

**OIL POLLUTION OF THE SEA (CIVIL LIABILITY AND COMPENSATION)
(AMENDMENT) ACT 1998**

LONG TITLE

An Act to give effect to the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, done at London on the 27th day of November 1992, and the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, done at London on the 27th day of November 1992, and for that purpose to amend the Oil Pollution of the Sea (Civil Liability and Compensation) Act, 1988.
[14th May, 1998]

be it enacted by the oireachtas as follows:

SECT 1

Definition.

1.—In this Act, "the Principal Act" means the Oil Pollution of the Sea (Civil Liability and Compensation) Act, 1988.

SECT 2

Application.

2.—(1) Sections 3, 4, 5, 6, 7, 8 and 15 shall apply in respect of incidents occurring on or after the commencement of those sections.

(2) Sections 9, 10, 11, 12, 13 and 14 shall apply in respect of incidents occurring on or after the commencement of those sections.

(3) Section 3, in so far as it gives effect to the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, shall apply in respect of incidents occurring on or after the commencement of the provisions referred to in subsection (1) of this section.

(4) Section 3, in so far as it gives effect to the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, shall apply in respect of incidents occurring on or after the commencement of the provisions referred to in subsection (2) of this section.

(5) For the purposes of this Act, an incident that consists of a series of occurrences having the same origin shall be deemed to have occurred on the happening of the first of those occurrences.

SECT 3

Amendment of section 3 of Principal Act.

3.—Section 3 of the Principal Act is hereby amended by—

(a) in subsection (1)—

(i) the substitution of the following definition for the definition of "the Fund Convention":

"'the Fund Convention' means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, done at Brussels on the 18th day of December, 1971, and includes any Convention or Protocol ratified, accepted, approved or acceded to by the State, before the passing of the Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 1998, amending or extending that Convention;"

(ii) the substitution in the definition of "harbour authority" of the following paragraph for paragraph (b):

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

(iii) the substitution of the following definition for the definition of "incident":

"'incident' means any occurrence or series of occurrences having the same origin that causes pollution damage or creates a grave and imminent threat of causing such damage;"

(iv) the deletion in the definition of "inspector" of paragraph (c),

(v) the substitution of the following definition for the definition of "the Liability Convention":

"'the Liability Convention' means the International Convention on Civil Liability for Oil Pollution Damage, 1969, and includes any Convention or Protocol ratified, accepted, approved or acceded to by the State, before the passing of the Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 1998, amending or extending that Convention;"

(vi) the substitution of the following definition for the definition of "oil":

"'oil' means any persistent hydrocarbon mineral oil including, in particular, crude oil, fuel oil, heavy diesel oil or lubricating oil whether carried on board a ship as cargo or in the bunkers of such a ship;"

(vii) the substitution of the following definition for the definition of "pollution damage":

"'pollution damage' means loss or damage occurring outside a ship arising from the escape or discharge of oil from such ship wherever such escape or discharge occurs, and shall be deemed to include—

(a) the costs of reasonable measures taken to prevent or lessen

such loss or damage (including measures taken outside the State, or a Convention Country, as the case may be, to prevent or lessen such loss or damage within the State or within that Convention Country), and

(b) any further loss or damage caused by such measures;"

(viii) the deletion of the definition of "sea fisheries protection officer", and

(ix) the insertion of the following definition:

"ship' means—

(a) a seagoing vessel or seaborne craft of any type, constructed or adapted for the carriage of oil in bulk as cargo,

(b) a seagoing vessel or seaborne craft capable of carrying oil and other cargoes that is for the time being carrying oil in bulk as cargo, or

(c) a seagoing vessel or seaborne craft capable of carrying oil and other cargoes that, following the unloading from it of a cargo of oil, contains residues of oil in those spaces adapted or constructed for the carriage of oil in bulk as cargo;"

(b) the substitution of the following subsection for subsection (2):

"(2) A reference in this Act to the State includes a reference to—

(a) the inland waters of the State,

(b) the territorial seas of the State, and the seabed and subsoil beneath those seas,

(c) any area for the time being that stands designated by order under section 2 of the Continental Shelf Act, 1968, and the waters above it, and

(d) any area that lies within a line, every point of which is at a distance of 200 nautical miles from the baselines for the purposes of the Maritime Jurisdiction Acts, 1959 to 1988, and the waters above it:

Provided that this subparagraph shall not be construed as constituting a claim by the State to any area that—

(i) is under the jurisdiction of a state other than the State, and

(ii) the State recognises as being under such jurisdiction."

