



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 326

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 150

1991

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 24 of 1991: Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1991.

Act No. 24, 1991

**PREVENTION AND COMBATING OF
POLLUTION OF THE SEA BY OIL
AMENDMENT ACT, 1991**

EXPLANATORY NOTE:

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- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.
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ACT

To amend the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, in order to adjust certain provisions in view of the independence of Namibia; to abolish the Oil Pollution Prevention Fund; to increase the fines that may be imposed in respect of offences; and to provide for incidental matters.

(Signed by the President on 11 December 1991)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 1
of Act 6 of 1981.

1. Section 1 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981 (hereinafter referred to as the principal Act), is hereby amended -

- (a) by the substitution in subsection (1) for the definition of "Convention" of the following definition:

" 'Convention' means the International Convention on Civil Liability for Oil Pollution Damage, signed in Brussels on 29 November 1969 and published for general information under General Notice No. 58 of 1978 in *Government Gazette* No. 5867 of 27 January 1978, and includes any amendments thereof and additions thereto signed, ratified or acceded to by the Republic of [South Africa] Namibia;"

- (b) by the deletion in subsection (1) of the definition of "Director-General";

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(c) by the deletion in subsection (1) of the definition of "Fund";

(d) by the substitution in subsection (1) for the definition of "Minister" of the following definition:

"Minister" means the Minister of [Transport Affairs] Works, Transport and Communication;

(e) by the substitution in subsection (1) for the definition of "natural oil" of the following definition:

"natural oil" means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust, but does not include coal or bituminous shales or other stratified deposits from which oil can be obtained by destructive distillation, or gas arising from marsh or other surface deposits;

(f) by the insertion in subsection (1) after the definition of "owner" of the following definition:

"Permanent Secretary" means the Permanent Secretary: Works, Transport and Communication;

(g) by the substitution in subsection (1) for the definition of "principal officer" of the following definition:

"principal officer" means the officer in charge of the office of the Directorate Maritime Affairs of the Ministry of Works, Transport and Communication at any port;

(h) by the substitution in subsection (1) for the definition of "prohibited area" of the following definition:

"prohibited area" means the territorial sea of Namibia and that portion of the exclusive economic zone, as defined in section 4 of the Terri-

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torial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990), situated within a distance of fifty nautical miles from the low-water mark, and includes the sea between the high-water and low-water marks and internal waters as defined in section 1 of the Marine Traffic Act, 1981;”;

- (i) by the substitution in subsection (1) for the definition of “sea” of the following definition:

“ ‘sea’ means the water and the bed of the sea and includes the land between the high-water and low-water marks; and

- (j) by the substitution in subsection (1) for the definition of “territorial waters of the Republic” of the following definition:

“ ‘territorial sea of Namibia’ means the territorial sea of Namibia, as defined in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990);”.

Amendment of section 7
of Act 6 of 1981.

2. The following section is hereby substituted for section 7 of the principal Act:

“Inspection
of ship or
tanker and of
records, and
taking of
samples of
oil.

7. Any person authorized thereto by the Minister and any member of the **[South African Police or of the police force of the South African Railways and Harbours Administration]** Namibian Police Force may go on board any ship or tanker in any part of the prohibited area to ascertain whether any document required by this Act to be carried on board such ship or tanker is so carried on board or, if **[he]** such authorized person has reasonable grounds for believing that any provision of this Act has been or is being contravened in connection with such ship or tanker, may so go on board and inspect such ship or tanker or any part or cargo thereof, inspect and make copies of any documents or records kept in respect of such ship or tanker or in respect of its cargo or oil on board thereof, take

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samples of any oil on board such ship or tanker, take soundings of tanks, spaces and bilges and test any equipment on board such ship or tanker which is intended for use in preventing a discharge of oil from such ship or tanker.”.

Amendment of section 8
of Act 6 of 1981.

3. Section 8 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) as little damage, loss or inconvenience as possible shall be caused in the exercise of the powers conferred by this subsection, and such compensation as may be agreed upon or, failing agreement, determined by a competent court, shall be paid from [the Fund] moneys appropriated by law for any damage, loss or inconvenience so caused.”.

Amendment of section 9
of Act 6 of 1981.

4. Section 9 of the principal Act is hereby amended -

(a) by the substitution for subparagraph (ii) of paragraph (b) of subsection (2) of the following subparagraph:

“(ii) an amount deemed by the [Director-General] Permanent Secretary to be sufficient to compensate [the South African National Foundation for the Conservation of Coastal Birds, an] any organization registered under the National Welfare Act, 1965 (Act No.79 of 1965), as a welfare organization, or any similar organization approved by the Minister, and which has as its aim the conservation of the sea and animal life along the coast, for expenses incurred in rescuing, conveying, treating, feeding, cleaning and rehabilitating coastal birds polluted by oil discharged from the ship, tanker or offshore installation in question.”;
and

(b) by the substitution for paragraph (a) of subsection (8) of the following paragraph:

“(a) ‘unit of account’ means a Special Drawing Right as defined by the International Mo-

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netary Fund, and the value of such Special Drawing Right in [**South African**] Namibian currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund and which is in effect at the time when payment is made, or, in the event of an application in terms of section 12(1), at the time when such application is considered by the court;”.

