

## CHAPTER 271

### MARINE POLLUTION (PREVENTION AND CONTROL) ACT

*To prevent and control the pollution of the sea and other waters and to give effect to the provisions of international and regional conventions and protocols relating to the protection of the marine environment.*

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*Enacted by ACT XII of 1977, as amended by Acts: XIII of 1983, XVII of 1991 and XXIV of 1995.*

#### ARRANGEMENT OF ACT

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#### SCHEDULE

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\*This Chapter is not yet in force.

## PART I

## PRELIMINARY

Short title and commencement.	<p><b>1.</b> (1) This Act may be cited as the Marine Pollution (Prevention and Control) Act.</p> <p>(2) This Act shall come into force on such date as the Minister may, by notice in the Gazette, appoint, and different dates may be so appointed for different provisions and different purposes of this Act.</p>
Interpretation.	<p><b>2.</b> (1) In this Act, unless the context otherwise requires or it is otherwise expressly provided -</p> <p>"area of Malta" means Malta and the territorial waters thereof;</p> <p>"Convention" has the meaning assigned to it by section 29 of this Act, and includes a protocol, agreement or other arrangement;</p> <p>"Convention Ship" means a ship registered in a Convention State;</p> <p>"Convention State", in relation to any Convention, means a country the Government of which has been declared by an order made under section 29 of this Act to have accepted such Convention and has not been so declared to have denounced it, and includes any territory to which it has been so declared that the Convention extends, not being a territory to which it has been so declared that the Convention has ceased to extend;</p> <p>"damage" includes loss;</p> <p>"discharge", in relation to oil or other pollution or to a mixture containing oil or other pollutant, means any discharge or escape however caused;</p> <p>"in bulk" means in such quantities as may be prescribed;</p> <p>"load", when used in Part VI of this Act, means load for dumping;</p> <p>"Maltese aircraft" means an aircraft registered in Malta, and includes an aircraft which has been <i>bona fide</i> demised, let or hired out for any period exceeding fourteen days to an individual resident in Malta or a company or other body corporate established under the laws of Malta;</p> <p>"Maltese marine structure" means a marine structure owned by or leased to an individual resident in Malta or a company or other body corporate established under the laws of Malta;</p> <p>"Maltese ship" has the same meaning as is assigned to it by section 3 of the Merchant Shipping Act;</p> <p>"marine structure" means a platform or other man-made structure at sea;</p> <p>"master" includes every person, except a pilot, having for the time being command or charge of a ship;</p> <p>"Minister" means the Minister responsible for shipping and includes any person acting under his authority;</p>
Cap. 234.	

"mixture containing oil" means any mixture of oil with water or with any other substance or with both and any mixture of water or any other substance, or both, with oil;

"mixture containing pollutant" means any mixture of a pollutant with water or with any other substance or with both and any mixture of water or any other substance, or both, with a pollutant;

"oil" means oil of any description and includes spirit produced from oil of any description and also includes coal tar;

"oil residues" includes any residue or waste consisting of, or arising from, oil or a mixture containing oil;

"outside the territorial waters of Malta" means outside the seaward limits of those waters;

"owner", in relation to a ship, means the person registered as the owner of the ship, or in the absence of registration the person owning the ship;

"owner or operator", in relation to an offshore facility or an onshore facility, means any person owning or operating such facility, and in the case of an abandoned facility, the person who owned or operated such facility immediately prior to such abandonment;

"place afloat" includes anything afloat (other than a vessel) if it is anchored or attached to the bed or shore of the sea or of the territorial waters of Malta, and includes anything resting on the bed or shore of the sea or of the territorial waters of Malta;

"place on land" includes any facility of any kind located, in, on or under any land within Malta, other than submerged land;

"pollutant" means any substance which if introduced into the sea or any other waters is liable to create hazards to human health, or to harm living resources or other marine life, or to damage amenities or to interfere with other legitimate uses of the seas or of the waters aforesaid, and, without limiting the generality of the foregoing includes any substance, or any substance that is part of a class of substances, that is prescribed by the Minister, for the purposes of this Act, to be a pollutant;

"port" has the same meaning as is assigned to it by section 2 of the Ports Ordinance\*;

Cap. 170.

"prescribed" means prescribed by regulations, rules, orders or instructions under this Act;

"proper officer" means an officer authorised in that behalf by the Minister or other appropriate authority;

"ship" includes every description of vessel used in navigation not propelled by oars and also includes an air-cushioned vehicle and a floating craft which is attached to a ship;

"territorial waters", in relation to Malta, means the whole of the sea within the seaward limits of the territorial waters of Malta and

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\*Repealed by Act XVII of 1991. See the Malta Maritime Authority Act (Cap. 352).

includes the waters of any port, or harbour and all other internal waters of Malta within those limits;

"trade effluent" means the solid or liquid waste of any trade, business or manufacture;

"transfer", in relation to oil, means transfer in bulk;

"vessel" includes any ship or boat or any other description of vessel used in navigation.

