



## **AN BILLE UM THRUAILLIÚ NA FARRAIGE, 1990**

### **SEA POLLUTION BILL, 1990**

#### **EXPLANATORY AND FINANCIAL MEMORANDUM**

The main purpose of the Bill is to enable the State—

- (i) to ratify the International Convention for the Prevention of Pollution from Ships, 1973;
- (ii) to accede to the Protocol of 1978 modifying that Convention;
- (iii) to accede to the Protocol relating to Intervention on the High Seas in cases of Marine Pollution by Substances other than Oil, 1973,

by giving them the force of law in the State.

The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, some amendments thereto and the International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969 were given the force of law in Ireland by the Oil Pollution of the Sea Acts, 1956 to 1977. These Acts are being repealed because their provisions, relating solely to pollution caused by the discharge into the sea of oil or oily mixtures, have been included or expanded within the Sea Pollution Bill, 1990 which deals with pollution by discharges into the sea of the following substances — oil, oily mixtures, noxious liquid substances, harmful substances in packaged forms, or in freight containers, portable tanks or road and rail tank wagons, sewage from ships and garbage from ships.

The International Convention for the Prevention of Pollution from Ships, 1973 as modified by its protocol of 1978 is known world-wide as MARPOL 73/78.

#### **MARPOL 73/78**

The main objective of this instrument is to reduce to a minimum, and in certain instances prohibit, the operational discharge of marine pollutants from ships through the establishment of operational discharge criteria and procedures and construction and equipment standards. In addition, ship design features are prescribed to minimise the outflow of oil in the event of an accident. Provision is made for a regime whereby violations of the international rules and standards are prohibited and punished with sufficient severity to discourage future violations.

The Convention itself comprises five Annexes which are, effectively, the regulations laid down for

- (i) the prevention of pollution by oil;

- (ii) the control of pollution by noxious liquid substances in bulk;
- (iii) the prevention of pollution by harmful substances carried by sea in packaged forms or in freight containers, portable tanks or road and rail tank wagons;
- (iv) the prevention of pollution by sewage from ships;
- (v) the prevention of pollution by garbage from ships.

Annexes (iii), (iv) and (v) are optional but the State would propose to give effect to all five Annexes by way of regulations to be made under the Bill, when enacted.

*The Intervention Convention, 1969 and its Protocol, 1973.*

These instruments provide that, following a maritime casualty, contracting parties may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution, or threat of pollution, by oil and other substances which are 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.

#### **DETAILED PROVISIONS OF THE BILL**

*Section 1* gives the short title of the Bill.

*Section 2* provides for the coming into operation of different provisions of the Bill on such day or days as may be fixed by the Minister for the Marine, by order.

*Section 3* is a standard interpretative provision.

*Section 4* provides for the exemption from the Bill's provisions of any warship or ship being used by the Government of any country for non-commercial purposes. The Minister for the Marine, where he is satisfied that there will be no increased risk of pollution may, subject to certain conditions, exempt any Irish-registered ships from all or any of the Bill's provisions.

*Section 5* is a standard provision concerning the laying of orders and regulations made under the Bill, when enacted, before the Houses of the Oireachtas.

*Section 6* is a standard provision on the taking and collection of fees which may be charged under the Bill, when enacted, and for their payment into the Exchequer.

*Section 7* is a standard provision whereby expenses incurred by the Minister for the Marine in administering the Bill, when enacted, shall be paid out of moneys provided by the Oireachtas.

*Section 8* provides for the repeal of the three Acts mentioned in the First Schedule to the Bill. viz.:

- the Oil Pollution of the Sea Act, 1956;
- the Oil Pollution of the Sea (Amendment) Act, 1965;
- the Oil Pollution of the Sea (Amendment) Act, 1977.

*Section 9* is a standard provision for the continuance in force of orders and regulations made under the legislation being repealed.

*Section 10* provides for the making of regulations by the Minister for the Marine prohibiting or regulating the discharge from any Irish-registered ship anywhere at sea or from any other ship whilst in the territorial waters of the State of any oil, oily mixture, noxious liquid substance, harmful substance, sewage or garbage. Operations permitted on board ship in relation to these substances may also be regulated. The Minister for the Marine may by regulations prescribe the substances which he considers constitute a harmful substance, a noxious liquid substance, an oil or oily mixture, sewage or garbage. He may also by regulations require the master or owner of a ship carrying a prescribed substance to give notification of the intention to load or unload such substance in the State.

