Changes to Legislation: as of 3 November 2026, this Act is up to date with all changes known to be in force.

Number 29 *of* 2006

SEA POLLUTION (MISCELLANEOUS PROVISIONS) ACT 2006

REVISED

Updated to 22 November 2021

This Revised Act is an administrative consolidation of the *Sea Pollution (Miscellaneous Provisions) Act 2006*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Child and Family Agency (Amendment) Act 2021* (34/2021), enacted 24 November 2021, and all statutory instruments up to and including the *Maritime Jurisdiction Act 2021 (Commencement) Order 2021* (S.I. No. 601 of 2021), made 17 November 2021, were considered in the preparation of this revision.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

Number 29 *of* 2006

SEA POLLUTION (MISCELLANEOUS PROVISIONS) ACT 2006

REVISED

Updated to 22 November 2021

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International Convention on Civil Liability for Bunker Oil Pollution Damage 2001

ACTS REFERRED TO

Companies Act 1963	1963, No. 33
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Maritime Jurisdiction Acts 1959 to 1988	
Mercantile Marine Act 1955	1955, No. 29
Merchant Shipping (Salvage and Wreck) Act 1993	1993, No. 34
Petty Sessions (Ireland) Act 1851	14 & 15 Vic., c. 93
Public Offices Fees Act 1879	42 & 43 Vic., c. 58
Sea Pollution (Amendment) Act 1999	1999, No. 18
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Number 29 *of* 2006

SEA POLLUTION (MISCELLANEOUS PROVISIONS) ACT 2006

REVISED

Updated to 22 November 2021

AN ACT TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE 2001 DONE AT LONDON ON 23 MARCH 2001 AND TO MAKE PROVISION FOR MATTERS RELATING TO COUNCIL REGULATION (EC) NO. 44/2001 OF 22 DECEMBER 2000 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS IN SO FAR AS IT RELATES TO THAT CONVENTION, TO GIVE EFFECT TO THE PROTOCOL 2000 ON PREPAREDNESS, RESPONSE AND CO-OPERATION TO POLLUTION INCIDENTS BY HAZARDOUS AND NOXIOUS SUBSTANCES 2000 DONE AT LONDON ON 15 MARCH 2000, TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL ANTI-FOULING SYSTEMS DONE AT LONDON ON 5 OCTOBER 2001, TO GIVE EFFECT TO ANNEX VI AS ADDED TO THE MARPOL CONVENTION BY THE PROTOCOL TO THAT CONVENTION DONE AT LONDON ON 26 SEPTEMBER 1997, TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS 2004 DONE AT LONDON ON 13 FEBRUARY 2004, TO AMEND THE SEA POLLUTION ACTS 1991 TO 1999, TO AMEND THE HARBOURS ACT 1996 AND TO PROVIDE FOR RELATED MATTERS.

[31*st October*, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short title and commencement.

1.— (1) This Act may be cited as the Sea Pollution (Miscellaneous Provisions) Act 2006.

(2) This Act comes into operation on such day or days as the Minister for Transport may by order or orders appoint either generally or with reference to a particular purpose or provision and different days may be fixed for different purposes and different provisions.

(3) The Sea Pollution Acts 1991 to 1999, this paragraph and *Part 3* of this Act may be cited together as the Sea Pollution Acts 1991 to 2006, and shall be construed together as one Act.

(4) The Harbours Acts 1996 to 2005, this paragraph and *Part 4* may be cited together as the Harbours Acts 1996 to 2006.

Expenses.

2.— The expenses incurred by the Minister for Transport in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART 2

Bunker Oil Pollution (Civil Liability and Compensation)

Interpretation (*Part 2*).

3.— (1) In this Part, except where the context otherwise requires—

"bunker oil" means any hydrocarbon mineral oil (including lubricating oil) used or intended to be used for the operation or propulsion of a ship, and any residues of such oil;

"charterer" includes bareboat charterer;

"Convention" means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, done at London on 23 May 2001;

"Convention court" means, in relation to a State Party (other than the State)—

(*a*) any court or tribunal that under the law of that State Party has jurisdiction to determine liability in respect of pollution damage incurred, and to award compensation therefore, or

(*b*) any court or tribunal that under the law of that State Party has jurisdiction to—

(i) adjudicate on any appeal from a judgment, or

(ii) review a judgment,

of a court or tribunal referred to in *paragraph (a)* ;

"Council Regulation" means Council Regulation (EC) No. 44/2001 of 22 December 2000[1] on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

"harbour authority" means—

(*a*) in the case of a harbour to which the Harbours Acts 1946 to 1976 apply, a harbour authority within the meaning of those Acts,

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

(*c*) in the case of a fishery harbour centre to which the Fishery Harbour Centres Act 1968 applies, the Minister for Communications, Marine and Natural Resources,

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

(*e*) in the case of a harbour under the management of Iarnród Éireann — Irish Rail, that body;

"inspector" means one or more of the following:

(*a*) a person duly appointed under *section 14* ;

(*b*) a member of the Permanent Defence Forces holding commissioned rank, while in uniform;

[1] OJ No. L12 of 16.1.2001, p.1

(*c*) a member of the Garda Síochána, while in uniform;

(*d*) as respects the harbour of which he or she is the harbour master, a person duly appointed to be the harbour master by the harbour authority concerned;

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

"judgment" means a decision of a Convention court made in accordance with the provisions of the Convention awarding compensation to a person in respect of pollution damage incurred by him or her;

"judgment debtor" means the person against whom a Convention court has given a final judgment;

"local authority" has the same meaning as in the Local Government Act 2001;

"master" in relation to a ship, includes the manager or the operator or both;

"Member State" means a Member State of the European Communities, other than the State and Denmark;

"Minister" means the Minister for Transport;

"prescribed" means prescribed by order or regulations made by the Minister under this Part;

"State Party" means a state (other than the State) that is declared by order under *section 4* to be a State Party to the Convention.

F1**[**(2) A reference in this Part to the State includes a reference to—

(*a*) the internal waters of the State,

(*b*) the territorial sea of the State, its seabed and subsoil, and

(*c*) the exclusive economic zone of the State within the meaning of the Maritime Jurisdiction Act 2021.**]**

(3) A word or expression that is used in this Part and that is also used in the Convention has, in this Part, the meaning that it has in the Convention.

Orders.

4.— (1) The Minister may by order—

(*a*) declare that any state specified in the order is a State Party to the Convention and such an order shall be evidence that that State is a State Party to the Convention,

(*b*) make a declaration for the purposes of Article 7.15 of the Convention,

(*c*) prescribe fees payable pursuant to *section 9 (8)* .