(2) In relation to any damage resulting from the discharge of any oil from a ship, references in this Act to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge.

(3) Reference in this Act to the area of any country includes the territorial sea of that country.

(4) Any reference in this Act to the measures reasonably taken after the discharge of oil or other pollutant for the purpose of preventing or reducing any damage caused by contamination resulting from such discharge shall include actions taken to remove the oil from the water and foreshores or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, foreshores and beaches.

## PART II

### CRIMINAL LIABILITY FOR POLLUTION

Discharge of oils or other pollutants into sea outside territorial waters.  
Amended by:  
XIII. 1983.4,5.

3. (1) If any oil or other pollutant to which this section applies or any mixture containing such oil or pollutant is discharged from a Maltese ship into any part of the sea outside the territorial waters of Malta, the owner or master of the ship shall, subject to the provisions of this Act, be guilty of an offence.

(2) This section applies -

(a) to crude oil, fuel oil and lubricating oil; and

(b) to heavy diesel oil, as defined by regulations made by the Minister under this section,

and shall also apply to any other description of oil and to any pollutant which may be specified by regulations made by the Minister, having regard to the provisions of any Convention accepted by the Government of Malta in so far as it relates to the prevention of pollution of the sea.

(3) Regulations made by the Minister may make exceptions from the operation of subsection (1) of this section, either generally or with respect to particular classes of ships, particular descriptions of oil or other pollutants or mixtures containing oil or other pollutants or the discharge of oil or other pollutants or mixtures in particular circumstances or into particular areas of the sea, and may

do so either absolutely or subject to any specified conditions.

(4) Any person guilty of an offence under this section shall be liable, on conviction, to a fine (*multa*) of not less than two hundred and fifty liri and not more than fifty thousand liri.

4. (1) If any oil or other pollutant or any mixture containing oil or other pollutant is discharged into the territorial waters of Malta from any vessel or any place afloat, or from any place on land, or from any apparatus used for transferring oil or other pollutant (whether to or from a place on land or afloat), then, subject to the provisions of this Act the following shall be guilty of an offence, that is to say -

- (a) if the discharge is from a vessel, the owner or master of the vessel;
- (b) if the discharge is from an apparatus used for transferring oil or other pollutant from or to a vessel or takes place while oil or other pollutant is being so transferred, the owner or person in charge of the apparatus;
- (c) if the discharge is from any other place, the occupier or other person in charge of such place.

(2) Any person guilty of an offence under this section shall be liable, on conviction, to a fine (*multa*) of not less than two hundred and fifty liri and not more than fifty thousand liri.

5. (1) If any oil or any mixture containing oil is discharged into any part of the sea -

- (a) from a pipe-line; or
- (b) as a result of any operations for the exploration of the sea-bed and sub-soil or the exploitation of their natural resources in a designated area,

then, subject to the following provisions of this Act, the owner of the pipe-line or, as the case may be, the person carrying on the operations shall be guilty of an offence unless the discharge was from a place in his occupation and he proves that it was due to the act of a person who was there without his permission (express or implied).

(2) In this section "designated area" means an area for the time being designated by an order made under subsection (3) of section 3 of the Continental Shelf Act.

(3) A person guilty of an offence under this section shall be liable on conviction, to a fine (*multa*) of not less than two hundred and fifty liri and not more than fifty thousand liri.

6. (1) Where a person is charged with an offence under section 3 of this Act, or is charged with an offence under section 4 of this Act as the owner or master of a vessel, it shall be a defence to prove that the oil, pollutant or mixture was discharged for the purpose of securing the safety of any vessel or of preventing damage to any vessel or cargo, or of saving life, unless the court is

Discharge of oil or other pollutant into the territorial waters.

Amended by:  
XIII. 1983.4,5.

Discharge of oil from pipelines or as the result of sea-bed exploration etc., in a designated area.

Amended by:  
XIII. 1983.4,5.

Cap. 194.

Defence of master charged with offence under section 3.

satisfied that the discharge of the oil, pollutant or mixture was not necessary for that purpose or was not a reasonable step to take in the circumstances.

(2) Where a person is charged as mentioned in subsection (1) of this section, it shall also be a defence to prove -

- (a) that the oil, pollutant or mixture escaped in consequence of damage to the vessel, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing the escape of oil, pollutant or mixture; or
- (b) that the oil, pollutant or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

Defence of other persons charged with offence under section 4 or 5.

7. Where a person is charged, in respect of the escape of any oil, pollutant or mixture containing oil or pollutant, with an offence under section 4 or section 5 of this Act -

- (a) as the occupier of a place on land; or
- (b) as a person carrying an operation for the exploration of the sea-bed and sub-soil or the exploitation of their natural resources; or
- (c) as the owner of a pipe-line,

it shall be a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

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### PART III

#### CIVIL LIABILITY FOR POLLUTION

Liability for pollution.

