

CHAPTER 141

THE DUMPING AT SEA ACT

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DUMPING AT SEA

(3rd December, 1975.)

29/1975.
18/1989.

1. This Act may be cited as the Dumping at Sea Act. **Short title.**
2. (1) In this Act, unless the context otherwise requires— **Interpretation.**
- "Antiguan aircraft"⁷ means an aircraft registered in Antigua and Barbuda;
- "Antiguan enforcement officer" has the meaning assigned to it by section 7;
- "Antiguan hovercraft" means a hovercraft registered in Antigua and Barbuda;
- "Antiguan marine structure" means a marine structure owned by or leased to an individual resident in or a body corporate incorporated under the law of Antigua and Barbuda;
- "Antiguan ship" means a vessel registered in Antigua and Barbuda, or a vessel exempted from such registration;
- "Antiguan waters" means any part of the sea within the seaward limits of the territorial sea of Antigua and Barbuda;
- "captain" in relation to a hovercraft, means the person who is designated by the operator to be in charge of it during any journey, or, failing such designation, the person who is for the time being lawfully in charge of it;
- "commander"⁷ in relation to an aircraft, means the member of the flight crew designated as commander of that aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

"Convention" includes an agreement or other arrangement;

"Convention State" in relation to the London Convention, the Oslo Convention or a designated Convention, means a State declared to be a party to that Convention by an order for the time being in force under subsection (2);

"designated Convention" means a Convention declared to be a designated Convention by an order for the time being in force under subsection (2);

"dumping" has the meaning assigned to it by section 3;

"foreign enforcement officer" has the meaning assigned to it by section 8(2);

"International organisations" means any organisation established in pursuance of Article XIV of the London Convention or Article 16 of the Oslo Convention and any similar organisation established in pursuance of a designated Convention;

"load" means load for dumping;

"marine structure" means a platform or other man-made structure at sea;

"master" in relation to any ship, includes the person for the time being in charge of the ship;

"sea" includes any area submerged at mean high water springs, and also includes, so far as the tide flows at mean high water springs, an estuary or an arm of the sea and the waters of any channel, creek, bay or river; and

"the London Convention" means the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft concluded at Oslo in February 1972;

"the Oslo Convention" means the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft concluded at Oslo in February 1972.

(2) The Minister may by Order declare—

(a) that any Convention relating to dumping in the sea to which the Government is a party is a designated Convention for the purposes of this Act; and

(b) that any State specified in the Order is a party to the London Convention the Oslo Convention or a designated Convention.

3. (1) Subject to the provisions of this section, no person, except in pursuance of a licence granted under section 4 and in accordance with the terms of that licence shall—

Restrictions on dumping in the sea.

(a) dump substances or articles in Antigua waters;

(b) dump substances or articles in the sea outside Antigua waters from an Antigua ship, aircraft, hovercraft or marine structure, or

(c) load substances or articles on to a ship, aircraft, hovercraft or marine structure in Antigua and Barbuda or in Antigua waters for dumping in the sea, whether in Antigua waters or not; or

(d) cause or permit substances or articles to be dumped or loaded as mentioned in paragraphs (a) to (c).

(2) Subject to subsections (3) and (5), substances and articles are dumped in the sea for the purposes of this Act if they are permanently deposited in the sea from a vehicle, ship, aircraft, hovercraft, or marine structure or from a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.

(3) A discharge incidental to or derived from the normal operation of a ship, aircraft, vehicle, hovercraft or marine structure or of its equipment does not constitute dumping for the purposes of this Act unless the ship, aircraft, vehicle, hovercraft or marine structure in question is constructed or adapted wholly or mainly for the purpose of the disposal of

waste or spoil and the discharge takes place as part of its operation for that purpose.

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(4) A deposit made by, or with the written consent of the Port Authority established under section 3 of the Port Authority Act or the Minister, for the purpose of providing moorings or securing aids to navigation, does not constitute dumping for the purposes of this Act.

(5) A deposit made in the execution of works of maintenance in a harbour does not constitute dumping for the purposes of this Act if it is made on the site of the works.

(6) Subject to subsections (7) to (9), any person who contravenes subsection (1) shall be guilty of an offence and liable—

(a) on summary conviction to a fine of six thousand dollars and to imprisonment for twelve months; or

(b) on conviction on indictment, to a fine of seventy-five thousand dollars and to imprisonment for five years.

(7) It shall be a defence for a person charged with an offence under subsection (6) to prove—

(a) that the substances or articles in question were dumped for the purpose of securing the safety of a ship, aircraft, hovercraft or marine structure or of saving life; and

(b) that he took steps within a reasonable time to inform the Minister that the dumping had taken place and of the locality and circumstances in which it took place and the nature and quantity of the substances or articles dumped,

unless the court is satisfied that the dumping was not necessary for any of the purposes mentioned above and was not a reasonable step to take in the circumstances.

