

Merchant Shipping (Pollution) Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Transport, are published separately as Bill 68 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Darling has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Merchant Shipping (Pollution) Bill [HL] are compatible with the Convention rights.

Merchant Shipping (Pollution) Bill [HL]

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[NOTE: The words marked in bold type were inserted by the Lords to avoid questions of privilege.]

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TO

Enable effect to be given to the Supplementary Fund Protocol 2003 and to future revisions of the international arrangements relating to compensation for oil pollution from ships; to enable effect to be given to Annex VI of the MARPOL Convention; and to amend section 178(1) of the Merchant Shipping Act 1995.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Power to give effect to revisions of the international arrangements relating to compensation for oil pollution from ships

(1) In this section—

- (a) “the Supplementary Fund Protocol” means the Protocol of 2003 to the Fund Convention (which among other things establishes the Supplementary Fund for pollution damage claims and provides for contributions to, and payments of compensation by, that Fund); and 5
- (b) “the Liability Convention” and “the Fund Convention” have the same meaning as in section 172 of the Merchant Shipping Act 1995 (c. 21).

(2) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to— 10

- (a) the Supplementary Fund Protocol;
- (b) any international agreement relating to compensation for oil pollution from ships which modifies, or replaces the whole or any part of, the Liability Convention, the Fund Convention or the Supplementary Fund Protocol. 15

(3) An Order in Council may not make provision taking effect before ratification by the United Kingdom of the international agreement to which it relates unless the provision appears to Her Majesty to be necessary to enable the United Kingdom to meet a requirement imposed on a state wishing to ratify the agreement. 20

- (4) Without prejudice to the generality of subsection (2), an Order in Council may in particular –
- (a) require contributions to be paid to an international compensation fund in accordance with the international agreement to which the Order relates; 5
 - (b) authorise the Secretary of State to make an order by statutory instrument;
 - (c) provide for the delegation of functions exercisable by virtue of the Order;
 - (d) create summary offences or offences triable either way (but subject to the limitation that the Order may not authorise the imposition, on conviction on indictment, of a term of imprisonment exceeding two years); 10
 - (e) make provision with respect to the extra-territorial operation of the Order; 15
 - (f) make provision with respect to the application of the Order in relation to the Crown.
- (5) An Order in Council may –
- (a) make different provision for different circumstances;
 - (b) modify or apply (with or without modifications) provisions of the Merchant Shipping Act 1995 (c. 21) or any other enactment or instrument; 20
 - (c) make incidental, supplemental, consequential or transitional provision;
 - (d) make provision extending to any relevant British possession (within the meaning of the Merchant Shipping Act 1995). 25
- (6) No recommendation may be made to Her Majesty to make an Order in Council unless –
- (a) a draft of the Order has been laid before and approved by a resolution of each House of Parliament;
 - (b) the Order relates only to the Supplementary Fund Protocol; or 30
 - (c) the Order extends only to a possession mentioned in subsection (5)(d).
- (7) A statutory instrument containing –
- (a) an Order in Council which relates only to the Supplementary Fund Protocol (not being an Order which extends only to a possession mentioned in subsection (5)(d)), or 35
 - (b) an order made by virtue of subsection (4)(b),
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section “Order in Council” means an Order in Council under subsection (2). 40

2 Power to give effect to Annex VI of the MARPOL Convention

- (1) Section 128 of the Merchant Shipping Act 1995 (prevention of pollution from ships etc) is amended as follows.
- (2) In subsection (1), after paragraph (d) there is inserted –
- “(da) the Protocol to amend the Convention for the Prevention of Pollution from Ships signed in London on 26 September 1997 45

(which added to it Annex VI containing regulations for the prevention of air pollution from ships);”.

- (3) In subsections (1)(e), (5) and (9)(a) for “(d)” there is substituted “(da)”.

3 Limitation period for claims against the International Fund

In section 178(1) of the Merchant Shipping Act 1995 (c. 21) (extinguishment of claims), for “claim against the Fund arose” there is substituted “damage occurred”. 5

4 Short title, commencement and extent

- (1) This Act may be cited as the Merchant Shipping (Pollution) Act 2005.
- (2) Sections 1(2)(b) and 3 come into force at the end of the period of two months beginning with the day on which this Act is passed. 10
- (3) The amendment made by section 3 is capable of being extended to any relevant British possession under section 315 of the Merchant Shipping Act 1995.
- (4) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.** 15

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