agents de la force publique.

Les jugements seront signifiés par simple extrait contenant le nom des parties et le dispositif du jugement.

Cette signification fera courir les délais d'opposition, d'appel et de pourvoi en cassation.

**Art. 22**(L. n. 70-1302, 31 déc. 1970, art. 11). - En cas de recours en cassation, l'amende à consigner est réduite à moitié du taux fixé par l'article 580 du Code de procédure pénale.

**Art. 23**(Abrogé, L. n. 70-132, 31 déc. 1970, art. 3).

**Art. 24**. - Sont et demeurent abrogés, en ce qu'ils ont de contraire aux dispositions de la présente loi, les lois et règlements aujourd'hui existants sur la police de la pêche côtière ou pêche du poisson et du coquillage à la mer, le long des côtes, ainsi que dans la partie des fleuves, rivières, étangs et canaux où les eaux sont salées.

Sont également abrogés les règlements relatifs à la récolte du varech, sart, goémon et

autres herbes marines.

Toutefois, ces lois et règlements continueront provisoirement à être exécutés, mais sous les peines ci-dessus énoncées pour les contraventions aux dispositions qu'ils contiennent, jusqu'à la publication des décrets à intervenir en conformité de l'article 3, laquelle publication devra avoir lieu dans l'année qui suivra la promulgation de la présente loi.

Il n'est d'ailleurs pas dérogé à loi du 23 juin 1846 sur les pêcheries dans les mers situées entre les côtes de France et celles du Royaume-Uni de la Grande-Bretagne et de l'Irlande.

**9 janvier 1852**

**DÉCRET sur l'exercice de la pêche maritime<sup>(1)</sup>.**

**Art. 21 bis** (*Inséré, L. n° 86-2, 3 janv. 1986, art. 16*). - Les organisations professionnelles instituées en application de l'ordonnance n° 45-1813 du 14 août 1945 portant réorganisation des pêches maritimes peuvent exercer les droits reconnus à la partie civile en ce qui concerne les faits constituant une infraction aux dispositions du présent texte et des règlements pris pour son application et portant un préjudice direct ou indirect aux intérêts collectifs qu'elles ont pour objet de défendre.

**Art. 22** (*Abrogé, L. n° 85-542, 22 mai 1985, art. 6 puis rétabli dans la rédaction suivante, L. n° 96-151, 26 févr. 1996, art. 6- I*). - Les personnes physiques coupables des infractions prévues par la présente loi encourent également, à titre de peine complémentaire, la peine d'affichage de la décision prononcée ou de diffusion de celle-ci dans les conditions prévues à l'article 131-35 du Code pénal.

**Art. 23** (*Rétabli dans la rédaction suivante, L. n° 85-542, 22 mai 1985, art. 5*). - Les dispositions du présent texte sont applicables aux eaux sous souveraineté ou juridiction française situées au large de la collectivité territoriale de Mayotte, des îles Tromelin, Glorieuses, Juan de Nova, Europa, Bassas da India et de l'île de Clipperton.

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<sup>(1)</sup> *V. L. n° 85-542, 22 mai 1985, art. 10 en ce qui concerne l'entrée en vigueur des modifications apportées au présent décret.*

**26 mai 1977**

**LOI n. 77-530 relative à la responsabilité civile et à l'obligation d'assurance des propriétaires de navires pour les dommages résultant de la pollution par les hydrocarbures ( J. O. 27 mai 1977).**

**Art. 1<sup>er</sup>.** - Tout propriétaire d'un navire transportant une cargaison d'hydrocarbures en vrac est responsable des dommages par pollution résultant d'une fuite ou de rejets d'hydrocarbures de ce navire dans les conditions et limites déterminées par la convention internationale de Bruxelles du 29 novembre 1969 sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures.

Pour l'application de la présente loi, les termes ou expressions «propriétaire», «navire», «événement», «dommages par pollution» et «hydrocarbures» s'entendent au sens qui leur est donné à l'article 1<sup>er</sup> de la convention mentionnée à l'alinéa précédent.

**Art. 2.** - Sous réserve des dispositions de la convention internationale mentionnée à l'article précédent relatives aux navires qui sont la propriété de l'Etat, le propriétaire d'un navire immatriculé dans un port français et transportant plus de 2 000 tonnes d'hydrocarbures en vrac en tant que cargaison ne peut laisser commercer ce navire s'il ne justifie, dans les conditions déterminées par l'article VI de cette convention, d'une assurance ou d'une garantie financière à concurrence, par événement, du montant de sa responsabilité.