Contravention of the requirements of this Section constitutes an offence.

*Section 11* is a saver provision permitting discharge into the sea where it is necessary for securing the safety of a ship, for saving life at sea, or as a result of damage to the ship provided that the owner or master did not act with intent to cause damage or act recklessly and efforts are made to prevent or minimise the discharge.

*Section 12* provides that the Minister for the Marine may by regulations, require harbours in the State to have adequate facilities for the discharge or disposal of oily residues and other wastes.

The regulations may provide for a time limit within which the facilities deemed necessary are to be made available and the time and manner of discharge and disposal. Contravention of a regulation constitutes an offence.

Harbours may make reasonable charges and impose reasonable conditions for use of the facilities provided.

*Section 13* provides for the reporting to the Minister for the Marine (or to the harbour-master or person in charge of the harbour, if it occurred in a harbour) of any discharge or probable discharge for the purpose of securing the safety of a ship, saving human life or as a result of damage to a ship, or if the quantity is in excess of that permitted (if any). Every report shall give full details of the discharge incident. Contravention of this Section, or regulations made thereunder, constitutes an offence.

*Section 14* provides that the Minister for the Marine may by regulations, require a ship registered in the State to be constructed, fitted or operated in such a way as to prevent, control or reduce discharges into the sea. Contravention of any such regulation constitutes an offence.

*Section 15* provides that the master of an Irish-registered ship shall keep such records as may be prescribed in regulations made by the Minister for the Marine in relation to operations on board ship, discharges for the purpose of securing the safety of a ship, saving life at sea or as a result of damage to a ship and discharges in excess of permitted limits (if any) in respect of the substances prescribed under Section 10. The regulations may provide for the form, maintenance and control of records. Contravention of a regulation, or the giving of false or misleading information, constitutes an offence.

*Section 16* applies Sections 14 and 15 to ships registered in any other country and to their owners and masters whilst they are within the territorial waters of the State.

*Section 17* provides for the making of regulations by the Minister

for the Marine for the survey, inspection, testing and certification of ships, their equipment and fittings for compliance with the regulations made by the Minister under Section 14. These duties shall be performed by a surveyor of ships or an inspector appointed by the Minister for the Marine for that purpose. Fees may be charged for surveys, etc. Contravention of the regulations constitutes an offence.

*Section 18* provides that the Government of any country which is party to the MARPOL Convention may request the Minister for the Marine to have a ship registered in that country surveyed and certified for compliance with the requirements of regulations made under Section 14 and applying to Irish-registered ships. A copy of the survey report and the certificate shall be transmitted to the Government of the country concerned.

*Section 19* provides that surveyors of ships shall be inspectors for the purposes of the Bill and shall, subject to such directions as may be given by the Minister for the Marine, report on compliance with requirements of the Bill, on measures taken to prevent pollution from ships and on the adequacy of facilities in the State for the discharge and disposal of ships' waste.

*Section 20* provides for the appointment of inspectors by the Minister for the Marine, by warrant, and for such warrants to set out the functions to be carried out. Inspectors shall produce their warrants for inspection if requested to do so when exercising their functions.

*Section 21* sets out the powers of an inspector which may include: boarding a ship; inspecting the ship and all machinery, boats, equipment or fittings thereon; inspecting documents and records and copying entries; taking samples of substances on board, summoning any person to attend before him and examining that person under oath or requiring a witness to make a declaration of the truth of any statement made at his examination. A witness before an inspector shall be entitled to the same immunities and privileges as if he were a witness in the High Court and shall be allowed such expenses as are allowed to a witness on a sub poena in the High Court. Non-attendance before an inspector, refusal to take an oath or to produce documents, or to answer questions, or to stop a ship, constitutes an offence.