8. (1) Where any oil or other pollutant, or any mixture containing oil or pollutant, is discharged from any vessel (whether carried as part of the cargo of the vessel or otherwise), or from a place afloat or from a place on land -

- (a) the owner of the ship; or
- (b) the owner or operator of the place afloat or place on land,

shall, subject to the provisions of this Act, be liable -

- (i) for any damage caused in the area of Malta by contamination resulting from the discharge; and
- (ii) for the costs of any measures reasonably taken after the discharge for the purpose of preventing

or reducing any such damage in the area of Malta; and

- (iii) for any damage caused in the area of Malta by any measures so taken.

(2) Where oil or other pollutant, or any mixture containing oil or pollutant, is discharged from two or more vessels and a liability is incurred under this section by the owner of each of them but the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable, each of the owners shall be liable jointly and severally (*in solidum*) with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(3) For the purposes of this Part of this Act, where more than one discharge results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one; but any measures taken after the first of them shall be deemed to have been taken after the discharge.

(4) Where the owner of a vessel incurs a liability under this section by reason of a discharge, sections 349 and 350 of the Merchant Shipping Act shall not apply in relation to that liability.

Cap. 234.

**9.** The owner or operator of a ship, or of a place afloat or of a place on land from which oil or other pollutant has been discharged shall not incur any liability under section 8 of this Act if he proves that the discharge -

Exemptions from liability under section 8.

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- (b) was due wholly to anything done or left undone by another person, not being a servant or agent of the owner or operator, with intent to do damage; or
- (c) was, in the case of a discharge from a vessel, due wholly to the negligence or wrongful act of the Government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

**10.** (1) Where -

- (a) after a discharge of oil or other pollutant from any vessel, or place afloat, or place on land, measures are reasonably taken for the purpose of preventing or reducing the damage in the area of Malta which may result from the discharge; and
- (b) any person incurs, or might but for the measures have incurred, a liability, otherwise than under section 8, for any such damage,

Liability for cost of measures where section 8 does not apply.

then, whether or not paragraph (d) of subsection (1) of that section applies, such person shall be liable for the cost of the measures taken as aforesaid, whether or not the person taking them does so

for the protection of his interests or in the performance of a duty.

Extinguishment of claims.

**11.** No action to enforce a claim in respect of a liability incurred under section 8 of this Act shall be entertained by any court in Malta unless the action is commenced not later than three years after the claim arose and not later than six years after the occurrence or first of the occurrences resulting in the discharge by reason of which the liability was incurred.

Insurance against liability for pollution.  
Amended by:  
XIII. 1983.4,5.

**12.** (1) Any vessel to which this section applies shall not enter or leave a port in Malta or arrive at or leave a terminal in the territorial waters of Malta or anchor within the territorial waters of Malta, unless there is in force in respect of the vessel a contract of insurance or other security recognised by the Minister for the purposes of this section.

(2) The Minister shall recognise a contract of insurance or other security for the purposes of this section if such contract or security satisfies the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage done at Brussels on the 29th November, 1969, or such requirements as the Minister may by notice in the Gazette specify:

Provided that, where the Minister is of the opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 8 of this Act in all circumstances, he may refuse to recognise such insurance or security.

(3) Documentary evidence to the effect that the vessel carries the contract of insurance or other security required by subsection (1) of this section shall, on demand, be produced by the master to any officer of customs or to any proper officer.

(4) If any vessel enters or leaves, or attempts to enter or leave a port or arrives at or attempts to arrive at or leave a terminal or anchors within the territorial waters of Malta in contravention of subsection (1) of this section, the master or the owner of the vessel shall be liable, on conviction, to a fine (*multa*) not exceeding thirty five thousand liri.

(5) If the master of the vessel fails to comply with any demand made under subsection (3) of this section, he shall be liable, on conviction, to a fine (*multa*) not exceeding four hundred liri.

(6) This section shall apply to any vessel carrying in bulk a cargo of oil of a description prescribed by the Minister.

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#### PART IV

#### MEASURES TO PREVENT AND CONTROL POLLUTION

Equipment in ships to prevent pollution.  
Amended by:  
XIII. 1983.4,5.

**13.** (1) For the purpose of preventing or controlling pollution of the sea, the Minister may make regulations requiring Maltese ships to be fitted with such equipment and to comply with such other requirements as may be specified in the regulations.



(2) Without prejudice to the generality of subsection (1) of this section, where any regulations made thereunder require ships to be fitted with equipment of a specified description, the regulations may provide that equipment of that description -

- (a) shall not be installed in a ship to which the regulations apply unless it is a type tested and approved in such manner as may be prescribed;
- (b) while installed in such a ship, shall not be treated as satisfying the requirements of the regulations unless, at such times as may be prescribed, it is submitted for testing and approval in such manner as may be prescribed, and is so tested and approved.

(3) If, in the case of any ship, the provisions of any regulations made under this section which apply to that ship are contravened, the owner or master of the ship shall be guilty of an offence and, on conviction, shall be liable to a fine (*multa*) not exceeding one thousand liri.