**Art. 3.** - Quel que soit son lieu d'immatriculation, aucun navire transportant plus de 2 000 tonnes d'hydrocarbures en vrac en tant que cargaison ne peut avoir accès aux ports français ou à des installations terminales situées dans les eaux territoriales ou intérieures françaises, ni les quitter, s'il n'est muni d'un certificat établissant que la responsabilité civile de son propriétaire pour les dommages par pollution est couverte par une assurance ou garantie financière dans les conditions prévues au paragraphe I de l'article VII de la convention susmentionnée. Si le navire est la propriété d'un Etat, il doit être muni d'un certificat justifiant que la responsabilité de cet Etat est couverte dans les limites fixées au paragraphe I de l'article V de ladite convention.

**Art. 4.** - Les dispositions de l'article précédent ne sont pas applicables aux navires de guerre et aux autres navires appartenant à un Etat ou exploités par lui et affectés

exclusivement à un service non commercial d'Etat.

**Art. 5.** - Indépendamment des officiers et agents de police judiciaire, sont habilités à rechercher et à constater les infractions aux dispositions de la présente loi les administrateurs des affaires maritimes, les officiers du corps technique et administratif des affaires maritimes, les inspecteurs de la navigation et du travail maritime, les inspecteurs mécaniciens de la marine marchande, les techniciens experts du service de la sécurité de la navigation maritime, les officiers de port et officiers de port adjoints, les agents de la police de la navigation et de la surveillance des pêches maritimes, les ingénieurs des ponts et chaussées et les ingénieurs des travaux publics de l'Etat affectés aux services maritimes ainsi que les agents desdits services commissionnés à cet effet, les agents de douanes et, à l'étranger, en ce qui concerne les navires immatriculés dans un port français, les consuls de France à l'exclusion des agents consulaires.

**Art. 6.** - Les procès-verbaux dressés conformément à l'article 5 de la présente loi font foi jusqu'à preuve du contraire et ne sont pas soumis à l'affirmation.

Ils sont transmis immédiatement au procureur de la République par l'agent verbalisateur, qui en adresse en même temps copie aux services intéressés.

**Art. 7.** - Les infractions aux dispositions de la présente loi sont jugées, soit par le tribunal compétent du lieu de l'infraction, soit par celui de la résidence de l'auteur de l'infraction.

Est en outre compétent, soit le tribunal dans le ressort duquel le navire est immatriculé s'il est français, soit celui dans le ressort duquel le navire peut être trouvé s'il est étranger.

A défaut d'autre tribunal, le Tribunal de grande instance de Paris est compétent.

**Art. 8<sup>(1)</sup>.** - Les infractions aux dispositions des articles 2 et 3 de la présente loi seront punies d'une amende de 50 000 F à 500 000 F.

**Art. 9.** - La présente loi est applicable aux territoires d'outre-mer ainsi qu'au département de Saint- Pierre- et- Miquelon et à Mayotte.

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<sup>(1)</sup> Amendes : pour calculer les variations de taux, consultez la fiche orange en tête de chaque volume.

**Art. 10.** - Un décret en Conseil d'Etat détermine, en tant que de besoin, les conditions d'application de la présente loi.

**5 juillet 1983**

**LOI n. 83-583 réprimant la pollution de la mer par les hydrocarbures (J.O.6 juill. et rectific. 30 sept. 1983).**

**Art. 1<sup>er</sup>.**<sup>(1)</sup> - Sera puni d'une amende de 100 000 F à 1 000 000 F et d'un emprisonnement de trois mois à deux ans, ou de l'une de ces deux peines seulement et, en cas de récidive, du double de ces peines, tout capitaine d'un navire français soumis aux dispositions de la convention internationale pour la prévention de la pollution par les navires, faite à Londres le 2 novembre 1973, telle que modifiée par le protocole du 17 février 1978 et par ses modificatifs ultérieurs régulièrement approuvés ou ratifiés, entrant dans les catégories ci-après :

- navires-citernes d'une jauge brute égale ou supérieure à 150 tonneaux ;
- navires autres que navires-citernes, d'une jauge brute égale ou supérieure à 500 tonneaux,

qui se sera rendu coupable d'infraction aux dispositions des règles 9 et 10 de l'annexe I de la convention, relatives aux interdictions de rejets d'hydrocarbures, tels que définis au 3 de l'article 2 de ladite convention.

