



Food and Environment Protection Act 1985

1985 CHAPTER 48

PART II

DEPOSITS IN THE SEA

Licensing

5 Requirement of licences for deposit of substances and articles in the sea etc.

Subject to the following provisions of this Part of this Act, a licence under this Part of this Act is needed—

- (a) for the deposit of substances or articles within United Kingdom waters, either in the sea or under the seabed—
 - (i) from a vehicle, vessel, aircraft, hovercraft or marine structure;
 - (ii) from a container floating in the sea; or
 - (iii) from a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea ;
- (b) for the deposit of substances or articles anywhere in the sea or under the sea-bed—
 - (i) from a British vessel, British aircraft, British hovercraft or British marine structure ; or
 - (ii) from a container floating in the sea, if the deposit is controlled from a British vessel, British aircraft, British hovercraft or British marine structure;
- (c) for the deposit of substances or articles anywhere with in British fishery limits, either in the sea or under the sea-bed—
 - (i) from a foreign vessel, foreign aircraft, foreign hovercraft or foreign marine structure which was loaded in the United Kingdom or United Kingdom waters with any of those substances or articles; or

- (ii) from a container floating in the sea which was loaded with any of those substances or articles in the United Kingdom or United Kingdom waters, if the deposit is controlled from a foreign vessel, foreign aircraft, foreign hovercraft or foreign marine structure ;
- (d) for the deposit of substances or articles anywhere under the sea-bed within British fishery limits from a vehicle which was loaded in the United Kingdom with any of those substances or articles ;
- (e) for the scuttling of vessels—
 - (i) in United Kingdom waters ;
 - (ii) anywhere at sea, if the scuttling is controlled from a British vessel, British aircraft, British hovercraft or British marine structure ; or
 - (iii) anywhere at sea within British fishery limits, if it is controlled from a foreign vessel, foreign aircraft, foreign hovercraft or foreign marine structure and the vessel scuttled was towed or propelled to the place where the scuttling takes place from the United Kingdom or United Kingdom waters ;
- (f) for the loading of a vessel, aircraft, hovercraft, marine structure or floating container in the United Kingdom or United Kingdom waters with substances or articles for deposit anywhere in the sea or under the sea-bed;
- (g) for the loading of a vehicle in the United Kingdom with substances or articles for deposit from that vehicle as mentioned in paragraph (a) or (d) above ; and
- (h) for the towing or propelling from the United Kingdom or United Kingdom waters of a vessel for scuttling anywhere at sea.

6 Requirement of licences for incineration at sea etc.

- (1) Subject to the following provisions of this Part of this Act, a licence is needed—
 - (a) for the incineration of substances or articles on a vessel or marine structure—
 - (i) in United Kingdom waters ;
 - (ii) anywhere at sea, if the incineration takes place on a British vessel or British marine structure ; or
 - (iii) anywhere at sea within British fishery limits, if the incineration takes place on a foreign vessel or foreign marine structure which was loaded in the United Kingdom or United Kingdom waters with any of those substances or articles ; and
 - (b) for the loading of a vessel or marine structure in the United Kingdom or United Kingdom waters with substances or articles for incineration anywhere at sea.
- (2) In this Act " incineration " means any combustion of substances and materials for the purpose of their thermal destruction.

7 Exemptions

- (1) The Ministers may jointly by order made by statutory instrument specify operations—
 - (a) which are not to need a licence; or
 - (b) which are not to need a licence if they satisfy conditions specified in the order.
- (2) The conditions that an order under this section may specify include conditions enabling a licensing authority to require a person to obtain the authority's approval before he does anything for which a licence would be needed but for the order.

- (3) Approval under subsection (2) above may be without conditions or subject to such conditions as the authority considers appropriate.
- (4) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

8 Licences

- (1) In determining whether to issue a licence a licensing authority—
 - (a) shall have regard to the need—
 - (i) to protect the marine environment, the living resources which it supports and human health ; and
 - (ii) to prevent interference with legitimate uses of the sea; and
 - (b) may have regard to such other matters as the authority considers relevant.
- (2) Without prejudice to the generality of subsection (1) above, where it appears to a licensing authority that an applicant for a licence has applied for the licence with a view to the disposal of the substances or articles to which it would relate, the authority, in determining whether to issue a licence, shall have regard to the practical availability of any alternative methods of dealing with them.
- (3) A licensing authority—
 - (a) shall include such provisions in a licence as appear to the authority to be necessary or expedient—
 - (i) to protect the marine environment, the living resources which it supports and human health; and
 - (ii) to prevent interference with legitimate uses of the sea; and
 - (b) may include in a licence such other provisions as the authority considers appropriate.
- (4) Without prejudice to the generality of subsection (3) above, a licensing authority—
 - (a) may include in any licence provisions requiring—
 - (i) that no operation authorised by the licence shall be carried out until the licensing authority has given such further consent to or approval of the operation as the licence may specify ; and
 - (ii) that automatic equipment shall be used for recording such information relating to any operation of deposit, scuttling or incineration mentioned in the licence as the licensing authority may specify; and
 - (b) may include in a licence which only authorises operations such as are mentioned in section 5(f) or (h) above or section 6(1)(b) above provisions requiring that any operation of deposit, scuttling or incineration which is mentioned in it shall take place at a specified site, whether in United Kingdom waters or not.
- (5) A licensing authority may require an applicant for a licence to supply such information and permit such examinations and tests as in the opinion of the authority may be necessary or expedient to enable the authority to decide whether a licence should be issued to the applicant and the provisions which any licence that is issued to him ought to contain.
- (6) Where automatic recording equipment is used in accordance with a provision included in a licence by virtue of subsection (4) (a) above, any record produced by means of