(c) the insertion of the following subsection:

"(2A) A reference in this Act to a Convention Country includes a reference to—

(a) the territorial seas and inland waters of the Convention Country concerned, and

(b) the area beyond and adjacent to the territorial seas under the jurisdiction of a Convention Country, to the extent so recognised under international law, and extending not more than 200 nautical miles from the baselines from which the territorial seas of that Convention Country are measured.",

and

(d) the substitution of the following subsection for subsection (5):

"(5) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended, adapted or extended, whether before or after the commencement of this section, by or under any subsequent enactment."

SECT 4

Amendment of section 7 of Principal Act.

4.—Section 7 of the Principal Act is hereby amended by—

(a) the substitution in subsection (1) of the following paragraph for paragraph (b):

"(b) in any case where pollution damage results from an incident involving two or more ships, the owner of each such ship shall, save where this Act otherwise provides, be jointly and severally liable for all such damage in so far as such damage is not reasonably severable";

and

(b) the deletion in subsection (1) of paragraph (d).

SECT 5

Exemption from liability for pollution damage.

5.—Section 8 of the Principal Act is hereby amended by the addition of the following subsection:

"(2) Subject to subsection (2) of section 7, the following persons shall not be liable for pollution damage in the State caused by a ship, namely—

(a) a servant or agent of the owner of the ship or of a person referred to in paragraph (d), (e) or (f),

(b) a member of the crew of the ship,

(c) the pilot or any other person, other than a member of the crew of the ship who performs services in relation to the ship,

(d) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship,

(e) any person performing salvage operations in relation to the ship with the consent of the owner of the ship or on the instructions of a harbour authority, or

(f) any person undertaking measures to prevent or lessen pollution damage,

unless it results from the personal act or omission of such person and such person intended by his act or omission to cause such damage or was reckless as to whether, and had knowledge that, such damage would probably occur as a result of such act or omission."

SECT 6

Limitation on liability for pollution damage.

6.—The Principal Act is hereby amended by the substitution of the following section for section 10:

"10.—(1) Subject to subsection (2), the following provisions shall apply in respect of an owner who is liable pursuant to section 7 for pollution damage, that is to say—

(a) the owner concerned may limit his liability in accordance with this Act;

(b) where the owner concerned limits his liability in accordance with this Act, his liability for any single incident shall not exceed—

(i) 3 million units of account, or

(ii) in the case of a ship exceeding 5,000 units of tonnage the aggregate of—

(I) 3 million units of account, and

(II) an amount in respect of each unit of tonnage in excess of 5,000 units of tonnage, where the amount of the owner's liability in respect of each such unit does not exceed 420 units of account:

Provided that the aggregate amount for which the owner shall be liable shall not exceed 59.7 million units of account in respect of a single incident;

(c) where a discharge of oil causes pollution damage both in the State and in the territory of a Convention Country, and the owner of the ship from which the oil was discharged has limited his liability in accordance with this Act, the limitation on the liability of the owner shall apply to the aggregate of his liability in the State and in any Convention Country concerned;

(d) where, in accordance with the law of a Convention Country, an

owner has limited his liability, the court, tribunal or administrative authority in that Convention Country that has the jurisdiction or power to determine liability for pollution damage and to award compensation therefor shall be exclusively competent to determine all matters relating to the appointment and distribution of any monies lodged with the court, tribunal or administrative authority as the case may be, in respect of the owner's liability.

(2) The owner of a ship shall not be entitled to limit his liability under this Act where—

(a) the discharge of oil from the ship occurred as a result of his personal act or omission, and

(b) he intended by such act or omission to cause pollution damage, or was reckless as to whether, and had knowledge that, pollution damage would probably occur as a result of such act or omission."

SECT 7

Calculation of tonnage of ship.

7.—The Principal Act is hereby amended by the substitution of the following section for section 11:

"11.—(1) For the purposes of calculating the liability of the owner of a ship by reference to the tonnage of a ship the tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

(2) If the tonnage of the ship cannot be calculated in accordance with the tonnage measurement regulations referred to in subsection (1) an inspector shall, if so directed by a Court, certify the tonnage that, in his opinion and having regard to the evidence specified in the direction would be the tonnage of the ship if such tonnage were calculated in accordance with the said tonnage measurement regulations, and the tonnage as certified in the certificate of the inspector shall be reckoned to be the tonnage of that ship."

SECT 8

Amendment of section 17 of Principal Act.