Les pénalités prévues au présent article sont applicables au responsable à bord de l'exploitation des plates-formes immatriculées en France pour, les rejets en mer effectués en infraction aux règles 9 et 10 de l'annexe I de cette convention.

**Art. 2.**<sup>(1)</sup> - Sera puni d'une amende de 30 000 F à 300 000 F et d'un emprisonnement de quinze jours à un an, ou de l'une de ces deux peines, et, en cas de récidive, du double de cette amende et d'un emprisonnement de un à deux ans, ou de l'une de ces deux peines seulement, tout capitaine d'un navire français soumis aux dispositions de la convention susmentionnée et appartenant aux catégories suivantes :

- navires-citernes d'une jauge brute inférieure à 150 tonneaux ;
  - navires autres que navires-citernes, d'une jauge brute inférieure à 500 tonneaux et dont la machine propulsive a une puissance installée supérieure à 150 kilowatts,
- qui aura commis les infractions prévues à l'article 1<sup>er</sup> ci-dessus.

**Art. 3.** - Les pénalités prévues à l'article 2 sont applicables pour les rejets en mer en

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<sup>(1)</sup> Amendes : *pour calculer les variations de taux, consultez le fascicule orange en tête de chaque volume.* - N.D.L.R.



infraction aux règles 9 et 10 de l'annexe I de la convention susmentionnée, au responsable de la conduite de tous engins portuaires, chalands ou bateaux citernes fluviaux, qu'ils soient automoteurs, remorqués ou poussés.

**Art. 4.**<sup>(1)</sup> - Sera puni d'une amende de 1 000 F à 10 000 F et, en cas de récidive, du double de cette peine et d'un emprisonnement de huit jours à six mois, ou de l'une de ces deux peines seulement, tout capitaine ou responsable à bord d'un navire français soumis aux dispositions de la convention susmentionnée n'appartenant pas aux catégories de navires définis aux articles 1<sup>er</sup> et 2 qui aura commis les infractions prévues à l'article 1<sup>er</sup>.

**Art. 5.** - Seront punis, selon le cas, des peines prévues aux articles 1<sup>er</sup>, 2 et 4 ci-dessus, les capitaines ou responsables à bord de navires français soumis à la convention susmentionnée ayant commis les infractions définies à l'article 1<sup>er</sup> ci-dessus dans les voies navigables jusqu'aux limites de la navigation maritime.

**Art. 6.** - Sans préjudice des peines prévues aux articles précédents à l'égard du capitaine ou du responsable à bord, le propriétaire ou l'exploitant qui aura donné l'ordre de commettre l'infraction sera puni des peines prévues auxdits articles.

Lorsque le propriétaire ou l'exploitant est une personne morale, la responsabilité prévue à l'alinéa précédent incombe à celui ou à ceux des représentants légaux ou dirigeants de fait qui en assurent la direction ou l'administration ou à toute personne habilitée par eux.

**Art. 7.** - Dans la zone économique au large des côtes du territoire de la République, les eaux territoriales, les eaux intérieures et les voies navigables françaises jusqu'aux limites de la navigation maritime, les dispositions de la présente loi s'appliquent, dans les conditions prévues aux articles 1<sup>er</sup>, 2, 4 et 5, aux navires et plates-formes étrangers même immatriculés dans un territoire relevant d'un Gouvernement non partie à la convention susmentionnée.

Toutefois, seules les peines d'amendes prévues aux articles 1<sup>er</sup>, 2 et 4 pourront être prononcées lorsque l'infraction a eu lieu dans la zone économique au large des côtes du territoire de la République.

**Art. 8.** - Sans préjudice des peines prévues aux articles précédents en matière d'infractions aux règles sur les rejets, l'imprudence, la négligence ou l'inobservation

des lois et règlements, ayant eu pour conséquence un accident de mer tel que l'a défini la convention de Bruxelles du 29 novembre 1969 sur l'intervention en haute mer, est punissable en la personne du capitaine ou du responsable de la conduite ou de l'exploitation qui a provoqué un tel accident ou n'a pas pris les mesures nécessaires pour l'éviter, lorsque cet accident a entraîné une pollution des eaux territoriales, des eaux intérieures ou des voies navigables jusqu'à la limite de la navigation maritime.