the equipment shall, in any proceedings under this Part of this Act, be evidence, and in Scotland sufficient evidence, of the matters appearing from the record.

- (7) A licensing authority may require an applicant for a licence, on making his application, to pay a reasonable fee in respect of the administrative expenses of processing his application.
- (8) A licensing authority may also require an applicant for a licence to pay a further reasonable fee towards the expense—
- (a) of carrying out any examinations and tests which in the opinion of the authority are necessary or expedient to enable the authority to decide—
 - (i) whether to issue a licence to the applicant; and
 - (ii) the provisions which any licence issued to him ought to include;
 - (b) of checking the manner in which operations for which a licence is needed have been or are being conducted; and
 - (c) of monitoring the effect of such operations.
- (9) Fees under this section shall be determined on principles settled by the Ministers with the consent of the Treasury and after consultation with organisations appearing to the Ministers to represent persons who are likely to apply for licences.
- (10) A licensing authority may vary or revoke a licence which the authority has issued if it appears to the authority that there has been a breach of any of its provisions.
- (11) A licensing authority may vary or revoke a licence which the authority has issued if it appears to the authority that the licence ought to be varied or revoked—
- (a) because of a change in circumstances relating to the marine environment, the living resources which it supports or human health ; or
 - (b) because of increased scientific knowledge relating to any of those matters ; or
 - (c) for any other reason that appears to the authority to be relevant.
- (12) Schedule 3 to this Act shall have effect.

Offences relating to licensing system etc.

9 Offences relating to licensing system.

- (1) Subject to subsections (3) to (7) below, a person who—
- (a) except in pursuance of a licence and in accordance with its provisions, does anything for which a licence is needed; or
 - (b) causes or permits any other person to do any such thing except in pursuance of a licence and in accordance with its provisions,
- shall be guilty of an offence.
- (2) A person who for the purpose of procuring the issue of a licence, or in purporting to carry out any duty imposed on him by the provisions of a licence—
- (a) makes a statement which he knows to be false in a material particular;
 - (b) recklessly makes a statement which is false in a material particular; or
 - (c) intentionally fails to disclose any material particular,
- shall be guilty of an offence.

- (3) Subject to subsection (4) below, it shall be a defence for a person charged with an offence under subsection (1) above in relation to any operation to prove—
- (a) that the operation was carried out for the purpose of securing the safety of a vessel, aircraft, hovercraft or marine structure or of saving life; and
 - (b) that he took steps within a reasonable time to inform one or other of the Ministers—
 - (i) of the operation;
 - (ii) of the locality and circumstances in which it took place ; and
 - (iii) of any substances or articles concerned.
- (4) A person does not have the defence provided by subsection (3) above if the court is satisfied—
- (a) that the operation—
 - (i) was not necessary for any purpose mentioned in paragraph (a) of that subsection ; and
 - (ii) was not a reasonable step to take in the circumstances ; or
 - (b) that it was necessary for one of those purposes but the necessity was due to the fault of the defendant.
- (5) It shall be a defence for a person charged with an offence under subsection (1) above in relation to any operation—
- (a) which falls within section 5(b) or (e)(ii) or 6(1)(a)(ii) above; and
 - (b) which was carried out outside United Kingdom waters,
- to prove that subsections (6) and (7) below are satisfied in respect of that operation.
- (6) This subsection is satisfied—
- (a) in respect of an operation falling within section 5(b) above, if the vessel, aircraft, hovercraft, marine structure or container (as the case may be) was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or articles deposited ;
 - (b) in respect of an operation falling within section 5(e)(ii) above, if the vessel scuttled was towed or propelled from a Convention State or the national or territorial waters of a Convention State to the place where the scuttling was carried out; or
 - (c) in respect of an operation falling within section 6(1)(a)(ii) above, if the vessel or marine structure on which the incineration took place was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or articles incinerated.
- (7) This subsection is satisfied in respect of an operation if the operation took place in pursuance of a licence issued by the responsible authority in the Convention State concerned and in accordance with the provisions of that licence.

10 Power to take remedial action.

- (1) Either of the Ministers may carry out any operation which appears to him to be necessary or expedient for the purpose of protecting the marine environment, the living resources which it supports and human health, or of preventing interference with legitimate use of the sea, in any case where anything for which a licence is needed appears to have been done otherwise than in pursuance of a licence and in accordance with its provisions.