(2) The Minister may by order amend or revoke an order made by him or her under this section.

Regulations.

5.— The Minister may make regulations for carrying the provisions of this Part and the Convention into effect, including the issuing of certificates under *section 9* .

Laying of orders and regulations before Houses of Oireachtas.

6.— Every order and regulation under this Part shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling such order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation

shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Convention to have force of law.

7.— (1) Subject to the provisions of this Part the Convention shall have the force of law in the State and judicial notice shall be taken of it.

(2) For convenience of reference, the text of the Convention in the English language (including the Annex to it) is set out in the *Schedule*.

Limitation regime.

8.— (1) In this section—

"1976 Convention" means the Convention on Limitation of Liability for Maritime Claims, done at London on 19 November 1976;

"1996 Protocol" means the Protocol to the 1976 Convention, done at London on 2 May 1996.

(2) Where the State has jurisdiction under the Convention, then Articles 6 to 9 of the 1976 Convention (as amended by Articles 3, 4 and 5 of the 1996 Protocol) shall apply.

(3) Where, pursuant to Article 8 of the 1996 Protocol, the limits of liability (including any one or more of the amounts specified in the relevant Articles) are duly amended by increasing the limits, then the Minister shall, if satisfied that the limits of liability have been duly increased, make an order giving the new, increased limits of liability the force of law. The Minister shall specify in the order a date, not earlier than their entering into force internationally in accordance with the 1996 Protocol, when the new limits come into force in the State.

(4) (*a*) For the purpose of the limits of liability specified in Articles 6 and 7 (as amended) of the 1976 Convention, the value in the currency of the State of the unit of account specified in that Convention shall be taken to be the value, ascertained in accordance with Article 8 (as amended) of that Convention, in that currency of such a unit of account on the relevant day specified in that said Article or, if its value on that day cannot be so ascertained, its value in that currency on the latest day before such day on which it can be so ascertained.

(*b*) For the purposes of this section a certificate purporting to be signed by an officer of the F3**[**Central Bank of Ireland**]** and stating that—

(i) a specified amount in the currency of the State is the value of such a unit of account on a specified day, or

(ii) the value in the currency of the State of such a unit of account on a specified day cannot be ascertained in accordance with the 1976 Convention (as amended) and that a specified amount in the currency of the State is the value, calculated in accordance with that Convention, of such a unit of account on a specified day (being the latest day before the first-mentioned specified day on which such value can be ascertained as aforesaid),

shall be admissible as evidence of the facts stated in the certificate.

Insurance.

9.— (1) Nothing in this Part shall affect the rights of subrogation of any person providing insurance or financial security under Article 7 of the Convention.

(2) This section applies to a certificate issued pursuant to Article 7 of the Convention attesting that insurance or other financial security is in force in accordance with the provisions of the Convention. Such a certificate shall be in the form set out in the Annex to the Convention.

(3) For the purposes of Article 7 of the Convention the appropriate authority in the State is the Minister.

(4) The owner—

(*a*) of an Irish ship, or

(*b*) of a ship registered in a state that is not a State Party,

may apply to the Minister for a certificate under this section.

(5) The Minister shall, on being satisfied that insurance or other financial security is in force in respect of the ship, issue a certificate under this section to the owner.

(6) Where an Irish ship—

(*a*) has a gross tonnage greater than 1,000, and

(*b*) does not have on board a certificate issued by the Minister under this section,

then, the owner, the charterer and the master of such ship are each guilty of an offence.

(7) The owner, the charterer and the master of a ship other than an Irish ship that—

(*a*) is located in the State,

(*b*) has a gross tonnage greater than 1,000, and

(*c*) does not have on board a certificate that complies with, and is issued in accordance with Article 7 of the Convention,

are each guilty of an offence.

(8) An application under *subsection (4)* shall be accompanied by such fee, not exceeding the expense incurred by the Minister in considering such application and issuing a certificate, as may be prescribed by the Minister.

(9) The Public Offices Fees Act 1879 shall not apply to fees under this section.

Recognition and enforcement of final judgment in the State.

10.— (1) This section shall not apply to a judgment of a court of a Member State other than a court or tribunal of a territory of a Member State to which the Council Regulation does not apply.

(2) A final judgment of a Convention court shall be recognised and enforceable in the State in accordance with Article 10 of the Convention.

(3) An application for the enforcement of a final judgment shall be made to the High Court.

(4) For the purposes of this Part a judgment shall be deemed to be a final judgment where—

(*a*) the time within which, under the law of the State Party concerned, an appeal against the judgment may be brought has expired and no such appeal has been brought,

(*b*) under the law of the State Party concerned there is no provision for an appeal from such judgment,

(*c*) an appeal against the judgment has been withdrawn, or

(*d*) the judgment has been affirmed or varied on appeal by the Convention court hearing such appeal, and—

(i) the time within which, under the law of the State Party concerned, an appeal against the decision to so affirm or vary has expired and no such appeal has been brought,

(ii) under the law of the State Party concerned there is no provision for an appeal from the decision to so affirm or vary, or

(iii) an appeal against the decision to so affirm or vary has been withdrawn.

(5) Subject to this section and Article 10 of the Convention, the High Court shall make an order in the amount of the final judgment, less any payments duly made in satisfaction since the date of the final judgment.

(6) A final judgment in respect of which an order under *subsection (5)* has been made shall, to the extent to which the enforcement of that judgment is authorised by the enforcement order, be of the same force and effect as if the judgment were a judgment of the High Court.

(7) In an application under this section to enforce a final judgment the High Court may, at any stage of the proceedings, make such order as it considers just and equitable having regard to the circumstances and Article 10 of the Convention.

Recognition and enforcement of judgment of court or tribunal of Member State of European Communities.

11.— The Council Regulation and the European Communities (Civil and Commercial Judgments) Regulations 2002 (S.I. No. 52 of 2002) apply in respect of a judgment of a court or tribunal of a Member State other than a court or tribunal of a territory of a Member State to which the Council Regulation does not apply.

Payment of interest on judgment and payment of costs.

12.— (1) An enforcement order under *section 10* may, at the discretion of the court, provide for the payment to the applicant concerned by the judgment debtor of the reasonable costs of or incidental to the application for the order.