*Section 22* provides that where an inspector finds a ship to be so defective as to pose a serious threat of damage to the marine environment or that the ship or any equipment or fitting thereon does not correspond with the particulars in its certificate (under Section 17) the inspector may direct the master of such ship to remedy the defects or he may detain the ship until such defects are remedied. The inspector shall ensure that the detained vessel does not put to sea or leave a harbour to go to a repair yard for as long as its condition poses a threat of damage to living marine resources. Non-compliance with directions constitutes an offence.

If the master of a ship registered in the State does not comply with the directions of an inspector the Minister for the Marine shall be notified and may direct that a certificate under Section 17 in relation to that ship be withdrawn.

*Section 23* permits a harbour-master to refuse entry into a harbour if he believes a ship not to be in compliance with the requirements of the Bill or to be a serious threat of damage to flora, fauna, living marine resources, the harbour or other ships, unless such entry is necessary to save life. The Minister for the Marine, or a person appointed by him, under warrant, to act on his behalf, may direct the harbour-master to permit the ship to enter subject to certain

*Section 39* provides that when a ship has been detained by an conditions. The Minister may by regulations, in respect of ships generally or any class of ship provide for the giving of notice by an owner or master of the entry or intended entry of such ship(s) into the State and for preventing the entry of any ship or a ship carrying a specified cargo if he has reason to believe that it would be a hazard to human health or life or harmful in any respect. Failure to comply with a direction given, or with requirements of regulations, constitutes an offence.

*Section 24* provides for the detention by an inspector of a ship in the State which has caused or may cause pollution. A harbour-master may exercise powers of detention on a ship whilst in the harbour over which he has control. An inspector or harbour-master may release a detained vessel once it has ceased to be a threat to living marine resources or a cause of pollution. An inspector may release a ship to enable it to proceed to the nearest repair yard if he is satisfied that (a) there is no threat of damage to flora, fauna, or living marine resources, (b) the master of the ship undertakes to have defects in the ship remedied and (c) the owner of the ship puts forward security which would meet the cost of remedying any pollution which might be caused on the voyage to the nearest repair yard.

Where a detained ship attempts to leave a harbour or other place of detention the owner and master shall each be guilty of an offence and the ship may be further detained.

*Section 25* provides that a harbour-master may, without causing undue delay, go on board and inspect a ship to ascertain the circumstances of an alleged discharge of oil or other substance. He may also inspect records or other documents required to be held and copy any entry in such records or documents. Failure to comply with a harbour-master's request or to impede him in the exercise of his functions constitutes an offence.

*Section 26* provides that, following upon a maritime casualty, and in order to prevent, mitigate or eliminate pollution, the Minister for the Marine, or a person authorised by him, may give directions to the owner, master, salvor of a ship, or any other person deemed necessary and may take actions which would include: the movement of the ship outside the limits of a harbour or to a specified place; restraint or control of movements of the ship; the attendance of tug-boats, salvage vessels or other craft; the assessment of damage and giving advice on repairs needed; the unloading, discharge or transfer of cargo, fuel oils or other substances; the taking, or restriction on taking, of specified salvage measures or the sinking, destruction or taking over of control of a ship. Action may only be taken if there is grave and imminent danger of major harmful consequences through pollution to the coastline, to human health, marine resources, flora, fauna, fisheries activities and tourist attractions. The ship shall not be unduly delayed.

The Minister for the Marine shall furnish a person authorised by him to act on his behalf with a certificate of authority and that person shall produce the certificate for inspection, if requested. Wilful contravention of a direction given, or wilful obstruction of a person acting in compliance with such a direction, constitutes an offence. The owner of a ship shall pay the expenses of, or incidental to, any actions taken by the Minister for the Marine or by a person authorised to act on his behalf.

*Section 27* provides that where, in relation to a ship registered in the State or in a country which is party to the Intervention Convention, a person establishing that measures taken in accordance with Section 26 outside the territorial waters of the State were beyond what was

necessary shall be entitled to compensation from the Minister for the Marine for loss or damage.

Compensation shall be recoverable either by an award under the Arbitration Act, 1954 or in a court of competent jurisdiction. In considering entitlement to recover compensation, account shall be taken of the extent of imminent danger if those measures had not been taken; the likelihood of those measures being effective and the extent of the damage caused by such measures.

*Section 28* is a standard provision whereby the Minister for the Marine may, by order, declare the names of the countries which are party to MARPOL 73/78 or the Intervention Convention and Protocol.