**14.** (1) The Minister may make regulations requiring record books to be carried in Maltese ships and requiring the master of any such ship to record in the record book carried by her -

Records.  
Amended by:  
XIII. 1983.4.5.

- (a) the carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed, that is to say, operations relating to:
  - (i) the loading of any cargo of oil or other pollutant;  
or
  - (ii) the transfer of any cargo of oil or other pollutant during a voyage; or
  - (iii) the discharge of any cargo of oil or other pollutant; or
  - (iv) the ballasting of tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and cleaning of, such tanks; or
  - (v) the separation of oil from water, or from other substances, in any mixture containing oil; or
  - (vi) the disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in the preceding sub-paragraphs; or
  - (vii) the disposal of any other residue of oil or other pollutant;
- (b) any occasion on which oil or other pollutant or a mixture containing oil or other pollutant is discharged from the ship for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, or of saving life;
- (c) any occasion on which oil or other pollutant or a mixture containing oil or other pollutant is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of

leakage.

(2) The Minister may make regulations requiring the keeping of records relating to the transfer of oil or other pollutant to and from vessels while they are within the territorial waters of Malta, and requiring the master of any such vessel, or such other person as may be prescribed, to keep such records.

(3) The requirements of any regulation made under subsection (2) of this section shall be in addition to the requirements of any regulation made under subsection (1) of this section.

(4) Regulations under this section requiring the carrying of record books or the keeping of records may -

- (a) prescribe the form of record books or records and the nature of the entries to be made in them;
- (b) require the person providing or keeping the books or records to retain them for a prescribed period;
- (c) require a person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations;
- (d) provide for the custody or disposal of books or records after their transmission to such a place or person.

(5) If any ship fails to carry such record book or books as she is required to carry under this section, the owner or master shall be liable, on conviction, to a fine (*multa*) not exceeding five hundred liri.

(6) If any person fails to comply with any requirements imposed on him by or under this section, he shall be liable, on conviction, to a fine (*multa*) not exceeding five hundred liri.

(7) If any person makes an entry in any record book carried or record kept under this section which is to his knowledge false or misleading in any material particular, he shall be liable, on conviction, to a fine (*multa*) not exceeding five hundred liri or imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(8) In any proceedings under this Act -

- (a) any record book carried or record kept in pursuance of regulations made under this section shall, unless the contrary is proved, be sufficient evidence of the facts stated in it;
- (b) any copy of an entry in such a record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a true copy of the entry shall, unless the contrary is proved, be sufficient evidence of the facts stated in the entry;
- (c) any document purporting to be a record book carried or record kept in pursuance of regulations made under this section, or purporting to be such certified copy as is mentioned in paragraph (b) of this subsection shall,

unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.

- 15.** (1) If any oil or other pollutant or mixture containing oil or other pollutant -
- (a) is discharged from a vessel into the territorial waters of Malta; or
  - (b) is found to be escaping, or to have escaped, from a vessel into such waters; or
  - (c) is found to be escaping, or to have escaped, into such waters from a place on land or a place afloat,

Duty of masters to report discharges into the territorial waters.  
Amended by:  
XIII.1983.4.5;  
XVII.1991. 81.

the owner or master of the ship, or the occupier of the place on land or of the place afloat, as the case may be, shall forthwith report the occurrence to the Malta Maritime Authority indicating under which paragraph of this subsection the occurrence falls and giving such details as may be required by such Authority.

(2) If a person fails to make a report as required by subsection (1) of this section he shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding five hundred liri.

- 16.** (1) The Minister may make regulations requiring masters of Maltese ships or persons in command of Maltese aircraft to report -
- (a) all accidents or casualties which are causing or may cause pollution of the sea by oil or other pollutant; and
  - (b) the presence, characteristics and extent of oil or other pollutant observed on or in the sea,

Reporting of pollution accidents.  
Amended by:  
XIII. 1983.4.5.

to any such authority or organization and in such form and manner as may be prescribed.

(2) If a master of a Maltese ship or a person in command of a Maltese aircraft fails to make a report as required by any regulations made under subsection (1) of this section, he shall be liable, on conviction, to a fine (*multa*) not exceeding five hundred liri.

## PART V

### INTERVENTION IN CASES OF OIL POLLUTION CASUALTIES

- 17.** (1) The powers conferred by this section shall be exercisable where -
- (a) an accident has occurred to or in a ship; and
  - (b) in the opinion of the Minister, oil or other pollutant from the ship will or may cause pollution on a large scale in Malta or in the waters in or adjacent to Malta up to the seaward limits of territorial waters; and
  - (c) in the opinion of the Minister, the use of the powers

Shipping casualties.

conferred by this section is urgently needed,  
and shall be exercisable subject to the provisions of this Act.

(2) For the purpose of preventing or reducing pollution, the Minister may give directions as respects the ship or its cargo -

- (a) to the owner of the ship, or to any person in possession of the ship; or
- (b) to the master of the ship; or
- (c) to any salvor in possession of the ship, or to any person who is the servant or agent of any salvor in possession of the ship, and who is in charge of the salvage operation.

