

LAWS OF SEYCHELLES

CHAPTER 67

DUMPING AT SEA ACT 1974 (OVERSEAS TERRITORIES) ORDER 1975

S.I. 36 of 1976.

1975 No. 1831

[10th December, 1975]

1. This Order may be cited as the Dumping at Sea Act 1974 (Overseas Territories) Order 1975.

2. The Interpretation Act 1889(c) of the United Kingdom shall apply for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

3. (1) The provisions of the Dumping at Sea Act 1974 of the United Kingdom, modified and adapted as in the Schedule hereto, shall extend to Seychelles.

(2) For the purpose of construing the said Act as so extended as part of the law of Seychelles "the Territory" means Seychelles.

(3) The references in the Schedule hereto to £200 and £400 shall be construed by substituting for such amounts R2500 and R5000 respectively.

SCHEDULE

Article 3

**PROVISIONS OF THE DUMPING AT SEA ACT 1974 AS EXTENDED TO
SEYCHELLES**

1. (1) Subject to the provisions of this section, no person, except in pursuance of a licence granted under section 2 below and in accordance with the terms of that licence -

- (a) shall dump substances or articles in the territorial waters of Seychelles; or
- (b) shall dump substances or articles in the sea outside the territorial waters of Seychelles from a ship, aircraft, hovercraft registered in Seychelles or a marine structure owned by or leased to a citizen of Seychelles or a body corporate incorporated under the laws of Seychelles; or

- (c) shall load substances or articles on to a ship, aircraft, hovercraft or marine structure in Seychelles or its territorial waters for dumping in the sea, whether in such waters or not; or
- (d) shall cause or permit substances or articles to be dumped or loaded as mentioned in paragraphs (a) to (c) above.

(2) Subject to subsections (3) to (5) below, 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, 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.

(4) A deposit made by, or with the written consent of, a harbour authority or lighthouse authority, 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 by or on behalf of a harbour authority in the execution of works of maintenance in their 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) below, any person who contravenes subsection (1) above shall be guilty of an offence and liable -

- (a) on summary conviction to a fine of not more than £400 or to imprisonment for a term of not more than six months or to both; or
- (b) on conviction by the Supreme Court to imprisonment for not more than five years, or a fine, or to both.

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

2. (1) 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 in a licence such conditions as appear to him 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 he may determine.

(5) The Minister may require an applicant to supply such information and permit such examination and sampling of the substances or articles which he desires to dump, or of similar 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 him 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) above, as he may determine, towards the expense of any tests which in the opinion of the Minister 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 -

- (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 provision 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 not exceeding £400.

(10) A person who on the coming into force of this Act in Seychelles is authorised in writing by the Minister to dump substances or articles in the sea may continue to do so, so long as he complies with any conditions subject to which the authorisation is given until the authorisation expires or is revoked, as if the authorisation were a licence under this Act.

3. (1) Where the Minister proposes -

- (a) to refuse a licence; or
- (b) to include a condition in a licence, whether on granting or transferring it; or

(c) to require a payment under section 2(6) above; or

(d) to vary or revoke a licence,

it shall be his 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) If the Minister receives such representations, and in the case of a proposal to vary or revoke a licence receives them within 28 days of the receipt of the notification of the proposal, he shall constitute a committee to consider the representations and shall appoint one of the members of the committee to be its chairman.

(5) The Minister shall draw up and from time to time revise a panel of persons who are specially qualified in his opinion to be members of such committees, and any such committee constituted by him shall be drawn from members of such panel.

(6) It shall be the duty of the chairman of a committee -

(a) to serve upon the person who made the representations under subsection (3) above a notice in writing requiring him to state within 14 days of the receipt of the notice whether he wishes to make oral representations to the committee; and

(b) to give him, not earlier than the date of the notice under paragraph (a) above, notice in writing of the place, date and time of the meeting of the committee.

(7) A notice under subsection (6)(b) above shall not specify a date for the meeting of the committee earlier than 21 days from the date of the notice, unless the person who made the representations has agreed to an earlier meeting.

(8) If the person who made the representations expresses a wish to make oral representations to the committee, they shall afford him an opportunity of so doing, either in person or by any person authorised by him in that behalf.

(9) The committee shall consider any representations made under subsection (3) or (8) above and shall make a report to the Minister after the close of their consideration, giving their findings of fact and their recommendations.

(10) Where 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 committee's report on it.

(11) The Minister shall notify the person who made the representations of his decision and the reasons for it and shall send him a copy of the committee's report.

(12) Subject to subsection (13) below, the Minister may pay to a person who makes representations under this section such sum as the Minister considers appropriate in respect of costs or expenses incurred by him in connection with the making of the representations and their consideration under this section.