(2) (*a*) Where, on an application for an order under *section 10* , it is shown that, in accordance with the law of the State Party in which the judgment was given, interest on a sum, the payment of which is provided for in the judgment, is recoverable under the judgment at a particular rate or rates and from a particular date or time, then the order, if made, shall provide that—

(i) the person by whom that sum is payable shall also be liable to pay the interest on it apart from any interest on costs recoverable by virtue of *subsection (1)* , in accordance with the particulars noted in the order, and

(ii) the amount of the interest shall be recoverable by the applicant concerned as if it were part of that sum.

(*b*) Where the judgment debtor has limited his or her liability in accordance with the applicable limitation regime in force pursuant to Article 6 of the Convention the aggregate of the interest payable by virtue of this subsection and the amount of compensation payable by the judgment debtor in respect of the incident concerned shall not exceed the maximum amount of compensation payable under that Article in respect of any one incident caused by bunker oil carried on board the ship concerned.

(3) Interest shall be payable on a sum referred to in *subsection (2)* only as provided for by this section.

Documents required to accompany application for enforcement order under *section 10*.

13.— (1) The following documents shall be attached to an application for an order under *section 10* :

(*a*) a duly certified copy of the judgment to which the application relates;

(*b*) in the case of a judgment that was given in default of appearance or defence, a duly certified copy of the document that establishes that the party in default was duly served with the document instituting the proceedings to which the judgment relates, or had notice of the proceedings or the document; and

(*c*) if the High Court so requires, a translation of the documents specified in *paragraphs (a)* and *(b)* certified as being a correct translation thereof by a person who is competent to so certify.

(2) For the purposes of this section—

(*a*) a document purporting to be a copy of a judgment shall be deemed to be duly certified if it purports—

(i) to bear the seal of the Convention court that gave it, or

(ii) to be certified by any person in his or her capacity as a judge or officer of that court as being a true copy of the judgment,

and

(*b*) a document purporting to be a copy of a document specified in *subsection (1) (b)* shall be deemed to be duly certified if it purports to be certified by a person, who in relation to the Convention court concerned, performs functions the same as or similar to those performed in relation to a court in this State by the registrar or clerk of it, as being a true copy of such document.

Inspectors.

14.— (1) The Minister may appoint such persons or classes of persons as he or she considers appropriate to be inspectors for the purposes of this Part.

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

(3) Whenever an inspector has reasonable grounds for believing that an offence has been committed in relation to a ship under this section or *section 9* and the ship concerned is located in the State he or she may detain the ship or take it to such place in the State as he or she considers appropriate and there detain it.

(4) An inspector may, for the purposes of this Part—

(*a*) stop any ship,

(*b*) board any ship,

(*c*) inspect and examine the ship,

(*d*) inspect and take copies of, or extracts from, the ship's log (if any) and the ship's manifest (if any) and any other records or documents on board the ship relating to the ship, its owner, bareboat charterer (if any), or master,

(*e*) require the master or any member of the crew of the ship to furnish him or her with such information or documents and give such assistance as he or she may reasonably require for the purpose of carrying out functions under this Part,

(*f*) detain a ship in accordance with *section 15* .

(5) A person who—

(*a*) obstructs or interferes with an inspector in the performance of his or her functions under this Part, or

(*b*) fails or refuses to comply with a requirement of an inspector under *subsection (4)* ,

is guilty of an offence.

(6) If a ship that has been detained pursuant to this section leaves or attempts to leave the place at which it has been detained, the owner, bareboat charterer (if any) and the master of the ship concerned are each guilty of an offence.

Detention of ships.

15.— (1) Where an inspector, in exercise of the powers conferred on him or her by this Part, has detained a ship and the persons on board the ship at a port or other place in the State because of his or her suspicion that an offence under *section 9* or *14* has been committed, the inspector shall (unless proceeding under *subsection (2)*), as soon as may be, apply to a judge of the District Court for an order authorising the continued detention of the ship and those persons. The judge may grant an order authorising such detention for a period of 48 hours if he or she is satisfied that the applicant inspector has such a suspicion.

(2) Where an inspector, in exercise of the powers conferred on him or her by this Part, has detained a ship and the persons on board the ship at a port or other place in the State, the inspector shall, as soon as may be, bring the master of the ship and any other persons on board the ship, against whom proceedings for an offence under *section 9* or *14 (6)* have been or are about to be instituted, before a judge of the District Court. The judge shall, if he or she is satisfied that such proceedings have been or are about to be instituted against the master and those other persons or any one or more of them, by order directed to an inspector, require such inspector to detain at a specified place in the State the ship and each person (including the master) in respect of whom he or she is so satisfied, until such proceedings have been adjudicated upon by a court in exercise of its criminal jurisdiction. When such proceedings are so adjudicated upon, the judge of the court concerned may, by order, direct an inspector to further detain the ship at a specified place in the State pending the determination of any appeal from the adjudication concerned or the determination of any other proceedings connected with such adjudication or appeal.

(3) Where an inspector, pursuant to an order under *subsection (1)* , continues to detain a ship and the persons on board the ship at a port or other place in the State, an inspector may bring the master and any other persons on board the ship, against whom proceedings for an offence under *section 9* or *14 (6)* have been or are about to be instituted, before a judge of the District Court and such judge shall—

(*a*) before the expiration of the period of 48 hours to which the said order applies, and

(*b*) if he or she is satisfied that such proceedings have been or are about to be instituted against the master and those other persons or any one or more of them,

by order directed to an inspector, require such inspector to detain at a specified place in the State the ship and each person (including the master) aforesaid in respect of whom he is so satisfied until such proceedings have been adjudicated upon by a court in exercise of its criminal jurisdiction, and when such proceedings are so adjudicated upon the judge of the court concerned may, by order, direct an inspector to further detain the ship at a specified place in the State pending the determination of any appeal from the adjudication concerned or the determination of any other proceedings connected with such adjudication or appeal.

(4) Where an order is made under *subsection (2)* or *(3)* , a judge of the District Court or, as may be appropriate, the judge of the court adjudicating upon proceedings

referred to in those subsections or that has adjudicated upon such proceedings, may by order direct an inspector to release the ship to which the order applies, subject to the giving of security, by or on behalf of the defendant, that in the opinion of the judge concerned would be adequate to provide for the payment of—

(*a*) in circumstances where—

(i) a court has not yet adjudicated upon such proceedings, the maximum fine for which the defendant would be liable if guilty of the offence to which the proceedings relate, or

(ii) the defendant has been convicted in such proceedings, any fine imposed by the court concerned,

and

(*b*) the estimated amount of the costs (if any) of any trials, appeals or other proceedings in relation to such an offence for which the defendant would be liable if convicted thereof or would be liable, if on appeal from a conviction for such offence or on the conclusion of any other proceedings connected with such conviction, the conviction were affirmed.

