

SCHEDULES

SCHEDULE 14

Section 148.

AMENDMENTS OF THE PREVENTION OF OIL POLLUTION ACT 1971

- 1 The Prevention of Oil Pollution Act 1971 shall be amended as follows.
- 2 In section 19 (prosecutions), after subsection (4), there shall be inserted the following subsection—

“(4A) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under section 2(2A) of this Act alleged to have been committed by the company as the owner of a vessel shall be treated as duly served on that company if the document is served on the master of the vessel; and any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Act (whether or not in pursuance of the foregoing provisions of this subsection) shall, for that purpose, have the right to go on board the vessel in question.

(4B) In subsection (4A) of this section a “foreign company” means a company or body which is not one to whom any of the following provisions applies—

- (a) sections 695 and 725 of the Companies Act 1985;
- (b) Articles 645 and 673 of the Companies (Northern Ireland) Order 1986,

so as to authorise the service of the document in question under any of those provisions.”

- 3 After that section there shall be inserted the following section—

“19A Power to detain vessels

- (1) Where a harbour master has reason to believe that the master or owner of a vessel has committed an offence under section 2(2A) of this Act by the discharge from the vessel of oil, or a mixture containing oil, into the waters of the harbour, the harbour master may detain the vessel.
- (2) Subsections (1) and (2) of section 692 of the Merchant Shipping Act 1894 (enforcing detention of ship) shall apply in relation to a vessel detained under subsection (1) of this section as they apply in relation to a ship detained under that Act but as if—
 - (a) in subsection (1) (penalties where ship proceeds to sea while subject to detention)—
 - (i) for the words from “any commissioned officer” to “and if” there were substituted the word “and”; and
 - (ii) for the reference to competent authority there were substituted a reference to the harbour authority; and

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- (b) in subsection (2) (penalties where a ship so proceeds to sea when any officer authorised to detain the ship is on board), for any reference to any officer authorised to detain the ship, or any surveyor or officer of the Secretary of State or any officer of Customs and Excise there were substituted a reference to the harbour master or any person acting on his behalf.
- (3) Where a harbour master detains a ship other than a United Kingdom ship (within the meaning of section 21(2) of the Merchant Shipping Act 1979) under this section he shall immediately notify the Secretary of State who shall then inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.
- (4) A harbour master who exercises the power conferred by subsection (1) of this section shall immediately release the vessel—
 - (a) if no proceedings for the offence in question are instituted within the period of 7 days beginning with the day on which the vessel is detained;
 - (b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted;
 - (c) if either—
 - (i) the sum of £55,000 is paid to the harbour authority by way of security, or
 - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than £55,000 is given to the harbour authority,by or on behalf of the master or owner; or
 - (d) where the master or owner is convicted of the offence, if any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid.
- (5) The harbour authority shall repay any sum paid in pursuance of subsection (4)(c) of this section or release any security so given—
 - (a) if no proceedings for the offence in question are instituted within the period of 7 days beginning with the day on which the sum is paid; or
 - (b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted.
- (6) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (4)(c) of this section and the master or owner is convicted of the offence in question, the sum so paid or the amount made available under the security shall be applied as follows—
 - (a) first in payment of any costs or expenses ordered by the court to be paid by the master or owner; and
 - (b) next in payment of any fine imposed by the court;and any balance shall be repaid to the first mentioned person.
- (7) Any reference in this section to a harbour master or a harbour authority shall, where the harbour in question consists of or includes the whole or any part of a dockyard port within the meaning of the Dockyard Ports Regulation Act

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1865, be construed as including a reference to the Queen's harbour master for the port.

(8) For the purposes of this section in its application to England and Wales and, subject to section 30(4A) of this Act, in its application to Northern Ireland—

- (a) proceedings for an offence are instituted—
 - (i) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of the offence,
 - (ii) when a person is charged with the offence after being taken into custody without a warrant,
 - (iii) when a bill of indictment is preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933;

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times; and

- (b) proceedings for an offence are concluded without the master or owner being convicted on the occurrence of one of the following events—
 - (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the master or owner;
 - (iii) the quashing of the master or owner's conviction for the offence;
 - (iv) the grant of Her Majesty's pardon in respect of the master or owner's conviction for the offence.

(9) For the purposes of this section in its application to Scotland—

- (a) proceedings for an offence are instituted—
 - (i) on the granting by the sheriff of a warrant in respect of the offence on presentation of a petition under section 12 of the Criminal Procedure (Scotland) Act 1975;
 - (ii) when, in the absence of a warrant or citation, the master or owner is first brought before a court competent to deal with the case;
 - (iii) when, in a case where he is liberated upon a written undertaking in terms of section 18(2)(a), 294(2)(a) or 295(1)(a) of the Criminal Procedure (Scotland) Act 1975, the master or owner appears at the specified court at the specified time;
 - (iv) when, in a case mentioned in paragraph (iii) above where the master or owner fails to appear at the specified court at the specified time, the court grants warrant for his apprehension;
 - (v) when summary proceedings are commenced in terms of section 331(3) of the Criminal Procedure (Scotland) Act 1975; and

- (b) proceedings for an offence are concluded without the master or owner being convicted on the occurrence of one of the following events—

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- (i) the court makes a finding of not guilty or not proven against the master or owner in respect of the offence;
- (ii) the proceedings are expressly abandoned (other than *pro loco et tempore*) by the prosecutor or are deserted simpliciter;
- (iii) the conviction is quashed;
- (iv) the accused receives Her Majesty's pardon in respect of the conviction.

(10) This section shall not apply in relation to any vessel of Her Majesty's navy or to any Government ship (within the meaning of section 80 of the Merchant Shipping Act 1906)."

4 In section 20(1) (power of court to direct amount of unpaid fine to be levied by distress or poinding and sale of vessel) after the words "is not paid" there shall be inserted the words ", or any costs or expenses ordered to be paid by him are not paid,".

5 In section 24(2) (application of Act to Government ships), for the words "and subsection (4) of section 16" there shall be substituted the words ", subsection (4) of section 16 and subsection (10) of section 19A".

6 In section 25(1) (power to extend provisions of Act to Isle of Man, Channel Islands etc), after the words "other than section 3" there shall be inserted the words "or 19A".

7 In section 30 (provisions as to Northern Ireland), after subsection (4), there shall be inserted the following subsection—

"(4A) In its application to proceedings in Northern Ireland, subsection (8)(a) of section 19A of this Act shall have effect as if—

(a) in sub-paragraph (i), for the references to section 1 of the Magistrates' Courts Act 1980 there were substituted a reference to Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981; and

(b) for sub-paragraph (iii) there were substituted—

"(iii) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969;".