8.—Section 17 of the Principal Act is hereby amended by—

(a) the substitution of the following subsection for subsection (3):

"(3) A guarantor may limit his liability under this section;"

and

(b) the insertion of the following subsection:

"(3A) Where a guarantor limits his liability under this section sections 10(1)(b) and 12 shall apply with the necessary

modifications."

SECT 9

International Oil Pollution Compensation Fund 1992.

9.—Section 19 of the Principal Act is hereby amended by—

(a) the substitution in subsection (2) of "the International Oil Pollution Compensation Fund 1992" for "the International Oil Pollution Compensation Fund",

(b) the substitution in subsection (3) of "in accordance with the Internal Regulations of the Fund" for "by the Assembly of the Fund Convention", and

(c) the insertion of the following subsection:

"(3A) The Fund shall be a body corporate with perpetual succession and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property."

SECT 10

Amendment of section 20 of Principal Act.

10.—Section 20 of the Principal Act is hereby amended by the deletion of subsections (6), (7), (8) and (9).

SECT 11

Amendment of section 21 of Principal Act.

11.—Section 21 of the Principal Act is hereby amended by—

(a) the substitution of the following subsection for subsection (1):

"(1) Subject to subsection (2), where the Fund incurs a liability under this Act in respect of pollution damage in the State, the aggregate amount of compensation payable in respect of any one incident shall—

(a) in circumstances where compensation has been paid by a person other than the Fund in respect of pollution damage arising out of that incident, not exceed such amount as would cause the combined amount of compensation to exceed 135 million units of account, or

(b) in circumstances where the pollution damage results from a natural phenomenon of an exceptional, inevitable and irresistible character, not exceed 135 million units of account."

(b) the substitution of the following subsection for subsection (2):

"(2) Where an incident occurs during a period when there are not less than 3 parties to the Liability Convention and the combined

relevant quantity of crude oil and fuel oil imported into the territories of any 3 of those parties during the year preceding the year in which the incident concerned occurs, amounts to not less than 600 million tons, subsection (1) shall have effect as if references therein to 135 million units of account were references to 200 million units of account.",

and

(c) the substitution of the following subsection for subsection (3):

"(3) In this section—

‘the aggregate amount of compensation’ means, in relation to an incident, the maximum amount of compensation payable by the Fund, in respect of pollution damage arising out of the incident, by virtue of the application of any one or more of the following:

(a) this Act,

(b) the law of a Convention Country, or

(c) the Fund Convention;

‘combined amount of compensation’ means, in relation to an incident, the amount of compensation paid by a person other than the Fund, in respect of pollution damage arising out of the incident, and the aggregate amount of compensation.".

SECT 12

Amendment of section 22 of Principal Act.

12.—Section 22 of the Principal Act is hereby amended by—

(a) the substitution in subsection (1) of "An action shall not be brought against the Fund—" for "Subject to subsection (2), an action shall not be brought against the Fund—", and

(b) the deletion of subsection (2).

SECT 13

Amendment of section 23 of Principal Act.

13.—Section 23 of the Principal Act is hereby amended by the deletion of the words "or indemnity under section 20".

SECT 14

Amendment of section 30 of Principal Act.

14.—Section 30 of the Principal Act is hereby amended by the deletion in subsection (1) of the words "or indemnity".

SECT 15

Amendment of section 37 of Principal Act.

15.—Section 37 of the Principal Act is hereby amended by—

(a) the substitution of the following subsection for subsection (3):

"(3) Proceedings for an offence under this Act may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.", and

(b) the deletion of subsection (4) (inserted by paragraph 5 of the Second Schedule to the Sea Pollution Act, 1991).

SECT 16

Construction of references in Principal Act.

16.—References in the Principal Act to—

(a) the Oil Pollution of the Sea Acts, 1956 to 1977, shall be construed as references to the Sea Pollution Act, 1991, and

(b) a ship carrying oil in bulk as cargo shall be construed as references to a ship (within the meaning of section 3(1) of the Principal Act as amended by this Act).

SECT 17

Repeal of section 18 of Principal Act.

17.—Section 18 of the Principal Act is hereby repealed.

SECT 18

Short title.

18.—(1) This Act may be cited as the Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 1998.

(2) The Oil Pollution of the Sea (Civil Liability and Compensation) Act, 1988, section 37 of the Sea Pollution Act, 1991, and this Act may be cited together as the Oil Pollution of the Sea (Civil Liability and Compensation) Acts, 1988 to 1998, and shall be construed together as one Act.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.