

New Zealand.



ANALYSIS

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1926, No. 27.

Title.

AN ACT to make Provision against the Discharge or Escape of Oil into Territorial Waters. [31st August, 1926.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement

1. This Act may be cited as the Oil in Territorial Waters Act, 1926, and shall come into force on the first day of April, nineteen hundred and twenty-seven.

Interpretation.

12 & 13 Geo. V,
c. 39, s. 8

2. In this Act, unless the context otherwise requires,—

“Harbour” and “Harbour Board” have the same meanings respectively as in the Harbours Act, 1923:

“Harbourmaster” includes any person appointed by a Harbour Board for the purpose of enforcing the provisions of this Act:

“Master” when used in relation to any vessel means the person having the command or charge of the vessel for the time being:

“Marine Department” means the Marine Department constituted by the Shipping and Seamen Act, 1908:

“Minister” means the Minister of Marine:

“Oil” means oil of any description, and includes spirit produced from oil and oil mixed with water:

“Owner” when used in relation to any vessel includes any agent in New Zealand of the owner and any charterer to whom a vessel may be demised:

“Ship” includes every description of vessel used in navigation or in any way kept or used as a hulk or storeship or as an oil-separating barge :

“Territorial waters” means any bay, gulf, harbour, river, lake, or other water included within the territorial limits of New Zealand.

3. (1.) If any oil is discharged or allowed to escape, whether directly or indirectly, into any territorial waters—

- (a.) From any ship ; or
- (b.) From any place on land ; or
- (c.) From any apparatus used for the purpose of transferring oil from or to any ship to or from any other ship or to or from any place—

Penalty for discharge of oil into territorial waters.

Cf. 12 & 13 Geo. V, c. 39, s. 1

the owner or master of the ship from which the oil is discharged or allowed to escape, the occupier of the land, or the person having charge of the apparatus, as the case may be, shall be guilty of an offence, and shall in respect of each such offence be liable on summary conviction to a fine of five hundred pounds, and in the case of a continuing offence to a further fine of the same amount for every day or part of a day during which such offence continues, and shall also be liable to pay such amount as the Magistrate may assess in respect of the cost of removing such oil from such waters or from any foreshore or any harbour-works.

(2.) All moneys payable in respect of the cost of removing oil as aforesaid shall, where the same are payable in respect of any harbour, or any harbour-works, or any part of the foreshore vested in the Harbour Board, be paid to the Harbour Board, and in any other case shall be paid into the Public Account to the credit of the Consolidated Fund.

(3.) It shall be a good defence to proceedings against the owner or master of a ship for an offence under subsection one hereof if such owner or master proves that the escape or discharge of the oil was due to or made necessary because of a collision, and that subsequent to such collision all reasonable means were taken to prevent such escape or render such discharge unnecessary.

4. (1.) If the Magistrate by whom any person is convicted of an offence under the last preceding section in respect of the discharge or escape of oil from a ship, or any other Magistrate, is satisfied that damage to any property has been or is likely to be caused by such discharge or escape of oil, he may, upon its being shown to him by any applicant that none of the owners of the ship resides in New Zealand, issue an order directed to any officer of Customs or other officer named by the Magistrate, requiring him to detain the ship until such time as security, to be approved by the Magistrate, is given to abide the event of any action, suit, or other legal proceedings that may be instituted in respect of such damage to property, and to pay all costs, damages, and other moneys that may be awarded therein.

Detention of ships in cases of damage to property by discharge of oil.

Cf. 1909, No. 36, s. 44

(2.) On any such order being made the officer of Customs or other officer to whom the order is directed shall detain the ship accordingly, and the provisions of the Shipping and Seamen Act, 1908, as to the detention of ships (including the penal provisions thereof) shall apply accordingly.

(3.) In any legal proceedings in relation to such damage as aforesaid the person giving security shall be made defendant, and shall be stated to be the owner of the ship, and the production of the order of the Magistrate made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

(4.) If the owner of a ship is a corporation it shall for the purposes of this section be deemed to reside in New Zealand if it has an office in New Zealand at which service of writs can be effected.

(5.) The procedure under this section shall be such as the Magistrate to whom the application is made deems appropriate to the case.

Master of overseas vessel carrying oil to notify Harbour-master at New Zealand port

5. (1.) The master of every ship arriving in New Zealand from overseas carrying oil in bulk as cargo or fuel shall,—

(a.) If the ship is equipped with wireless telegraphy, send by such means to the Harbourmaster at the first port of call in New Zealand, so as to be delivered to him not later than twelve hours before the arrival of the ship thereat, notice of the fact that oil is being carried as aforesaid; or

(b.) If the ship is not so equipped, cause such a notice to be delivered to the Harbourmaster forthwith on the arrival of the ship at such first port of call; and

(c.) Before proceeding from any port in New Zealand to any other such port, send a similar notice to the Harbourmaster at such last-mentioned port by such means as will ensure its being delivered at least twelve hours before the arrival of the ship.