(5) *Subsection (3)* is in addition to and not in substitution for any other power of a court to require the entering into of a bond or recognisance by the defendant in respect of any trials, appeals or other proceedings to which the offence concerned relates.

(6) Where an order is made under this section for the detention or release of a ship, the ship shall be detained or released, as the case may be, in accordance with the terms of the order.

Recovery of fines etc., for certain offences.

16.— (1) The following provisions shall have effect in relation to the recovery of a fine for an offence under this Part committed by the owner or master of the ship concerned and the costs (if any) ordered to be paid in respect of proceedings for such offence:

(*a*) the court concerned shall fix a time within which such fine and costs (if any) are to be paid;

(*b*) where the ship concerned is detained under *section 15 (2)* or *15 (3)* the court shall by order direct an inspector to further detain the ship at a specified place in the State until such fine and costs (if any) are paid, and the inspector shall comply with such order;

(*c*) where such fine and costs (if any) are not paid within the said time, such fine and costs may be recovered by the distress and sale of such ship, her equipment, furniture and apparel;

(*d*) the court shall order—

(i) the payment in whole or in part of any moneys given as security in accordance with *section 15 (4)* , or

(ii) the sale of any property real or personal given as security in accordance with the said *section 15 (4)* and the payment in whole or in part of the proceeds of any such sale,

in satisfaction in whole or in part of such fine and costs (if any).

(2) Nothing in *subsection (1)* shall be construed as preventing a fine or costs to which that subsection applies being recovered from the defendant concerned by ordinary process of law.

Penalties and offences.

17.— (1) (*a*) A person guilty of an offence under *section 9* is liable—

(i) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding €1,500,000, or to imprisonment for a term not exceeding 5 years, or to both.

(*b*) A person guilty of an offence under this Part (other than *section 9*) is liable—

(i) on summary conviction to a fine not exceeding €3,000, or to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding €15,000, or to imprisonment for a term not exceeding 2 years, or to both.

(2) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this Part as if, in lieu of the penalties specified in subsection (3)(*a*) of that section, there were specified therein the penalties provided for in *subsection (1) (a) (i)* . The reference in section 13(2)(*a*) of the Criminal Procedure Act 1967 to the penalties provided for by subsection 3 of that section shall be construed and have effect accordingly.

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

Proceedings.

18.— (1) Summary proceedings for an offence under this Part may be brought and prosecuted by the Minister.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Part may be instituted—

(*a*) within 2 years from the date on which the offence was committed, and

(*b*) if at the end of that period, the person to be charged is outside the State, within 2 months of the date on which he or she next enters the State.

(3) References in section 382 of the Companies Act 1963 to a company shall, for the purposes of this Part, be construed as including references to a body corporate (whether or not a company within the meaning of that section) charged on indictment with an offence under this Part.

PART 3

Sea Pollution

Definitions.

19.— In this Part—

"Act of 1991" means the Sea Pollution Act 1991;

"Act of 1999" means the Sea Pollution (Amendment) Act 1999.

Amendment of section 2 (preparation and submission of plans to Minister) of Act of 1999.

20.— Section 2 of the Act of 1999 is amended—

(*a*) in subsections (1) and (2) by substituting "as soon as possible" for "as soon as may be",

(*b*) by inserting the following after subsection (1):

"(1A) A harbour authority shall, as soon as possible after the commencement of this subsection, prepare and submit to the Minister a plan for the prevention and minimisation of damage arising out of a pollution incident by hazardous and noxious substances occurring in a harbour under its control.",

(*c*) by inserting the following after subsection (2):

"(2A) The operator of a hazardous and noxious substances handling facility shall, as soon as possible after the commencement of this subsection, prepare and submit to the Minister a plan for the prevention and minimisation of damage arising out of a pollution incident by hazardous and noxious substances occurring on the handling facility concerned.",

(*d*) by inserting the following after subsection (3):

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

(3B) The owner or master of a relevant Irish ship shall, as soon as possible after the commencement of this subsection, prepare and submit to the Minister a plan for the prevention and minimisation of damage arising out of an oil pollution incident and a plan for the prevention and minimisation of damage arising out of a pollution incident by hazardous and noxious substances occurring on such ship.",

and

(*e*) in subsection (5) by substituting "operator, local authority or Irish ship concerned" for "operator or local authority concerned".

Pollution emergency plans.

21.— The Act of 1999 is amended by substituting the following for section 3:

"3.— (1) A harbour authority shall, in relation to a harbour under its control, have in place—

(*a*) an oil pollution emergency plan, and

(*b*) a hazardous and noxious substances pollution emergency plan.

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

(*b*) The operator of a hazardous and noxious substances handling facility shall, in relation to the handling facility concerned, have in place a hazardous and noxious substances pollution emergency plan.

(*c*) The master, or such other person as may have charge, of a relevant Irish ship shall ensure that there is on board the ship an oil pollution emergency plan and a hazardous and noxious substances pollution emergency plan in relation to the ship. Each such plan shall be in the English language.

(*d*) The master, or such other person as may have charge, of a ship registered in a country, other than the State, which is a party to the Convention shall ensure that there is on board the ship—

(i) an emergency plan for the prevention and minimisation of damage arising from an oil pollution incident,

(ii) an emergency plan for the prevention and minimisation of damage arising from a pollution incident by hazardous and noxious substances, and

(iii) where any such plan is not in the English language, a duly certified copy of the plan in the English language,

and each such plan shall comply with the legal requirements of the country in which the ship is registered.

(*e*) Where the Minister has made regulations under paragraph (*f*), the master, or such other person as may have charge, of a ship to which such regulations apply shall ensure that there is on board the ship—

(i) an emergency plan for the prevention and minimisation of damage arising from an oil pollution incident,

(ii) an emergency plan for the prevention and minimisation of damage arising from a pollution incident by hazardous and noxious substances, and

(iii) where any such plan is not in the English language, a duly certified copy of the plan in the English language,

and each such plan shall comply with those regulations.

(*f*) (i) In respect of a ship registered in a country which is not a party to the Convention, the Minister may by regulations require the master, or such other person as may have charge, of the ship, while that ship is in the State to have on board the ship—

(I) an emergency plan for the prevention and minimisation of damage arising from an oil pollution incident,

(II) an emergency plan for the prevention and minimisation of damage arising from a pollution incident by hazardous and noxious substances, and

(III) where any such plan is not in the English language, a duly certified copy of each such plan in the English language.