Lorsque l'infraction aura été commise au moyen d'un navire ou d'une plate-forme défini à l'article 1<sup>er</sup>, elle sera punie de peines égales à la moitié de celles prévues audit article. Lorsque l'infraction aura été commise au moyen d'un navire ou engin défini aux articles 2, 3 et 4, elle sera punie de peines égales à la moitié de celles prévues auxdits articles.

Les peines prévues à l'alinéa ci-dessus sont applicables soit au propriétaire, soit à l'exploitant ou à leur représentant légal ou dirigeant de fait s'il s'agit d'une personne morale, soit à toute autre personne que le capitaine ou le responsable à leur représentant légal ou dirigeant de fait s'il s'agit d'une personne morale, soit à bord exerçant, en droit ou en fait, un pouvoir de contrôle ou de la plate-forme, lorsque ce propriétaire, cet exploitant ou cette personne aura été à l'origine d'une pollution dans les conditions définies au premier alinéa.

N'est pas punissable, en vertu du présent article, le rejet, consécutif à des mesures ayant pour objet d'éviter un danger grave et imminent menaçant la sécurité des navires, la vie humaine ou l'environnement.

**Art. 9.** - Les dispositions des articles 1<sup>er</sup> à 6 inclus et 8 ne sont pas applicables aux navires, plates-formes et engins maritimes ou fluviaux de toute nature appartenant à la marine nationale, aux services de police ou de gendarmerie, à l'administration des douanes, à l'administration des affaires maritimes ou, d'une manière générale, à tous navires d'Etat utilisés à des opérations de police ou de service public en mer.

**Art. 10.** - Le tribunal pourra, compte tenu des circonstances de fait et, notamment, des conditions de travail de l'intéressé, décider que le paiement des amendes prononcées à l'encontre du capitaine ou du responsable à bord, en vertu des articles précédents, ainsi que des frais de justice qui peuvent s'ajouter à ces amendes, seront, en totalité ou en partie, à la charge de l'exploitant ou du propriétaire.

Le tribunal ne pourra user de la faculté prévue à l'alinéa précédent, que si le propriétaire ou l'exploitant a été cité à l'audience.

**Art. 11.** - Indépendamment des officiers et agents de police judiciaire, qui exercent leurs pouvoirs conformément aux dispositions du Code de procédure pénal, sont habilités à constater les infractions aux dispositions des règles 9, 10 et 20 de l'annexe I de la Convention internationale pour la prévention de la pollution par les navires susmentionnée, les infractions aux dispositions de la présente loi ainsi que les infractions aux dispositions réglementaires qui seront prises pour son application:

- les administrateurs des affaires maritimes ;
- les officiers du corps technique et administratif des affaires maritimes ;
- les inspecteurs de la navigation et du travail maritime ;
- les inspecteurs mécaniciens ;
- les techniciens experts du service de la sécurité de la navigation maritime ;
- les contrôleurs des affaires maritimes (branche technique) ;
- les personnels embarqués d'assistance et de surveillance des affaires maritimes ;
- les fonctionnaires et agents assermentés et commissionnés des services maritimes et des ports autonomes ;
- les ingénieurs des mines et les ingénieurs des travaux publics de l'Etat affectés au service des mines de circonscriptions minéralogiques intéressées ;
- les officiers de port et officiers de port adjoints ;
- les agents des douanes,

et à l'étranger, les consuls de France, à l'exclusion des agents consulaires.

En outre, les infractions aux dispositions des règles 9 et 10 de l'annexe I de la convention ci-dessus mentionnée peuvent être constatées par les commandants des aéronefs militaires.

Sont chargés de rechercher les infractions constituant le délit de pollution des eaux de mer, de recueillir à cet effet tous renseignements en vue de découvrir les auteurs de ces infractions et d'en rendre compte soit à un officier de police judiciaire exerçant ses pouvoirs conformément aux dispositions du Code de procédure pénale, soit à un administrateur des affaires maritimes :

- les commandants des navires océanographiques de l'Etat ;
  - les commandants de bord des aéronefs de la protection civile et des aéronefs de l'Etat affectés à la surveillance des eaux maritimes ;
  - les agents du service des phares et balises ;
  - les agents de l'Institut scientifique et technique des pêches maritimes,
- et les agents de la police de la pêche fluviale.