(2.) If the master of any ship fails to comply with the requirements of this section he commits an offence, and is liable to a fine of fifty pounds. In any proceedings for an offence against this section it shall be a good defence to prove that notice to the effect required by this section was given to the Harbourmaster by the owner of the ship, or by any other person, within the time limited by this section.

Liquid contained in space used for carriage of oil deemed oil for purposes of Act. 12 & 13 Geo. V, c. 39, s. 4

6. (1.) Where oil has been contained in any tanks or other spaces in a ship, any liquid discharged or allowed to escape from those tanks or spaces shall, unless it is proved that the tanks or spaces have been cleaned of oil or that the liquid has been freed from oil by means of a separating apparatus, be deemed to be oil within the meaning of this Act.

(2.) In the case of proceedings against any person other than the master of a ship, evidence of the matters aforesaid may be given by means of a certificate signed by the master, and if the master of a ship gives any certificate under this section which is to his knowledge false or in any material particular misleading he shall on summary conviction be liable in respect of each offence to a fine of fifty pounds.

(3.) In this section the term "master of a ship" means the person named as the master in the agreement with the crew

Cost of removing oil to constitute a debt due to the Crown or Harbour Board. Cf. 1923, No. 40, s. 176

7. All expenditure incurred by the Minister or a Harbour Board, as the case may be, for the removal from any territorial waters or any foreshore or harbour-works of any oil discharged or which has escaped into such waters shall be deemed to be a debt due to the Crown or to such Harbour Board by the owner of the ship, or, as the case may be, the occupier of the land or the owner of the apparatus, from which such oil was discharged or has escaped, and may be recovered accordingly.

8. Where any person is convicted of the offence of having in contravention of the provisions of this Act discharged or allowed to escape any oil into any territorial waters, the Court before which he is convicted may, on the application of the prosecutor, order that the whole or any part of the fine imposed in respect of the offence shall be paid to such person as the Court may direct for the purpose of being applied by him in or towards meeting any expenses incurred or to be incurred in the removal of the oil so discharged or allowed to escape, or in or towards making good any damage resulting from the discharge or escape of such oil.

Application of
fines.
12 & 13 Geo. V,
c. 39, s. 5

9. (1.) The Minister may, if he thinks fit, either at his own instance or at the instance of any Harbour Board, appoint any officer of the Marine Department or other competent person to inspect any ship being in any territorial waters; and any person so appointed, or the Harbourmaster of the harbour in which the ship is, may at all reasonable times enter upon the ship and examine the measures adopted to prevent the escape of oil.

Power to inspect
premises and ships.
Ibid., s. 6

(2.) If the Minister has reason to suspect that oil is escaping or has escaped, whether directly or indirectly, into any territorial waters from premises adjacent to or in the neighbourhood of those waters, the Minister may, if he thinks fit, appoint any officer of the Marine Department or other competent person to inspect the premises; and any officer or person so appointed may at all reasonable times enter upon and inspect the premises.

(3.) The power conferred on the Minister by the last preceding subsection may be exercised by a Harbour Board in respect of premises adjacent to or in the neighbourhood of the harbour under its control.

(4.) If any person obstructs or interferes with any person authorized to enter on any premises or ships under this section, he shall, on summary conviction, be liable in respect of each offence to a fine of ten pounds.

10. (1.) Where an offence under this Act is alleged to have been committed by the master of a ship who thereafter departs from New Zealand before the expiration of the period within which proceedings for the offence might have been instituted against him, proceedings for the offence may, notwithstanding anything in the Justices of the Peace Act, 1908, be instituted against him at any time within two months next after the date on which he first returns to New Zealand.

Legal proceedings.
Ibid., s. 7

(2.) For the purpose of any proceedings for an offence under this Act the offence may be treated as having been committed either at the place at which it was actually committed or at any place in which the person charged with the offence may at any time be.

(3.) Notwithstanding that clearance has been granted to any ship under the Customs Act, 1913, any officer of Customs may, if he has reason to believe that an offence against this Act has been committed by reason of a discharge or escape of oil from such ship, detain such ship in territorial waters:

Provided that no ship shall be detained pursuant to this subsection for a longer period than forty-eight hours unless within such period proceedings in respect of such offence are instituted against the owner or master.

(4.) All the provisions of the Shipping and Seamen Act, 1908, relating to the detention of ships (including the penal provisions thereof) shall, with the necessary modifications, apply to the detention of a ship pursuant to the last preceding subsection.

(5.) Where a fine imposed by any Court in proceedings against the owner or master of a vessel for an offence under this Act is not paid at the time and in manner ordered by the Court, the Court shall, without prejudice to any other powers of the Court 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.

(6.) Proceedings for an offence under this Act shall not be instituted in the case of an offence committed in or in relation to the waters of a harbour except by the Harbour Board, and in any other case except by a person authorized in that behalf by the Minister, and shall be heard before a Stipendiary Magistrate alone.