(8) It shall be a defence for a person charged with an offence under subsection (6) to prove—

(a) that he acted under instructions given to him by his employer; or

(b) that he acted in reliance on information given to him by others without any reason to suppose that the information was false or misleading,

and in either case that he took all such steps as were reasonably open to him to ensure that no offence would be committed.

(9) It shall be a defence for a person charged with an offence under subsection (6) in relation to substances or articles dumped outside Antigua waters from an Antiguan ship, aircraft or hovercraft to prove that they were loaded on to it in a Convention State and that the dumping was authorized by a licence issued by the responsible authority in that State.

4. (1) The Minister is hereby empowered to grant **Licences.** licences for the purposes of this Act and in determining whether to grant a licence the Minister shall have regard to the need to protect the marine environment and the living resources which it supports from any adverse consequences of dumping the substances or articles to which the licence, if granted, will relate; and the Minister shall include such conditions in a licence as appear to the Minister to be necessary or expedient for the protection of that environment and those resources from any such consequences.

(2) The Minister may revoke a licence if it appears to him that the holder is in breach of a condition included in it.

(3) The Minister may vary or revoke a licence if it appears to him that the licence ought to be varied or revoked because of a change of circumstances relating to the marine environment or the living resources which it supports, including a change in scientific knowledge.

(4) The Minister may require an applicant for a licence to pay such fee on applying for it as may be specified by order made by the Minister and published in the *Gazette*.

(5) The Minister may require an applicant to supply such information and permit such examination and sampl-

ing of the substances or articles, and to supply such information about the method of dumping which he desires to use, as in the opinion of the Minister is necessary to enable the authority to decide whether a licence should be granted and the conditions which any licence that is granted ought to contain.

(6) The Minister may require an applicant for a licence to pay such amount, in addition to any fee under subsection (4) as he may determine, towards the expense of any tests which in his opinion are necessary to enable him to decide whether a licence should be granted and the conditions which any licence that is granted ought to contain, and, in particular, expense incurred in connection with any monitoring to determine the effect that dumping may have or has had on the marine environment and the living resources which it supports.

(7) A licence which the Minister may grant under this Act—

(a) shall specify the person to whom it is granted;

(b) shall state whether it is to remain in force until revoked or is to expire at a time specified in the licence;

(c) shall specify the quantity and description of substances or articles to which it relates; and

(d) may make different provisions as to different descriptions of substances or articles.

(8) The Minister may transfer a licence from the holder to any other person on the application of that person or of the holder, but shall have power to include additional conditions in a licence on transferring it.

(9) Any person who for the purpose of procuring the grant or transfer of a licence, or in purporting to carry out any duty imposed on him as a condition of a licence, knowingly or recklessly makes a false statement or knowingly or recklessly produces, furnishes, signs or otherwise makes use of a document containing a false statement shall be guilty of an offence and liable on summary conviction to a fine of six thousand dollars.

5. (1) Where the Minister proposes—**Right to make representations.**

- (a) to refuse a licence;
- (b) to include a condition in a licence, whether on granting or transferring it;
- (c) to require a payment under section 4 (6); or
- (d) to vary or revoke a licence,

it shall be the Minister's duty, when notifying the applicant for or holder of the licence of the proposal, also to notify him

- (i) of the reason for it; and
- (ii) of his right under this section to make written representations relating to it.

(2) A notification of a proposal to vary or revoke a licence shall also include a notice that any written representations must be received by the Minister within 28 days of the receipt of the notification.

(3) A person who receives a notification of a proposal such as is mentioned in subsection (1) above may make written representations about it to the Minister.

(4) Where written representations relating to a proposal have been made under this section, the Minister may make a final decision relating to the proposal only after receiving and considering the written representations.

(5) The Minister shall notify the person who made the representations of the decision and the reasons for it.

6. (1) The Minister shall compile and keep available for public inspection free of charge at reasonable hours the notifiable particulars of any dumping licensed by him under this Act, and shall furnish a copy of any such notifiable particulars to any person on payment of such reasonable sum as he may determine. **Publicity.**

(2) In subsection (1) above "notifiable particulars" means particulars which the Government is required to notify to the international organisations in respect of Antigua and Barbuda.

Enforcement of
Act.

7. (1) The Minister may appoint enforcement officers for the purposes of this Act.

(2) An enforcement officer appointed under subsection (1) is referred to in this Act as an "Antiguan enforcement officer".

(3) An Antiguan enforcement officer, may for the purpose of enforcing this Act, exercise, in relation to places and things liable to inspection under this Act, the powers conferred by subsections (6) and (9).

