

**L.N. 130 of 2008**

**TERRITORIAL WATERS AND CONTIGUOUS ZONE ACT  
Ship-Source Pollution Regulations, 2008**

IN exercise of the powers conferred by article 7 of the Territorial Waters and Contiguous Zone Act, the Prime Minister has made the following regulations

**PART I**

**General Provisions**

1. These regulations may be cited as the Ship-Source Pollution Regulations, 2008.

2. (1) In these regulations, unless the context otherwise requires –

“the Act” means the Territorial Waters and Contiguous Zone Act

“Annex I” means Annex I to the MARPOL Convention, including the appendices thereto

“Annex II” means Annex II to the MARPOL Convention, including the appendices thereto

“harmful substances” means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by the MARPOL Convention

“internal waters” means all waters landward of the baselines from which the territorial waters are measured and includes any port

“Maltese waters” means the internal waters and the territorial waters

“maritime enforcement officer” shall have the same meaning as is assigned to it in the Act

“MARPOL Convention” means the International Convention for the Prevention of Pollution from Ships, signed in London on 2 November 1973 as modified by the Protocol of 1978 relating thereto signed in London on 17 February 1978

“port” means any port declared under the Malta Maritime Authority Act

“Pollution Regulations” means the Merchant Shipping (Prevention of Pollution from Ships) Regulations, 2003

“relevant vessel or craft” shall have the same meaning as is assigned to it in the Act

“ship” means any seagoing vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft

“territorial waters” shall have the same meaning as is assigned to it in the Act.

(2) Unless otherwise defined in these regulations or unless the context requires, words and expressions used in these regulations shall have the same meaning assigned to them in the MARPOL Convention.

3. These regulations implement Directive 2005/35/EC of the European Parliament and of the Council of the 7 September 2005 on

ship-source pollution and on the introduction of penalties for infringements.

4. (1) These regulations shall apply to

(a) any ship in Maltese waters

(b) any ship on the high seas

Provided that these regulations shall only apply to a ship on the high seas if the discharge of any harmful substance from any such ship results or may be reasonably expected to result in major harmful consequences in Maltese waters or to the coastline of Malta or related interests, including fishing.

(2) These regulations shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

## **PART II**

### **Offences and exceptions**

5. (1) It shall be a criminal offence to discharge with intent, recklessly or by serious negligence any harmful substance in contravention of the provisions of the Pollution Regulations from

(a) any ship in Maltese waters or

(b) any ship on the high seas, in so far as the conditions laid down in the proviso to regulation 4(1) are satisfied.

(2) Whosoever shall aid, abet or incite the commission of an offence referred to in the immediately preceding provision shall be guilty of an offence.

6. (1) A discharge of any harmful substance shall not constitute an offence under these regulations if it satisfies the conditions set out in Annex I, Regulations 9, 10, 11(a) or 11(c) or in Annex II, Regulations 5, 6(a) or 6(c) of the MARPOL Convention.

(2) Without prejudice to the generality of the immediately preceding provision a discharge of any harmful substance from any ship on the high seas shall not constitute an offence under these regulations when committed by the owner of a ship or by the master or other member of the crew acting under the master's responsibility if it satisfies the conditions set out in Annex I, Regulation 11(b) or in Annex II, Regulation 6(b) of the MARPOL Convention.

## **PART III**

### **Enforcement, penalties and jurisdiction**

7. A maritime enforcement officer, whether on board a relevant vessel or craft or otherwise, may take appropriate action with respect to any person or to any ship within Maltese waters or, in so far as the conditions laid down in the proviso to regulation 4(1) are satisfied, on the high seas who is reasonably suspected of having committed or of being about to commit an offence under these regulations.

8. (1) Whosoever shall commit an offence under these regulations that does not result in deterioration of the quality of the water shall, on conviction, be liable to a fine (multa) of not more than twelve thousand euros or to imprisonment for a term not exceeding six months or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.

(2) Whosoever shall commit an offence under these regulations resulting in serious deterioration of the quality of the water

shall, on conviction, be liable to a fine (multa) of not less than twelve thousand euros and not more than thirty thousand euros or to imprisonment for a term not less than six months and not exceeding 18 months or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.

(3) Whosoever shall through recklessness or serious negligence commit an offence under these regulations resulting in significant and widespread damage to water quality, to animal or vegetable species or to parts thereof shall, on conviction, be liable to a fine (multa) of not less than twenty three thousand euros and not more than two hundred fifty thousand euros or to imprisonment for a term of not less than six months and not exceeding two years or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.

(4) Whosoever shall through recklessness or serious negligence commit an offence under these regulations resulting in significant and widespread damage to water quality, to animal or vegetable species or to parts thereof and the death or serious injury of persons shall, on conviction, be liable to imprisonment for a term of not less than two years and not exceeding twelve years for serious injuries and for a term of not less than four years and not exceeding twenty years for death, including the payment of any expenses disbursed to remedy the damage incurred.

(5) Whosoever shall with intent commit an offence under regulation 5(1)(a) of these regulations resulting in significant and widespread damage to water quality, to animal or vegetable species or to parts thereof shall, on conviction, be liable to imprisonment for a term of not less than two years and not exceeding five years including the payment of any expenses disbursed to remedy the damage incurred.

(6) Whosoever shall with intent commit an offence under regulation 5(1)(b) of these regulations resulting in significant and widespread damage to water quality, to animal or vegetable species or to parts thereof shall, on conviction, be liable to imprisonment for a term of not less than six months and not exceeding four years including the payment of any expenses disbursed to remedy the damage incurred.

(7) Whosoever shall with intent commit an offence under regulation 5(1) of these regulations resulting in significant and widespread damage to water quality, to animal or vegetable species or to parts thereof and the death or serious injury of persons shall, on conviction, be liable to imprisonment for a term of not less than three years and not exceeding fifteen years for serious injuries and for a term of not less than five years and not exceeding thirty years for death, including the payment of any expenses disbursed to remedy the damage incurred.

(8) Any person who is guilty of an offence under regulation 5(2) of these regulations shall be liable to the same penalty imposed in the preceding provisions of this regulation in respect of the commission of the corresponding offence under regulation 5(1).

(9) Where the person found guilty of an offence under these regulations is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of

such body corporate or having an authority to take decisions on behalf of that body or having authority to exercise control within that body, and the offence of which that person is found guilty was committed for the benefit, in whole or in part, of that body corporate, the said person shall for the purpose of these regulations be deemed to be vested with the legal representation of the said body corporate which shall, on conviction, be liable to the payment of a fine (multa) of not less than one hundred and fifty thousand euros and not more than three hundred thousand euros for any offence committed through recklessness or serious negligence, and of not less than seven hundred and fifty thousand euros and not more than one million and five hundred thousand euros for any offence committed with intent, including the payment of any expenses disbursed to remedy the damage incurred.

9. The Maltese courts shall, subject to the provisions of article 5 of the Criminal Code, have jurisdiction over the offences laid down in these regulations.