(13) No payment shall be made under subsection (12) above where the final decision confirms the Minister's original proposal without modifications.

4. (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.

(2) In subsection (1) above "notifiable particulars" means such particulars as the Minister shall direct being particulars which the Government of Seychelles are required to notify to the international organisations.

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

(2) An enforcement officer appointed under subsection (1) above is referred to in this Act as a "local enforcement officer".

(3) A local enforcement officer may be either an inspector appointed for the purposes of this Act or an officer in the public service of Seychelles appointed to exercise and perform the powers and duties of such an inspector subject to such limitations as may be specified in the instrument appointing him; and the following provisions of this Act shall be construed, in reference to such an officer, as subject to any such limitations.

(4) A local 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 (7) to (10) below.

(5) 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 Seychelles;
- (b) ships in ports in Seychelles; and
- (c) ships, aircraft, hovercraft and marine structures, registered in or belonging to Seychelles or its citizens or bodies corporate incorporated under the laws of Seychelles, wherever they may be,

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

(6) 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.

(7) A local 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.

(8) A local 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.

(9) For the purpose of boarding a vehicle, ship, aircraft, hovercraft or marine structure, a local 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.

(10) A local 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.

(11) A local 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.

6. (1) If an order is in force in the United Kingdom made under section 6(1) of this Act as in force there (in this section referred to as "the original Act") declaring -

- (a) that any procedure (which has been developed for the effective application of the London Convention, the Oslo Convention or any designated Convention) specified in the order is an accepted procedure as between Her Majesty's Government in the United Kingdom and the Government of any Convention State so specified, and
- (b) that the powers conferred by subsections (5) to (10) of section 5 of the original Act may be exercised for the purpose of the enforcement of that procedure outside United Kingdom waters -
 - (i) in relation to a British ship or hovercraft (as defined in the original Act), by a person of a 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 a British enforcement officer,

then the powers conferred by subsections (5) to (10) of section 5 of this Act may be exercised for the purpose of the enforcement of that procedure outside the territorial waters of Seychelles -

- (A) in relation to a British ship or hovercraft, by a person of the class specified in the said order, and

- (B) in relation to a ship or hovercraft of the State specified in that order, by a local enforcement officer.

(2) A person belonging to a class specified in an order referred to in the preceding subsection 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.

7. (1) A local 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 a local 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 not exceeding £200 and in the case of a second or subsequent offence thereunder to a fine not exceeding £400.

8. (1) In any civil or criminal proceedings a written statement purporting to be a report made by a local 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.

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

9. (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.

(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 Seychelles.

10. The powers conferred by subsections (7) to (10) of section 5 above shall be exercisable, with the consent of the Minister, in relation to land in which the Republic has an interest but in which there is also an interest held otherwise than by or on behalf of the Republic.

11. (1) There shall be paid out of the general revenues of Seychelles -

- (a) such fees and allowances for members of committees under section 3 above;
- (b) such salaries and allowances for the staff of such committees;
- (c) such other expenses of such committees; and
- (d) such salaries or other remuneration for local enforcement officers; and
- (e) any expenses incurred under this Act by the Minister and not mentioned in the preceding subsections,

as the Minister may determine.

(2) Any receipts of the Minister under this Act shall be paid into the general revenues of Seychelles.

12. In this Act, unless the context otherwise requires -

"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", 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 in the United Kingdom made under section 12(3)(b) of this Act as in force in the United Kingdom;

"designated Convention" means a Convention declared to be a designated Convention by an Order for the time being in force in the United Kingdom made under section 12(3)(a) of this Act as in force in the United Kingdom.

"dumping" has the meaning assigned to it by section 1 above;

"foreign enforcement officer" has the meaning assigned to it by section 6(2) above;

"harbour authority" has the meaning assigned to it by section 742 of the Merchant Shipping Act, 1894 of the United Kingdom;

"hovercraft" means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

"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;

"lighthouse authority" means a local lighthouse authority or a general lighthouse authority within the meaning of section 634 of the Merchant Shipping Act 1894 of the United Kingdom or a harbour authority;

"load" means load for dumping;

"local enforcement officer" has the meaning assigned to it by section 5(2) above;

"the London Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter concluded at London in December 1972;

"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.

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

"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, lagoon or river; and

"territorial waters" means any part of the sea within the seaward limits of the territorial waters of Seychelles.

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

(2) Subject to the provisions of section 33 of the Interpretation Act 1889 of the United Kingdom (which relates to offences under two or more laws), 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.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order extends the provisions of the Dumping at Sea Act 1974, subject to exceptions, adaptations and modifications, to Seychelles.

The purposes of the Act were to give effect to the Convention on the Dumping of Wastes at Sea (Cmnd. 5160) opened for signature at London on 29 December 1972; and for connected purposes.