**Art. 12.** - Les procès-verbaux dressés par les agents mentionnés à l'article 11 de la

présente loi font foi jusqu'à preuve contraire. Ils sont transmis immédiatement au procureur de la République par l'agent verbalisateur qui en adresse en même temps copie à l'administrateur des affaires maritimes lorsqu'il s'agit de navires ou de plates-formes ou à l'ingénieur des ponts et chaussées chargé du service maritime, s'il s'agit d'engins portuaires, de chalands ou de bateaux-citernes fluviaux.

Les infractions aux dispositions de la convention mentionnée à l'article 1<sup>er</sup> et à celles de la présente loi sont jugées soit par le tribunal compétent du lieu de l'infraction soit par celui dans le ressort duquel le bâtiment est attaché en douanes ou immatriculé s'il est français, soit par celui dans le ressort duquel peut être trouvé le bâtiment s'il est étranger.

A défaut d'autre tribunal, le Tribunal de grande instance de Paris est compétent.

**Art. 13.** - Le navire qui a servi à commettre l'une des infractions définies aux articles 1<sup>er</sup> à 8 de la présente loi peut être immobilisé sur décision du procureur de la République ou du juge d'instruction saisi.

A tout moment, l'autorité judiciaire compétente peut ordonner la levée de l'immobilisation s'il est fourni un cautionnement dont elle fixe le montant et les modalités de versement.

Les conditions d'affectation, d'emploi et de restitution du cautionnement sont réglées conformément aux dispositions des articles 142, 142-2 et 142-3 du Code de procédure pénale.

**Art. 14.** - Si les faits constitutifs des infractions énumérées aux articles 1<sup>er</sup> à 8 de la présente loi ont causé des dommages au domaine public maritime, l'administration ne pourra poursuivre devant la juridiction administrative selon la procédure des contraventions de grande voirie que la réparation de ce dommage.

**5 juillet 1983**

**LOI n° 83-583 réprimant la pollution par les navires.**

*(Intitulé modifié, L. n° 90-444, 31 mars 1990, art. 1<sup>er</sup>.)*

**Art. 7** *(Premier alinéa : les mots « conditions prévues aux articles 1<sup>er</sup>, 2, 4 et 5 » sont remplacés par les mots « conditions prévues aux articles 1<sup>er</sup>, 2, 4, 4 bis, 4 ter, 5, 5 bis-1 et 5 ter », L. n° 90-444, 31 mai 1990, art. 7).*

*(Second alinéa : les mots « peines d'amende prévues aux articles 1<sup>er</sup>, 2, et 4 » sont remplacés par les mots « peines d'amende prévues aux articles 1<sup>er</sup>, 2, 4, 4 bis, 4 ter, 5 bis, 5 bis-1 et 5 ter », L. n° 90-444, 31 mai 1990, art. 7.)*

**Art. 8** *(Premier alinéa : après les mots « en la personne du capitaine ou du responsable de la conduite ou de l'exploitation » sont insérés les mots « à bord de navires ou de plates-formes français ou étrangers », L. n° 90-444, 31 mai 1990, art. 8).*

*(Deuxième alinéa remplacé par les deux alinéas suivants, L. n° 90-444, 31 mai 1990, art. 8.)* Lorsque l'infraction aura été commise au moyen d'un navire entrant dans les catégories définies à l'article 1<sup>er</sup> ci-dessus ou d'une plate-forme, elle sera punie de peines égales à la moitié de celles prévues audit article.

Lorsque l'infraction aura été commise au moyen d'un navire ou engin entrant dans les catégories définies aux articles 2, 3, et 4, elle sera punie de peines égales à la moitié de celles prévues auxdits articles.