*Section 29* lays down penalties for offences under the Bill, when enacted viz. on summary conviction to a fine not exceeding £1,000, up to 12 months imprisonment, or both; on conviction on indictment to a fine not exceeding £10 million, up to 5 years imprisonment, or both.

*Section 30* provides for the bringing of summary proceedings for offences under the Bill, when enacted, by the Minister for the Marine (or by the harbour authority if the offence relates to a particular harbour) within two years from date of offence or, if the defendant is abroad, within six months of his next entry into the State.

*Section 31* provides that an officer of a body corporate as well as the body corporate may be prosecuted for an offence committed.

*Section 32* is a standard provision relating to indictment of a body corporate.

*Section 33* provides for the collection and application of fines imposed viz. payment into Exchequer; sale of a ship, its equipment or stores where a fine is not duly paid; payment of all or part of a fine to defray expenses in removing pollution or making good damage done.

*Section 34* is a standard provision whereby documents purporting to be records or certified true copies kept in pursuance of the Bill, when enacted, the MARPOL Convention or the Intervention Convention and its Protocol shall be admissible as evidence in proceedings, unless the contrary is shown.

*Section 35* provides for the presumption, until the contrary is proven, that a discharge in close proximity to an Irish-registered ship anywhere at sea or a foreign-registered ship while in the territorial waters of the State was discharged from that ship.

*Section 36* provides for amendment of Section 7 of the Continental Shelf Act, 1968 to bring discharge provisions in relation to pipe-lines, exploration of the sea-bed and subsoil and exploitation of natural resources into line with the provisions of the Bill.

*Section 37* provides that a certificate under the Minister for the Marine's seal shall be prima facie evidence of his entitlement under Section 26 to recover expenses.

*Section 38* provides for minor amendment of the Oil Pollution of the Sea (Civil Liability and Compensation) Act, 1988 as outlined in the Second Schedule to the Bill.

*Section 39* provides that when a ship has been detained by an inspector or harbour-master, following the commission of an offence, on the direction of a District Justice the master of the ship shall remain on board and such other person as he may direct shall stay at a specified place in the State until proceedings have been adjudicated upon.

*Section 40* provides for the further detention of the master of the ship pending the outcome of an appeal to a judgment in proceedings taken, or for the release of the ship on payment of adequate security.

*Section 41* provides that, on application of a prosecutor, a court may direct that the amount of the fine imposed in respect of an offence together with costs be paid out of the security to the Minister for the Marine.

*Section 42* provides that a court may order that a prosecutor be paid costs reasonably incurred in relation to the investigation, detection and prosecution of an offence, including costs incurred in the taking of samples, the carrying out of tests, examinations or analyses, and in the remuneration and other expenses of employees, consultants and advisers.

*Section 43* provides that where a defendant, resident outside the State, is released on bail the court may direct that documents relating to charges for an offence be served on a specified person ordinarily resident in the State.

Costs will be incurred in the administration and enforcement of the provisions of the Act. Staffing needs may only be assessed in the light of experience of its implementation.

*Roinn na Mara,  
Meitheamh, 1990.*

Section 29 provides that when a ship has been detained by an inspector or harbor-master, following the commission of an offence, on the direction of a District Justice the master of the ship shall remain on board and such other person as he may direct shall stay at a specified place in the State until proceedings have been adjudicated upon. Compensation shall be recoverable either by an award under the Arbitration Act, 1954 or as an award of damages. Section 30 provides that, on application of a prosecutor, a court may direct that the amount of the fine imposed in respect of an offence together with costs be paid out of the security to the Minister for the Marine.

Section 31 provides that, on application of a prosecutor, a court may order that a prosecutor be liable for costs incurred in relation to the investigation, detection and prosecution of an offence, including costs incurred in the carrying out of tests, examinations or analyses, and in the remuneration and other expenses of employees, consultants and advisers.

Section 32 is a standard provision relating to indictable offences committed by a body corporate. Section 33 provides for the collection and application of fines imposed viz. payment into Exchequer; sale of a ship, its equipment or stores where a fine is not duly paid; payment of all or part of a fine to defray expenses in removing pollution or making good damage done.

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