(ii) Regulations under this paragraph may provide for all or any of the following matters in relation to each such plan:

(I) the matters to be covered by such plan;

(II) such other and incidental matters as appear to the Minister to be necessary.

(*g*) Paragraphs (*d*), (*e*) and (*f*) apply only to a ship which is—

(i) an oil tanker of not less than 150 tons gross tonnage, or

(ii) a ship other than an oil tanker of not less than 400 tons gross tonnage.

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

(*b*) Each local authority of which a requirement is made under section 2(3A) shall, in relation to the area of seashore to which the requirement relates, have in place a hazardous and noxious substances pollution emergency plan.

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

Amendment of section 4 (authorised officers) of Act of 1999.

22.— Section 4 of the Act of 1999 is amended by substituting the following for subsection (3):

"(3) For the purposes of the *Sea Pollution Acts 1991 to 2006*, an authorised officer may—

(*a*) enter at any time a relevant facility or ship, or any part thereof, for the purpose of exercising any powers conferred on him or her by this section,

(*b*) make inspections and carry out such tests as he or she thinks fit in relation to the carrying on of any activities in a relevant facility or ship, including the monitoring and assessment of the effects on the marine environment of such activities,

(*c*) make such inspections and carry out such tests in a relevant facility or ship as he or she thinks fit for the purposes of monitoring and assessing the effects on the marine environment of any oil pollution incident or a pollution incident by hazardous and noxious substances,

(*d*) require any person in a relevant facility or ship to produce to him or her such documents, records or materials as are in that person's possession or control relating to any plan which is required to be kept on board the relevant facility or ship and to give to him or her such information as he or she may reasonably require in respect of such documents, records or materials, or

(*e*) require any person holding any position of authority or responsibility in relation to the implementation of any plan referred to in paragraph (*d*) to give to him or her such information as he or she may reasonably require in relation to the procedures employed or steps taken to ensure the carrying out of and compliance with such plan.

(3A) In this section 'relevant facility or ship' means one or more of the following:

(*a*) a harbour;

(*b*) an offshore unit;

(*c*) an oil handling facility;

(*d*) a hazardous and noxious substances handling facility;

(*e*) a relevant Irish ship;

(*f*) a ship to which one or more of paragraphs (*d*), (*e*) and (*f*) of section 3(2) applies.".

Amendment of section 25 (powers of harbour-masters) of Act of 1991.

23.— Section 25 of the Act of 1991 is amended in subsection (1A) (inserted by section 5(*b*) of the Act of 1999)—

(*a*) by inserting "or hazardous and noxious substances handling facility" after "oil handling facility", and

(*b*) in paragraph (*b*) by inserting "or pollution incident by hazardous and noxious substances" after "oil pollution incident".

Amendment of section 6 (giving of directions by Minister) of Act of 1999.

24.— Section 6 of the Act of 1999 is amended—

(*a*) in both subsections (1)(*a*) and (3)(*a*) by inserting "or a hazardous and noxious substances pollution emergency plan" after "oil pollution emergency plan",

(*b*) in both subsections (1)(*b*) and (3)(*b*) by inserting "or a pollution incident by hazardous and noxious substances" after "oil pollution incident", and

(*c*) by substituting the following for subsection (2):

"(2) The Minister may—

(*a*) give a direction in writing to the operator of an offshore unit, oil handling facility or hazardous and noxious substances handling facility or to the master, or such other person as may have charge, of a relevant Irish ship requiring the operator, master or other person concerned to make such modifications or alterations to either or both an oil pollution emergency plan and a hazardous and noxious substances pollution emergency plan in respect of the offshore unit, handling facility or relevant Irish ship, as the case may be, under the control of the operator, or the master or such other person, as the Minister deems appropriate, or

(*b*) in relation to an offshore unit, oil handling facility, hazardous and noxious substances handling facility or relevant Irish ship, give a direction (in writing or otherwise) to the operator of such offshore unit or handling facility or to the master, or such other person as may have charge, of a relevant Irish ship, as the case may be, to do or refrain from doing anything, the doing or refraining from doing of which is, in the opinion of the Minister, necessary or expedient for the purposes of responding to an oil pollution incident or a pollution incident by hazardous and noxious substances in or on the offshore unit, handling facility or relevant Irish ship concerned.".

Report of discharge in State or into harbour or prescribed area.

25.— The Act of 1991 is amended by substituting the following for section 13 (inserted by section 7(*a*) of the Act of 1999):

"13.— (1) Whenever there is an incident, whether on board or outside a ship—

(*a*) resulting in a discharge, in the State or a prescribed area, of hazardous and noxious substances or a pollutant or, in the event that a regulation has been made under section 10, a quantity of a pollutant in excess of that permitted under such a regulation, from a ship, or

(*b*) giving rise to circumstances from which it is reasonable to infer that there is likely to be such a discharge, in the State or a prescribed area, from a ship,

the master of the ship concerned or of any other ship involved in such incident or from which such incident is observed shall forthwith report the matter to the

Minister or, where the incident or discharge occurs in or is observed from a harbour, to the harbour-master, or person for the time being performing the functions of harbour-master, in relation to such harbour.

(2) Where the presence of oil or hazardous and noxious substances in the sea is observed from a ship in the State or a prescribed area the master of such ship shall forthwith report the matter to the Minister, or where such presence is observed from a ship in a harbour, to the harbour-master or person for the time being performing the functions of harbour-master in relation to such harbour.

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

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

(*b*) on being informed of an incident resulting in a discharge, in the harbour concerned, of hazardous and noxious substances or a pollutant or, in the event that a regulation has been made under section 10, a quantity of a pollutant in excess of that permitted under such a regulation, or the existence of circumstances from which it is reasonable to infer that there is likely to be a discharge of hazardous and noxious substances or a pollutant or quantity of a pollutant in excess of that permitted under section 10 in the harbour, or

(*c*) on observing an incident referred to in paragraph (*b*), or hazardous and noxious substances or a pollutant or, in the event that a regulation has been made under section 10, a quantity of a pollutant in excess of that permitted under such a regulation in the sea, within the harbour,

report the matter to the Minister.

(4) A report under this section shall be made forthwith, using the quickest means of communication available, and shall comply with such requirements (if any) as the Minister may prescribe.

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

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

Duty on Irish ships to report pollution incident.