*(Troisième alinéa : les mots « à l'alinéa ci-dessus » sont remplacés par les mots « aux deux alinéas précédents », L. n° 90-444, 31 mai 1990, art. 8.)*

**Art. 10** *(Premier alinéa : les mots « ainsi que des frais de justice qui peuvent s'ajouter à ces amendes, seront » sont remplacés par le mot « sera » à compter du 1<sup>er</sup> mars 1993, L. n° 93-2, 4 janv. 1993, art. 120-V et 226-III. - V. Ce texte).*

*(Alinéa ajouté in fine, L. n° 96-151, 26 févr. 1996, art. 6-II.)* Les personnes physiques coupables des infractions prévues par la présente loi encourent également, à titre de peine complémentaire, la peine d'affichage de la décision prononcée ou de diffusion de celle-ci dans les conditions prévues à l'article 131-35 du Code pénal.

**Art. 10 bis** *(Inséré, L. n. 96-151, 26 févr. 1996, art. 8).* - Les personnes morales peuvent être déclarées pénalement responsables, dans les conditions prévues à l'article

121-2 du Code pénal, des fractions définies aux articles 6 et 8 de la présente loi.

Elles encourent les peines suivantes :

- 1° L'amende, suivant les modalités prévues par l'article 131-38 du Code pénal ;
- 2° Les peines mentionnées aux 5° , 6° et 9° de l'article 131-39 du Code pénal.

**Art. 11** *(Premier alinéa : après les mots «aux dispositions des règles 9, 10 et 20 de l'annexe I » sont insérés les mots «de la règle 5 de l'annexe II, de la règle 7 de l'annexe III, des règles 3, 4 et 5 de l'annexe V et du protocole I » , L n° 90-444, 31 mai 1990, art. 9).*

*(Quinzième et cinquième alinéas remplacés par un alinéa ainsi rédigé, L. n° 96-151, 26 févr. 1996, art. 14.)* Les inspecteurs des affaires maritimes.

*(Septième alinéa : les mots «(branche technique)» sont supprimés, L. n° 96-151, 26 févr. 1996, art. 14.)*

*(Quinzième alinéa : après les mots «les infractions aux dispositions des règles 9 et 10 de l'annexe I » sont insérés les mots «, de la règle 5 de l'annexe II, de la règle 7 de l'annexe III et des règles 3, 4 et 5 de l'annexe V», L. n° 90-444, 31 mai 1990, art. 9 ; les mots «les commandants, commandants en second ou officiers en second des bâtiments de la marine nationale et les chefs de bord des aéronefs de la marine nationale», L. n° 96-151, 26 févr. 1996, art. 14.)*

*(Quinzième alinéa : les mots «un administrateur» sont remplacés par les mots «un officier ou un inspecteur», L. n° 96-151, 26 févr. 1996, art. 14.)*

*(Avant-dernier alinéa : les mots «les agents de l'Institut scientifique et technique des pêches maritimes» sont remplacés par les mots «les agents de l'Institut français de recherche pour l'exploitation de la mer», L. n° 96-151, 26 févr. 1996, art. 14.)*

**Art. 17** *(Remplacé, L. n° 90-444, 31 mai 1990, art. 11).* - L'article 5 bis de la présente loi entrera en vigueur le jour de la publication au *Journal officiel* de la République française de l'annexe III de la convention internationale pour la prévention de la pollution par les navires, faite à Londres le 2 novembre 1973, telle que modifiée par le protocole du 17 février 1978.

**Art. 15.** - La présente loi est applicable dans les territoires d'outre-mer et à la collectivité territoriale de Mayotte.

Dans les territoires d'outre-mer où il n'existe pas d'administrateurs des affaires

maritimes, d'officiers de port, d'officiers de port adjoints, les pouvoirs qui leur sont dévolus à l'article 11 sont exercés par le délégué du Gouvernement de la République ou par l'un de ses représentants.

**Art. 16.** - Est abrogée, à compter de l'entrée en vigueur de la présente loi, la loi n. 64-1331 du 26 décembre 1964, modifiée par les lois n. 73-477 du 16 mai 1973 et n. 79-5 du 2 janvier 1979.

La référence à la présente loi est substituée à la référence à la loi n. 64-1331 du 26 décembre 1964 modifiée dans tous les textes contenant une telle disposition.

**Art. 17<sup>(1)</sup>.** - La présente loi entrera en vigueur le jour de l'entrée en vigueur pour la France de la convention internationale pour la prévention de la pollution par les navires, faite à Londres le 2 novembre 1973, telle que modifiée par le protocole du 17 février 1978.

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<sup>(1)</sup> *Convention publiée, D. n. 83-874, 27 sept. 1983 : J.O. 2 oct. 1983.*