(3) Directions under subsection (2) of this section may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the directions may require -

- (a) that the ship is to be, or is not to be, moved, or is to be moved to a specified place, or is to be removed from a specified area or locality; or
- (b) that the ship is not to be moved to a specified place or area, or over a specified route; or
- (c) that any oil or other pollutant or other cargo is to be, or is not to be, unloaded or discharged; or
- (d) that specified salvage measures are to be, or are not to be, taken.

(4) If in the opinion of the Minister, the powers conferred by subsection (2) of this section are, or have proved to be, inadequate for the purpose, the Minister may, for the purpose of preventing or reducing pollution, or the risk of pollution, take, as respects the ship or its cargo, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the Minister may -

- (a) take any such action as he has power to require to be taken by a direction under this section;
- (b) undertake operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he can give directions;
- (c) undertake operations which involve the taking over of control of the ship.

(5) The powers of the Minister under subsection (4) of this section shall also be exercisable by such persons as may be authorised in that behalf by the Minister.

(6) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.

(7) The provisions of this section and of section 20 of this Act

are without prejudice to any rights or powers of the Government of Malta exercisable apart from those sections whether under international law or otherwise.

(8) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (4) or (5) of this section does not constitute contempt of court.

(9) In this section, unless the context otherwise requires -

"accident" includes the loss, stranding, abandonment of or damage to a ship; and

"specified" in relation to a direction under this section, means specified by the direction.

**18.** (1) If any action duly taken by a person in pursuance of a direction given to him under section 17 of this Act, or any action taken under subsection (4) or (5) of that section -

- (a) was not reasonably necessary to prevent or reduce pollution, or risk of pollution; or
- (b) was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered, as a result of the action,

Right to recover in respect of unreasonable loss or damage.  
*Amended by:*  
*XXIV.1995.362.*

a person incurring expense or suffering damage as a result of, or by himself taking, the action shall be entitled to recover compensation from the Minister.

(2) In considering whether subsection (1) of this section applies, account shall be taken of -

- (a) the extent and risk of pollution if the action had not been taken;
- (b) the likelihood of the action being effective; and
- (c) the extent of the damage which has been caused by the action.

(3) Any reference in this section to the taking of any action includes a reference to a compliance with a direction not to take some specified action.

(4) The Civil Court, First Hall, shall have jurisdiction to hear and determine any claim arising under this section.

**19.** (1) If the person to whom a direction is given under section 17 of this Act contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.

(2) If a person wilfully obstructs any person who is -

- (a) acting on behalf of the Minister in connection with the giving or service of a direction under section 17 of this Act;
- (b) acting in compliance with a direction under that section; or

Offences in relation to section 17.  
*Amended by:*  
*XIII. 1983.4,5.*

(c) acting under subsection (4) or (5) of that section, he shall be guilty of an offence.

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

(4) A person guilty of an offence under this section shall be liable, on conviction, to a fine (*multa*) of not less than two hundred and fifty liri and not more than fifty thousand liri.

Application of sections 17 to 19 to foreign ships.

**20.** (1) The Minister may by order in the Gazette provide that sections 17 to 19 of this Act, together with any other provisions of this Part of this Act stated in the order, shall apply to a ship -

- (a) which is not a ship registered in Malta; and
- (b) which is for the time being outside the territorial waters of Malta,

in such cases and circumstances as may be specified in the order, and subject to such exceptions, adaptations and modifications, if any, as may be so specified.

(2) Except as provided by an order made under subsection (1) of this section, no direction under section 17 of this Act shall apply to a ship which is not registered in Malta and which is for the time being outside the territorial waters of Malta, and no action shall be taken under subsection (4) or (5) of section 17 of this Act as respects any such ship.

## PART VI

### DUMPING AT SEA

Restrictions on dumping in the sea. Amended by: XIII. 1983.4.5.

**21.** (1) Subject to the provisions of this section, no person shall, except in pursuance of a licence granted under section 22 of this Act and in accordance with the terms of such licence -

- (a) dump any substance or article in the territorial waters of Malta; or
- (b) dump any substance or article in the sea outside the territorial waters of Malta from a Maltese ship, or a Maltese aircraft or a Maltese marine structure; or
- (c) load any substance or article on to a vessel, aircraft or marine structure in Malta or in the territorial waters of Malta for dumping in the sea, whether in the territorial waters of Malta or not; or
- (d) cause or permit any substance or article to be dumped or loaded as mentioned in paragraph (a), (b) or (c) above.

(2) Subject to subsections (3), (4) and (5) of this section,

substances and articles are dumped in the sea for the purposes of this Part of this Act if they are permanently deposited in the sea from a vehicle, vessel, aircraft 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 ship, aircraft, vehicle or marine structure or of its equipment shall not constitute dumping for the purposes of this Part of this Act unless the ship, aircraft, vehicle 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) Subject to subsections (5) and (6) of this section, any person who contravenes any of the provisions of subsection (1) of this section shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not more than ten thousand liri or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(5) It shall be a defence for a person charged with an offence under subsection (4) of this section to prove -

- (a) that the substances or articles in question were dumped for the purpose of securing the safety of a vessel, aircraft 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.