26.— The Act of 1991 is amended by substituting the following for section 13A (inserted by section 7(*b*) of the Act of 1999):

"13A.— (1) Whenever there is an incident, whether on board or outside an Irish ship—

(*a*) resulting in a discharge, outside the State or a prescribed area, of oil or hazardous and noxious substances from a ship, or

(*b*) giving rise to circumstances from which it is reasonable to infer that there is likely to be such a discharge, outside the State or a prescribed area, from a ship,

the master of any Irish ship involved in such incident or of any Irish ship from which such incident was observed, shall forthwith report the matter to the maritime administration, in the state closest to the place where the incident occurred, or to the person performing, in relation to the port closest to that place, functions the same as or similar to the functions performed by a harbour-master in relation to a harbour in the State, as may be appropriate.

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

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

Duty on offshore units and handling facilities to report pollution incidents.

27.— The Act of 1991 is amended by substituting the following for section 13B (inserted by section 7(*b*) of the Act of 1999):

"13B.— (1) Whenever an incident occurs on an offshore unit, oil handling facility or hazardous and noxious substances handling facility—

(*a*) resulting in a discharge of oil or hazardous and noxious substances in the State or a designated area, or

(*b*) giving rise to circumstances from which it is reasonable to infer that there is likely to be such a discharge in the State or a designated area,

the person for the time being in charge of the offshore unit or handling facility concerned shall forthwith report the matter to the Minister or, in the case of a handling facility in a harbour, to the harbour-master, or person performing, for the time being, the functions of harbour-master in relation to that harbour.

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

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

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

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

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

Amendment of section 8 (Minister to prepare plan for preventing and minimising oil pollution damage) of Act of 1999.

28.— The Act of 1999 is amended by substituting the following for section 8:

"8.— (1) The Minister shall prepare a plan (in this section referred to as 'the plan') specifying the measures to be taken to prevent and minimise damage in the State resulting from discharges (in this section referred to as 'discharges') of oil or hazardous and noxious substances from ships, offshore units, oil handling facilities and hazardous and noxious substances handling facilities (either or both of which handling facilities are, in this section, referred to as 'handling facilities').

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

(*a*) the placing, at such places in the State as may be specified therein, of such equipment and materials to be used in connection with the removal, degrading or disposal of discharges into the sea or onto land as may be specified in the plan,

(*b*) the training of such persons or classes of persons as may be specified in the plan in the use of equipment and materials to which paragraph (*a*) applies, and generally in the carrying out of operations to prevent and minimise damage in the State resulting from discharges from ships, offshore units or handling facilities,

(*c*) the conducting of exercises by such persons or classes of persons and at such intervals as are specified in the plan to ensure the greater effectiveness of measures taken to prevent or minimise damage in the State resulting from discharges from ships, offshore units or handling facilities,

(*d*) the maintenance and improvement of co-operation and communication between persons required to comply with such provisions of the plan as are specified in a direction of the Minister under subsection (3), and

(*e*) the co-ordination of the activities of persons to whom paragraph (*d*) applies, when carrying out operations to prevent and minimise damage in the State resulting from discharges from ships, offshore units or handling facilities.

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

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

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

Amendment of section 9 (acquisition of equipment and materials by Minister) of Act of 1999.

29.— The Act of 1999 is amended by substituting the following for section 9:

"9.— The Minister may, alone or jointly with a foreign maritime administration, arrange for the provision, on such terms as he or she considers appropriate, whether by purchasing, leasing, hiring or otherwise, of such equipment and materials as he or she considers necessary or expedient for the carrying out of operations for the prevention or minimising of damage in the State resulting from discharges of oil or hazardous and noxious substances from ships, offshore units, oil handling facilities or hazardous and noxious substances handling facilities, or for the training of persons in the carrying out of such operations, or for the purposes of operations undertaken in relation to vessels in distress in accordance with section 7 of the Merchant Shipping (Salvage and Wreck) Act 1993 or in relation to salvage operations as defined in section 12 of that Act.".

Amendment of section 10 (provision of assistance by foreign maritime administration) of Act of 1999.

30.— Section 10 of the Act of 1999 is amended—

(*a*) by inserting "or hazardous and noxious substances" after "discharge of oil", and

(*b*) by substituting ", oil handling facility or hazardous and noxious substances handling facility," for "or oil handling facility,".

Amendment of section 11 (provision of assistance by Minister outside State) of Act of 1999.

31.— Section 11 of the Act of 1999 is amended in subsection (1)—

(*a*) by inserting "or hazardous and noxious substances" after "discharge of oil", and

(*b*) by substituting ", oil handling facility or hazardous and noxious substances handling facility," for "or oil handling facility,".

Amendment of section 12 (ships anchored outside harbour) of Act of 1999.

32.— Section 12 of the Act of 1999 is amended in both subsections (2) and (3) by substituting "cargo, oil or hazardous and noxious substances" for "cargo or oil".

Amendment of section 26 (powers of Minister to prevent, mitigate or eliminate pollution) of Act of 1991.

33.— Section 26 of the Act of 1991 is amended—

(*a*) in subsection (4) by substituting "ship;" for "ship." in paragraph (*h*) and by inserting the following after paragraph (*h*):

"(*i*) the establishment and maintenance of a temporary exclusion zone around a maritime casualty or an offshore unit, oil handling facility or hazardous and noxious substances handling facility.",

and

(*b*) in subsection (10), in the definition of "substance other than oil", by inserting ", and includes hazardous and noxious substances" after "legitimate uses of the sea".

Amendment of section 3 (interpretation) of Act of 1991.

34.— Section 3 of the Act of 1991 is amended in subsection (1)—

(*a*) by inserting, before the definition of "discharge", the following definitions:

" 'AFS Convention' means the International Convention on the Control of Harmful Anti-fouling Systems done at London on 5 October 2001;

'anti-fouling system' means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms;

'ballast water' means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship;

'ballast water management' means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of harmful aquatic organisms and pathogens within ballast water and sediments;

'BWM Convention' means the International Convention for the Control and Management of Ships'Ballast Water and Sediments 2004 done at London on 13 February 2004;",

(*b*) in the definition of "discharge" by substituting "sewage, garbage, substances subject to control by Annex VI to the MARPOL Convention, anti-fouling systems or ships' ballast water and sediments" for "sewage or garbage",

(*c*) by inserting, after the definition of "discharge", the following definitions:

" 'harmful aquatic organisms and pathogens' means aquatic organisms or pathogens which, if introduced into the sea, including estuaries, or into fresh water courses, may create hazards to the environment, human health, property

or resources, impair biological diversity or interfere with other legitimate uses of such areas;

'hazardous and noxious substances' means any substance other than oil which, if introduced into the marine environment, is likely to create a hazard to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea;

'hazardous and noxious substances handling facility' means a facility where hazardous and noxious substances are loaded into or unloaded from ships;

'hazardous and noxious substances pollution emergency plan' in relation to a harbour, offshore unit, oil handling facility, hazardous and noxious substances handling facility, Irish ship or an area of seashore in whole or in part within the functional area, or contiguous to the functional area, of a local authority, means a plan for the prevention and minimisation of damage arising out of a pollution incident by hazardous and noxious substances approved by the Minister under section 2 of the Sea Pollution (Amendment) Act 1999;",

and

(*d*) by inserting, after the definition of "related interests", the following definition:

"'sediments' means matter settled out of ballast water within a ship;".