- (2) If either of the Ministers carries out an operation under subsection (1) above, he may recover any expenses reasonably incurred by him in carrying it out from any person who has been convicted of an offence in consequence of the act or omission which made it appear to the Minister to be necessary or expedient to carry out the operation.

Enforcement

11 Powers of officers

- (1) Either of the Ministers may authorise any person, subject to such limitations as may be specified in the instrument authorising him, to enforce this Part of this Act; and the following provisions of this Act shall be construed, in reference to a person so authorised, as subject to any such limitations.
- (2) Subject to the following provisions of this Act, a person so authorised may enter
- (a) land and vehicles in the United Kingdom ;
 - (b) foreign vessels, foreign aircraft, foreign hovercraft and foreign marine structures in the United Kingdom or within British fishery limits ;
 - (c) British vessels, British aircraft, British hovercraft and British marine structures, wherever they may be,
- if he has reasonable grounds for believing that any substances or articles intended to be deposited in the sea or under the seabed or incinerated on a vessel or marine structure at sea are or have been present there.
- (3) A person so authorised may board—
- (a) any vessel within British fishery limits ; and
 - (b) any British vessel wherever it may be,
- if it appears to him that it is intended to be scuttled.
- (4) A person so authorised shall not enter premises used only as a dwelling for the purpose of enforcing this Part of this Act.
- (5) Schedule 2 to this Act shall have effect with respect to persons authorised to enforce this Part of this Act.

12 Enforcement of Conventions

- (1) The Ministers may jointly by order made by statutory instrument—
- (a) declare that any procedure which has been developed for the effective application of the London Convention or the Oslo Convention and is specified in the order is an agreed procedure as between Her Majesty's Government in the United Kingdom and the Government of any Convention State so specified ; and
 - (b) specify any of the powers conferred by this Act for the purpose of enforcing this Part of this Act as a power that may be exercised, by such persons in such circumstances and subject to such conditions or modifications as may be specified, for the purpose of enforcing that procedure.
- (2) A person who exercises any powers by virtue of an order under this section shall have the same rights and liabilities in relation to their exercise that a person authorised under

section 11 above would have in relation to the exercise of any powers for the purpose of enforcing this Part of this Act.

- (3) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Miscellaneous

13 Powers of Ministers to test and to charge for testing

- (1) At the request of any person either of the Ministers may conduct tests for the purpose of ascertaining the probable effect on the marine environment and the living resources which it supports of using for the purpose of treating oil on the surface of the sea any substance produced for that purpose.
- (2) If either of the Ministers conducts any tests under this section, he may recover any expenses reasonably incurred by him in conducting them from any person at whose request they were conducted.

14 Duty of licensing authority to keep register of licences

Each licensing authority shall compile and keep available for public inspection free of charge at reasonable hours a register containing—

- (a) in respect of each licence issued by the authority for an operation such as is mentioned in section 5(a), (b), (c), (d), (f) or (g) or section 6 above, the particulars specified in Part I of Schedule 4 to this Act; and
- (b) in respect of each licence so issued for an operation such as is mentioned in section 5(e) or (h) above, the particulars specified in Part II of that Schedule,

and shall furnish a copy of the entry relating to any such licence to any person on payment by him of such reasonable fee as the authority may with the consent of the Treasury determine.

15 Repeal of Dumping at Sea Act 1974, consequential amendments and transitional provisions

—The Dumping at Sea Act 1974 is hereby repealed.

- (2) Notwithstanding that repeal, Her Majesty's Government in the United Kingdom may continue to make payments to the international organisations.
- (3) In each of the enactments to which this subsection applies for the words " the Dumping at Sea Act 1974 " there shall be substituted the words " Part II of the Food and Environment Protection Act 1985 ".
- (4) The enactments to which subsection (3) above applies are—
- (a) sections 31(2)(6)(iii) and 32(4)(b) of the Control of Pollution Act 1974;
- (b) section 45(3) of the Petroleum and Submarine Pipe-lines Act 1975;
- (c) section 16 of the Deep Sea Mining (Temporary Pro visions) Act 1981.
- (5) In section 18 of the Offshore Petroleum Development (Scotland) Act 1975—
- (a) paragraph (h) shall cease to have effect; and
- (b) the following paragraph shall be added after paragraph (i)—

Status: This is the original version (as it was originally enacted).

“(j) Part II of the Food and Environment Protection Act 1985.”.

(6) The following paragraph shall be substituted for section 42(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976—

“(d) Part II of the Food and Environment Protection Act 1985 (which relates to deposits in the sea).”.

(7) Without prejudice to section 17(2) of the Interpretation Act 1978 (repeal and re-enactment) any licence under the Dumping at Sea Act 1974 which is in force immediately before the commencement of this Part of this Act—

- (a) shall have effect as from the commencement of this Part of this Act as if granted under this Part of this Act; and
- (b) in the case of a licence for a specified period, shall remain in force, subject to the provisions of this Part of this Act, for so much of that period as falls after the commencement of this Part of this Act.