(6) It shall be a defence for a person charged with an offence under subsection (4) of this section to prove in relation to substances or articles dumped outside the territorial waters of Malta from a Maltese ship or aircraft that they were loaded on to it in a Convention State and that the dumping was authorised by a licence issued by a responsible authority in that State.

**22.** (1) In determining whether or not to grant a licence, the Minister shall have regard to any Convention on dumping in the sea to which Malta is a party and 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 may include such conditions in a licence as appear to him to be necessary or expedient for the protection of that environment and those resources from any such consequences, and for the purpose of having regard to any Convention as aforesaid.

(2) 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

Licences.  
Amended by:  
XIII. 1983.4,5.

breach of a condition included in it or of a change of circumstances relating to the marine environment or the living resources which it supports, including a change in scientific knowledge or in order to give effect to any Convention as aforesaid.

- (3) The Minister may require an applicant for a licence -
  - (a) to pay such fee on applying for it as may be prescribed;
  - (b) 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 the Minister may deem necessary or expedient;
  - (c) to pay such amount, in addition to any fee under paragraph (a) of this subsection, as the Minister 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 is to contain, and in particular any 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.
- (4) 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 provisions and conditions as to different descriptions of substances or articles.
- (5) 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.
- (6) 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 conviction to a fine (*multa*) not exceeding one thousand liri or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Enforcement of provisions relating to dumping.

**23.** (1) The Minister may charge such public officers or other persons as he may deem proper (in this Part of the Act referred to



as "enforcement officers") with ensuring compliance with this Part of this Act and with the terms and conditions of any licence granted by him under section 22 of this Act.

- (2) In the performance of his duty, an enforcement officer -
- (a) may at any reasonable time enter any place and board any vehicle, vessel or marine structure, and inspect the same, with or without persons and equipment to assist him in his duties;
  - (b) may open any container and examine and take samples of any substance or article;
  - (c) 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;
  - (d) 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;
  - (e) may require any person on board a vessel, aircraft or marine structure to produce any records or other documents which relate to it and which are in his custody or possession;
  - (f) may take copies of any document produced under any of the foregoing paragraphs of this subsection; and
  - (g) may require the attendance before him of any person he may deem necessary or expedient to examine.

24. The Minister may by order in the Gazette declare -

- (a) that any procedure which has been developed for the effective application of a Convention relating to dumping in the sea to which Malta is a party, and which is specified in the order, is an accepted procedure as between Malta and the Government of any Convention State similarly specified; and
- (b) that the powers conferred by section 23 of this Act may be exercised for the purpose of the enforcement of that procedure outside the territorial waters of Malta -
  - (i) in relation to a Maltese ship by a person authorised to enforce it by the Government of that State (hereinafter referred to as a "foreign enforcement officer"); and
  - (ii) in relation to a ship of that State, by an enforcement officer,

Enforcement of Conventions, etc., relating to dumping.

and where an order has been made under this section the powers conferred by section 23 of this Act shall be exercisable in accordance with such order.

Miscellaneous provisions as to enforcement officers.  
Amended by:  
XIII.1983.4,5.

**25.** (1) An enforcement officer or a foreign enforcement officer shall not be liable in any civil or criminal proceedings for anything purported to be done in the exercise of the powers conferred on him by this Part of this Act if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(2) Any person who -

- (a) without reasonable excuse fails to comply with any requirement imposed, or to answer any question asked, by an enforcement officer or a foreign enforcement officer under this Part of this Act;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement or answering any such questions; or
- (c) assaults any such officer while exercising any of the powers conferred on him by or by virtue of this Part 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 conviction in the case of a first offence to a fine (*multa*) not exceeding two hundred liri, and in the case of a second or subsequent offence to a fine (*multa*) not exceeding one thousand liri, in respect of each offence.

Evidence.

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

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

## PART VII

### GENERAL PROVISIONS

Power to make regulations etc.  
Amended by:  
XIII. 1983.4,5.

**27.** (1) Without prejudice to the powers conferred by the foregoing provisions of this Act, the Minister may make such regulations, rules or orders, or give such directions, as appear to him to be necessary or expedient for the purpose of carrying into operation any of the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, the Minister may make regulations -

- (a) prescribing substances and classes of substances that are, for the purposes of this Act, pollutants;