Amendment of section 1 (interpretation) of Act of 1999.

35.— Section 1 of the Act of 1999 is amended in subsection (1)—

(*a*) by substituting the following for the definition of "the Convention":

" 'Convention' means the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, done at London on 30 November 1990 together with the Protocol done at London on 15 March 2000;",

(*b*) by inserting the following after the definition of "harbour authority":

" 'hazardous and noxious substances' means any substance other than oil which, if introduced into the marine environment, is likely to create a hazard to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea;

'hazardous and noxious substances handling facility' means a facility where hazardous and noxious substances are loaded into or unloaded from ships;

'hazardous and noxious substances pollution emergency plan' in relation to a harbour, offshore unit, oil handling facility, hazardous and noxious substances handling facility, Irish ship or an area of seashore in whole or in part within the functional area, or contiguous to the functional area, of a local authority, means a plan for the prevention and minimisation of damage arising out of a pollution incident by hazardous and noxious substances approved by the Minister under section 2 of this Act;",

(*c*) in the definition of "oil pollution emergency plan" by inserting ", relevant Irish ship" after "oil handling facility",

(*d*) by inserting the following after the definition of "oil pollution incident":

" 'pollution incident by hazardous and noxious substances' means any occurrence or series of occurrences having the same origin, including fire or explosion, which results or may result in a discharge, release or emission of hazardous and noxious substances and which poses or may pose a threat to the marine environment in the State, or to the coastline or related interests of one or more states, and which requires emergency action or immediate response;",

and

(*e*) by inserting the following after the definition of "the Principal Act":

" 'Protocol' means the Protocol specified in the definition of 'Convention';

'relevant Irish ship' means an Irish ship which is—

(*a*) an oil tanker of not less than 150 tons gross tonnage, or

(*b*) a ship other than an oil tanker of not less than 400 tons gross tonnage;".

Acts of European Communities.

36.— The Act of 1991 is amended by inserting the following new Part after Part III:

"PART IIIA

ACTS OF EUROPEAN COMMUNITIES

Power of Minister to make regulations to give effect to acts of European Communities.

28A.— (1) The Minister may make regulations to give effect to any act adopted by an institution of the European Communities in respect of any matter referred to in Part II or III.

(2) A person who contravenes a regulation under this section shall be guilty of an offence.".

Miscellaneous amendment of Act of 1991.

37.— The Act of 1991 is amended—

(*a*) in subsections (1) and (4) of section 10, paragraphs (*a*) and (*b*) of section 11, subsections (1)(*a*) and (3) of section 12 and sections 13(6), 14(1) and 19(*b*), by substituting "sewage, garbage, substances subject to control by Annex VI to the MARPOL Convention, anti-fouling systems or ships' ballast water and sediments" for "sewage or garbage",

(*b*) in section 12(2)(*a),* by substituting "sewage, garbage, substances subject to control by Annex VI to the MARPOL Convention, anti-fouling systems and ships' ballast water and sediments" for "sewage and garbage",

(*c*) in paragraphs (*d*) and (*g*) of subsection (2) of section 21 and section 25(1)(*a*) by substituting "sewage, garbage, substances subject to control by Annex VI to the MARPOL Convention or anti-fouling systems" for "sewage or garbage", and

(*d*) in section 28(*a*) by inserting ", the AFS Convention, the BWM Convention" after "MARPOL Convention".

PART 4

Amendment of Harbours Act 1996

Amendment of Harbours Act 1996.

38.— The Harbours Act 1996 is amended by inserting the following after section 95:

"Immunity of certain persons.

95A.— No action or other proceedings shall lie or be maintainable against—

(*a*) a harbour authority within the meaning of section 2 of the Harbours Act 1946,

(*b*) a company within the meaning of section 2, or

(*c*) the servants or agents of an authority or company to which paragraph (*a*) or (*b*) relates,

for the recovery of damages in respect of any injury to persons, damage to property or other loss alleged to have been caused or contributed to by a failure to perform or to comply with any of the functions conferred on them under the Dangerous Substances Act 1972.".

Section 7 (2).

SCHEDULE

International Convention on Civil Liability for Bunker Oil Pollution Damage 2001

The States Parties to this Convention,

RECALLING article 194 of the United Nations Convention on the Law of the Sea, 1982, which provides that States shall take all measures necessary to prevent, reduce and control pollution of the marine environment,

RECALLING ALSO article 235 of that Convention, which provides that, with the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the further development of relevant rules of international law,

NOTING the success of the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 in ensuring that compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil carried in bulk at sea by ships,

NOTING ALSO the adoption of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 in order to provide adequate, prompt and effective compensation for damage caused by incidents in connection with the carriage by sea of hazardous and noxious substances,

RECOGNIZING the importance of establishing strict liability for all forms of oil pollution which is linked to an appropriate limitation of the level of that liability,

CONSIDERING that complementary measures are necessary to ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of bunker oil from ships,

DESIRING to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

HAVE AGREED as follows:

Article 1

Definitions

For the purposes of this Convention:

1. "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.

2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

3. "Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.

4. "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "registered owner" shall mean such company.

5. "Bunker oil" means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.

6. "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended.

7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

8. "Incident" means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.

9. "Pollution damage" means:

(*a*) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(*b*) the costs of preventive measures and further loss or damage caused by preventive measures.

10. "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

11. "Gross tonnage" means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

12. "Organization" means the International Maritime Organization.

13. "Secretary-General" means the Secretary-General of the Organization.

Article 2

Scope of application

This Convention shall apply exclusively:

(*a*) to pollution damage caused:

(i) in the territory, including the territorial sea, of a State Party, and

(ii) in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(*b*) to preventive measures, wherever taken, to prevent or minimize such damage.

Article 3

Liability of the shipowner

1. Except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.

2. Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several.