(4) Subject to subsection (6) below, the places and things liable to inspection under this Act are—

(a) land (including land submerged at mean high water springs and buildings on land), vehicles, aircraft and hovercraft in Antigua and Barbuda;

(b) ships in ports in Antigua and Barbuda; and

(c) Antiguan ships, aircraft, hovercraft and marine structures, wherever they may be,

in which an Antiguan enforcement officer has reasonable cause to believe that any substances or articles intended to be dumped in the sea are or have been present.

(5) The places liable to inspection under this Act do not include any private dwelling not used by or by permission of the occupier for the purpose of a trade or business.

(6) An Antiguan enforcement officer may at any reasonable time enter any place liable to inspection under this Act, and board any vehicle, ship, aircraft, hovercraft or marine structure which is so liable, with or without persons and equipment to assist him in his duties.

(7) An Antiguan enforcement officer—

(a) may open any container and examine and take samples of any substances or articles;

(b) may examine equipment and require any person in charge of it to do anything which appears to the officer to be necessary for facilitating examination;

(c) may require any person to produce any licences, records or other documents which relate to the dumping of substances or articles in the sea and which are in his custody or possession;

(d) may require any person on board a ship, aircraft, hovercraft or marine structure to produce any records or other documents which relate to it and which are in his custody or possession; and

(e) may take copies of any document produced under paragraph (c) or (d) above.

(8) For the purpose of boarding a vehicle, ship, aircraft, hovercraft or marine structure, an Antiguan enforcement officer may require the person in charge to do anything which will facilitate boarding, and the power conferred by this subsection includes power, in the case of a vehicle, ship or hovercraft, to require the person in charge to stop it.

(9) An Antiguan enforcement officer may require the attendance of the master of a ship, the commander of an aircraft, the captain of a hovercraft or the person in charge of a marine structure on board that ship, aircraft, hovercraft or structure, and may make any examination and inquiry which appears to him to be necessary.

(10) An Antiguan enforcement officer shall be furnished with a certificate of his appointment and on entering or boarding for the purposes of this Act any place or thing liable to inspection under this Act shall, if so requested, produce the said certificate.

8. (1) The Minister may by Order declare—

**Enforcement of
Conventions.**

(a) that any procedure which has been developed for the effective application of the London Convention, the Oslo Convention or any designated Convention and is specified in the Order is an accepted procedure as between the Government of Antigua and Barbuda and the Government of any Convention State so specified; and

(6) that the powers conferred by subsections (6) to (9) of section 7 may be exercised, for the purpose of

the enforcement of that procedure outside Antiguan waters—

- (i) in relation to an Antiguan ship, or hovercraft, by a person of any specified class appointed to enforce it by the Government of that State, and
- (ii) in relation to a ship or hovercraft of that State, by an Antiguan enforcement officer.

(2) A person belonging to a class specified in an Order under this section is referred to in this Act as a "foreign enforcement Officer", but any reference to a foreign enforcement officer in the following provisions of this Act shall be construed, in relation to any person of a class so specified, as applying to him only for the purposes of the procedure specified in the order as the procedure for whose enforcement his Government appointed him.

9. (1) An Antiguan or foreign enforcement officer shall not be liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on him by 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—

(a) without reasonable excuse fails to comply with any requirement imposed or to answer any question asked, by an Antiguan or foreign enforcement officer under this Act;

(b) without reasonable excuse 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 this Act or obstructs any such officer in the exercise of any of those powers,

shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable on summary conviction, in the case of a first offence

thereunder, to a fine of three thousand dollars, and in the case of a second or subsequent offence thereunder to a fine of six thousand dollars.

10. (1) In any civil or criminal proceedings a written statement purporting to be a report made by an Antiguan or foreign enforcement officer on matters ascertained in the course of exercising his powers under this Act shall be admissible as evidence to the like extent as oral evidence to the like effect by that officer. **Evidence.**

(2) Subsection (1) 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.

11. (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 be liable to be proceeded against and punished accordingly. **Offences—general provisions.**

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) 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 Antigua and Barbuda.

12. (1) There shall be paid out of the Consolidated Fund all sums required for the purpose of making payments on behalf of the Government to the international organisations. **Financial provisions.**

(2) There shall also be paid out of the Consolidated Fund such salaries or other remuneration for Antiguan enforcement officers as the Minister may, by Order, determine.

(3) Any monies received under this Act shall be paid into the Consolidated Fund.

Savings.

13. (1) The restrictions imposed by this Act are in addition to any restriction imposed by or under any other enactment, and neither affect nor are affected by any such restriction.

(2) Nothing in this Act—

(a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Act; or

(b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Act.