- (b) respecting the construction of ships carrying oil or other pollutants and the fitting, maintenance, testing and use of electronic and other navigational equipment on such ships, in addition to any other equipment required by any provision of the Merchant Shipping Act or of any regulations made thereunder; Cap. 234.
- (c) respecting the supplies and equipment to be carried by and the fittings and installations required on ships carrying oil or other pollutants for handling the oil or other pollutant and dealing with any discharge thereof;
- (d) prescribing procedures to be followed when oil or other pollutants are loaded or unloaded from a ship in the territorial waters of Malta or are transferred on board a ship in such waters;
- (e) prescribing the supplies and equipment to be maintained by the operators of offshore and onshore facilities for ships for use in any discharge of oil or other pollutant;
- (f) prescribing measures for the protection of the marine environment against pollution by garbage and sewage from ships;
- (g) requiring persons carrying on any trade, business or manufacture in Malta to install such equipment and to take such other measures as may be prescribed for the purpose of preventing or controlling pollution of the sea by any trade effluent;
- (h) prescribing quantities of oil or other pollutants for the purposes of the definition of "in bulk" in this Act;
- (i) respecting the method of retention of oil waste or other wastes by ships carrying oil or other pollutants;
- (j) prescribing anything that is required or authorised by this Act to be prescribed.

(2) Any power conferred on the Minister by this Act to make regulations, rules or orders, or to give directions, shall include power -

- (a) to vary, alter or revoke any such regulation, rule, order or direction, without prejudice to the making of a new regulation, rule or order, or the giving of a new direction;
- (b) subject to such limitations or other express provision contained in this Act, to provide for fines (*multa* or *ammenda*) not exceeding ten thousand liri or imprisonment not exceeding six months, or both, and for such other sanction as the Minister may deem appropriate;
- (c) to make such transitional or other incidental or supplementary provision as may appear to the Minister to be appropriate.

(3) Regulations, rules and orders made, and directions given, under any of the provisions of this Act may be made or given in the English language only.

Powers of  
inspector.  
Amended by:  
XIII. 1983.4,5.

**28.** (1) The Minister may appoint or designate any person as an inspector to report to him, either generally or for specific purposes or on special occasions -

- (a) whether the prohibitions, restrictions and obligations imposed by virtue of this Act have been complied with;
- (b) what measures should be or need to be taken to prevent the discharge of oil and other pollutants.

(2) A person appointed or designated under subsection (1) of this section shall have power -

- (a) to go on board any vessel and inspect the vessel or any part thereof or any of the machinery, boats, equipment or articles on board or any apparatus for transferring oil or other pollutant, for the purpose of subsection (1) of this section and of ascertaining the circumstances relating to an alleged discharge of oil or other pollutant from the vessel into the waters;
- (b) to go on board any vessel which is within the territorial waters of Malta and which he has reasonable grounds to suspect to be bound for a place in Malta, and to conduct such inspections of the vessel as will enable him to determine whether the vessel complies with any of the provisions of this Act or of the regulations made thereunder that are applicable to the vessel;
- (c) to go on board any vessel and test any equipment on board with which the vessel is required to be fitted in pursuance of regulations made under this Act;
- (d) to require the production of any record book required to be carried and any records required to be kept in pursuance of regulations made under this Act;
- (e) to go on board any Convention ship while the ship is within a port or terminal in Malta, and to require production of any record book, document or certificate required to be carried in accordance with the Convention;
- (f) to copy any entry in any such book or record and require the master to certify the copy as a true copy of the entry;
- (g) to order any ship to proceed out of the territorial waters of Malta by such route and in such manner as he may direct, to remain outside such waters or to proceed to and moor, anchor or remain for a reasonable time specified by him and in a place selected by him that is within the territorial waters of Malta -

- (i) if he suspects, on reasonable grounds, that the ship fails to comply with any of the provisions of this Act or of the regulations made thereunder that is or may be applicable to it; or
  - (ii) if, by reason of weather, visibility, sea conditions, the condition of the ship or any of its equipment, or any deficiency in its complement or the nature and condition of its cargo, he is satisfied that such an order is justified to prevent the discharge of oil or other pollutant;
- (h) order any ship that he suspects, on reasonable grounds, to be carrying oil or other pollutant, to proceed through the territorial waters of Malta by a route prescribed by him and at a rate of speed not in excess of a rate stated by him; and
- (i) where he is informed that a substantial quantity of a pollutant has been discharged in the territorial waters of Malta or has entered such waters, or where on reasonable grounds he is satisfied that a grave and imminent danger of a substantial discharge of a pollutant exists -
- (i) order all ships within a specified area in the territorial waters of Malta to report their position to him; and
  - (ii) order any ship to take part in the clean up of such oil or other pollutant or in any action to control or contain the pollutant.

(3) An inspector exercising any powers conferred by subsection (2) of this section shall not unnecessarily detain or delay the ship from proceeding on any voyage.

(4) Any power conferred by this section to test any equipment on board a ship shall be construed as including a power to require persons on board the ship to carry out such work as may be requisite for the purpose of testing the equipment.

(5) Compensation shall be due and paid to the owner of any ship for services rendered by such a ship in compliance with an order under sub-paragraph (ii) of paragraph (i) of subsection (2) of this section.