3. No liability for pollution damage shall attach to the shipowner if the shipowner proves that:

(*a*) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(*b*) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

(*c*) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

4. If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.

5. No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Convention.

6. Nothing in this Convention shall prejudice any right of recourse of the shipowner which exists independently of this Convention.

Article 4

Exclusions

1. This Convention shall not apply to pollution damage as defined in the Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention.

2. Except as provided in paragraph 3, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

3. A State Party may decide to apply this Convention to its warships or other ships described in paragraph 2, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

4. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 9 and shall waive all defences based on its status as a sovereign State.

Article 5

Incidents involving two or more ships

When an incident involving two or more ships occurs and pollution damage results therefrom, the shipowners of all the ships concerned, unless exonerated under article 3, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article 6

Limitation of liability

Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any

applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

Article 7

Compulsory insurance or financial security

1. The registered owner of a ship having a gross tonnage greater than 1,000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

(*a*) name of ship, distinctive number or letters and port of registry;

(*b*) name and principal place of business of the registered owner;

(*c*) IMO ship identification number;

(*d*) type and duration of security;

(*e*) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;

(*f*) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

3. (*a*) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(*b*) A State Party shall notify the Secretary-General of:

(i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;

(ii) the withdrawal of such authority; and

(iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(*c*) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not

maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language of the State may be omitted.

5. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 of this article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

7. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage. In such a case the defendant may invoke the defences (other than bankruptcy or winding up of the shipowner) which the shipowner would have been entitled to invoke, including limitation pursuant to article 6. Furthermore, even if the shipowner is not entitled to limitation of liability according to article 6, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

11. A State Party shall not permit a ship under its flag to which this article applies to operate at any time, unless a certificate has been issued under paragraphs 2 or 14.

12. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security, to the extent specified in paragraph

1, is in force in respect of any ship having a gross tonnage greater than 1,000, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

13. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving ports or arriving at or leaving from offshore facilities in its territory, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

15. A State may, at the time of ratification, acceptance, approval of, or accession to this Convention, or at any time thereafter, declare that this article does not apply to ships operating exclusively within the area of that State referred to in article 2(a)(i).

Article 8

Time limits

Rights to compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought more than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six-years' period shall run from the date of the first such occurrence.

Article 9

Jurisdiction

1. Where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in article 2(*a*)(ii) of one or more States Parties, or preventive measures have been taken to prevent or minimise pollution damage in such territory, including the territorial sea, or in such area, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the courts of any such States Parties.

2. Reasonable notice of any action taken under paragraph 1 shall be given to each defendant.

3. Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

Article 10

Recognition and enforcement

1. Any judgment given by a Court with jurisdiction in accordance with article 9 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except:

(*a*) where the judgment was obtained by fraud; or

(*b*) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

2. A judgment recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Article 11

Supersession Clause

This Convention shall supersede any Convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such Convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such Convention.

Article 12

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 2001 until 30 September 2002 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(*a*) signature without reservation as to ratification, acceptance or approval;

(*b*) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(*c*) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing State Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those State Parties shall be deemed to apply to this Convention as modified by the amendment.

Article 13

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Secretary-General and shall state expressly the territorial units to which this Convention applies.

3. In relation to a State Party which has made such a declaration:

(*a*) in the definition of "registered owner" in article 1(4), references to a State shall be construed as references to such a territorial unit;

(*b*) references to the State of a ship's registry and, in relation to a compulsory insurance certificate, to the issuing or certifying State, shall be construed as

referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;

(*c*) references in this Convention to the requirements of national law shall be construed as references to the requirements of the law of the relevant territorial unit; and

(*d*) references in articles 9 and 10 to courts, and to judgments which must be recognized in States Parties, shall be construed as references respectively to courts of, and to judgments which must be recognized in, the relevant territorial unit.

Article 14

Entry into Force

1. This Convention shall enter into force one year following the date on which eighteen States, including five States each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2. For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months after the date of deposit by such State of the appropriate instrument.

Article 15

Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention comes into force for that State.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

Article 16

Revision or amendment

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Organization shall convene a conference of the States Parties for revising or amending this Convention at the request of not less than one-third of the States Parties.

Article 17

Depositary

1. This Convention shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(*a*) inform all States which have signed or acceded to this Convention of:

(i) each new signature or deposit of instrument together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit and the date on which the denunciation takes effect; and

(iv) other declarations and notifications made under this Convention.

(*b*) transmit certified true copies of this Convention to all Signatory States and to all States which accede to this Convention.

Article 18

Transmission to United Nations

As soon as this Convention comes into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 19

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-third day of March, two thousand and one.

IN WITNESS WHEREOF the undersigned being duly authorised by their respective Governments for that purpose have signed this Convention.

Number 29 *of* 2006

SEA POLLUTION (MISCELLANEOUS PROVISIONS) ACT 2006

REVISED

Updated to 22 November 2021

About this Revised Act

This revision presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

Sea Pollution Acts 1991 to 2014: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Local Government Reform Act 2014* (1/2014), s. 1(20)). The Acts in this group are:

- *Sea Pollution Act 1991* (27/1991)
- *Energy (Miscellaneous Provisions) Act 1995* (35/1995), insofar as it amends the *Sea Pollution Act 1991* (27/1991)
- *Dumping At Sea Act 1996* (14/1996), s. 12
- *Sea Pollution (Amendment) Act 1999* (18/1999)
- *Sea Pollution (Miscellaneous Provisions) Act 2006* (29/2006), Part 3 and s. 1(3)
- *Local Government Reform Act 2014* (1/2014), s. 1(20) and the amendments to the *Sea Pollution (Amendment) Act 1999* (18/1999) and the *Sea Pollution (Miscellaneous Provisions) Act 2006* (29/2006) provided for in s. 5(8) and sch. 2 part 6.

Harbours Acts 1996 to 2015: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Harbours Act 2015* (61/2015), s. 1(2)). The Acts in this group are:

- *Harbours Act 1996* (11/1996)
- *Harbours (Amendment) Act 2000* (21/2000)
- *Maritime Safety Act 2005* (11/2005), s. 58
- *Sea Pollution (Miscellaneous Provisions) Act 2006* (29/2006), Part 4 and s. 1(4)
- *Harbours (Amendment) Act 2009* (26/2009), other than subss. 7(1) and 7(2), s. 20 and subs. 21(3)
- *Vehicle Clamping Act 2015* (13/2015), s. 36
- *Harbours Act 2015* (61/2015), other than Part 6

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.