(6) If any person hinders or attempts to hinder any inspector from going on board any vessel or otherwise impedes or attempts to impede him in the execution of his duties or functions under this section, or fails without reasonable excuse to comply with any lawful requirement of the inspector, or prevents or attempts to prevent any other person from complying with any such requirement or knowingly makes a false or misleading statement either verbally or in writing, to an inspector, that person shall for each offence be liable to a fine (*multa*) not exceeding one thousand liri.

Enforcement of Conventions relating to pollution.

- 29.** (1) If the Minister is satisfied -
- (a) that the Government of any country has accepted, or has denounced a Convention; or
  - (b) that a Convention extends, or has ceased to extend, to any territory,

he may, by order in the Gazette, make a declaration to that effect.

(2) In this Act "Convention" means a Convention to which the Government of Malta is a party and which relates, or in so far as it relates, to the prevention of pollution of the sea.

Power to apply certain provisions to ships registered outside Malta.

**30.** (1) The Minister may by order in the Gazette direct that, subject to such exceptions and modifications as may be specified in the order, any provisions of this Act or of any regulations made thereunder, which do not apply to ships registered in countries and territories other than Malta shall apply to such ships at any time when they are in a port in Malta, or are within the territorial waters of Malta while on their way to or from a port in Malta.

(2) An order under subsection (1) of this section shall not be made so as to impose different requirements in respect of ships of different countries or territories; but if the Minister is satisfied, as respects any country or territory, that ships registered there are required by the law of that country or territory to comply with provisions which are substantially the same as, or equally effective with, the requirements imposed by virtue of the order, the Minister may by order in the Gazette direct that those requirements shall not apply to any ship registered in that country or territory if the ship complies with such of those provisions as are applicable thereto under the law of that country or territory.

(3) No provision shall by virtue of an order made under this section apply to any ship as being within a port in Malta, or on her way to or from such a port, if the ship would not have been within the port, or as the case may be, on her way to or from the port, but for stress of weather or any other circumstances which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled.

Power to detain ship.  
*Amended by:*  
*XIII. 1983.4,5.*

**31.** (1) Where the Minister has reasonable cause to believe that any oil or other pollutant or any mixture containing oil or other pollutant has been discharged from any ship and the owner of the ship has incurred a liability under section 8 or under section 10 of this Act, the ship may be detained until the owner or insurers of the ship deposit with the Government a sum of money, or furnish such security, which would in the opinion of the Minister be adequate to meet the owner's liability under those sections.

(2) If a ship attempts to leave a port in Malta or the territorial waters of Malta or a terminal within such waters in contravention of section 22 of this Act the ship may be detained.

(3) Where a ship is to be or may be detained any commissioned officer in the military service of Malta, any Police officer not below the rank of inspector, any officer of customs, or a proper officer,

may detain the ship; and if the ship after detention, or after service on the master of a notice of detention, proceeds to sea before it is released by a competent authority, the master of the ship, and also the owner and any person who sends the ship to sea, if that owner or person is party or privy to the act of sending the ship to sea, shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding fifty thousand liri.

(4) Any person authorised under this section to detain a ship may, if he thinks it necessary, place a Police or other guard on board and take such other measures as would impede the ship from proceeding to sea.

**32.** Where the owner or master of a ship had been convicted of an offence under the provisions of this Act and any fine imposed under this Act is not paid at or within the time ordered by the court, the court shall, in addition to any powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel, and such court shall, for the purposes of this section, have all the powers as are by law conferred on the Civil Court, First Hall.

Sale of ship to enforce payment of fines.  
Amended by:  
XXIV.1995.362.

**33.** (1) Save as provided in section 18 of this Act, any action taken or omitted to be taken by the Minister under this Act, or by any person acting under the authority of the Minister or otherwise in the execution of this Act, shall not in any circumstances make the Minister, whether personally or in representation of the Government, liable to any action, liability or claim whatsoever.

Protection from liability.

(2) Any person acting under the authority of the Minister or otherwise in the execution of this Act shall not be personally liable for any damage or loss resulting from any act or default of such person in carrying out his duties as aforesaid unless it is proved that the act or default was not done *bona fide*.

**34.** The provisions of this Act shall not apply to, or in relation to, any warship or any ship for the time being used by the Government of Malta or by the Government of any foreign State for any purpose other than commercial purposes.

Government Ships.

**35.** The Minister may exempt any ships or classes of ships from any of the provisions of this Act or of any regulations made thereunder, either absolutely or subject to such conditions as he may deem appropriate.

Exemptions.

**36.** (1) Nothing in this Act shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Act may have against another person in respect of that liability.

Saving for other claims, restrictions, etc.

(2) Nothing in this Act shall affect any restriction imposed by or under any other enactment or shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Act.

**37.** The enactments mentioned in the first column of the Schedule to this Act shall have effect subject to the amendments and repeals specified in relation thereto in the second column of

Repeals.

that Schedule.

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SCHEDULE

ENACTMENT

EXTENT OF AMENDMENT OR REPEAL

Code of Police Laws, Cap. 10.

Section 228 is repealed.

Continental Shelf Act, Cap. 194.

Section 7 is repealed.

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