Amendment of section 12
of Act 6 of 1981.

5. Section 12 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) For the purposes of this section ‘court’ means [**any division of the Supreme Court of South Africa**] the High Court of Namibia.”.

Amendment of section 19
of Act 6 of 1981.

6. Section 19 of the principal Act is hereby amended -

(a) by the substitution for the proviso to subparagraph (i) of paragraph (a) of subsection (1) of the following proviso:

“Provided that such detention shall not exceed a period of seven days or such further period as the [**division of the Supreme Court of South Africa having jurisdiction**] High Court of Namibia may authorize; and”;

(b) by the substitution for the words preceding subparagraph (aa) of paragraph (a)(ii) of subsection (1) of the following words:

“(ii) on the authority of the [**said division of the Supreme Court of South Africa**] High Court of Namibia and subject to its directions-”;

(c) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) on the authority of the [**said division of the Supreme Court of South Africa**] High Court of Namibia and subject to its directions, cause to be seized and realized in satisfaction of those costs, any goods of such owner on such ship or ships.”; and

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- (d) by the substitution for subsection (2) of the following subsection:

“(2) The Minister shall cause any ship or goods detained or seized in terms of subsection (1) to be released forthwith from detention or seizure if the owner concerned pays the costs, makes the deposit or furnishes the guarantee referred to in that section or by virtue of a direction contemplated in section 12(2) deposits an amount with the Master [**concerned**] of the High Court of Namibia or furnishes the said Master with a guarantee as contemplated in that section before the realization, in terms of the said subsection, of the ship or goods in question.”

Amendment of section 20 of Act 6 of 1981, as amended by section 1 of Act 63 of 1987.

7. Section 20 of the principal Act is hereby amended -

- (a) by the substitution for subsection (1) of the following subsection:

“(1) [**Any division of the Supreme Court of South Africa**] The High Court of Namibia, and within the limits of its jurisdiction as determined in section 29 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), but subject to the provisions of section 12(8), any magistrate's court, shall have jurisdiction in respect of all causes of action arising out of the provisions of this Act.”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) [**Any division of the Supreme Court of South Africa**] The High Court of Namibia, and within the limits of its jurisdiction as determined in section 92 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), any magistrate's court for a regional division, shall have jurisdiction in all criminal matters arising out of the provisions of this Act.”; and

- (c) by the substitution for subsection (3) of the following subsection:

“(3) No prosecution in respect of an offence under this Act shall be instituted except on the authority, which may be given in writing or

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otherwise, of the [attorney-general having jurisdiction in the area of the court in question] Prosecutor-General.”

Amendment of section 21 of Act 6 of 1981.

8. Section 21 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) outside a harbour as defined in [section 1(1) of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957),] section 1 of the National Transport Corporation Act, 1987 (Act 21 of 1987), or a fishing harbour as defined in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973), and within the prohibited area, render any ship having oil on board (whether as cargo or otherwise), or any tanker, incapable of sailing or manoeuvring under its own power;”

Repeal of section 26 of Act 6 of 1981, as amended by section 1 of Act 59 of 1985.

9. Section 26 of the principal Act is hereby repealed.

Amendment of section 27 of Act 6 of 1981.

10. Section 27 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 30 of Act 6 of 1981, as amended by section 2 of Act 63 of 1987.

11. Section 30 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any person convicted of an offence referred to in -

- (a) section 3(4), 8(2), 13(7), 24(5) or subsection (1)(a)(i), shall be liable to a fine not exceeding [one thousand rand] R10 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
- (b) subsection (1)(b)(iii), (b)(iv), (c)(i), (c)(ii), (c)(iii), or (c)(iv), shall be liable to a fine not exceeding [two thousand rand] R20 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;

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- (c) subsection (1)(a)(ii), shall be liable to a fine not exceeding [**five thousand rand**] R40 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
- (d) section 2(1) or 13(6) or subsection (1)(b)(i) or (b)(ii), shall be liable to a fine not exceeding [**twenty thousand rand**] R200 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”.

Substitution of certain expressions in Act 6 of 1981.

12. The principal Act is hereby amended -

- (a) by the substitution for the expression “Director-General”, wherever it occurs, of the expression “Permanent Secretary”;
- (b) by the substitution for the expression “territorial waters”, wherever it occurs, of the expression “territorial sea”; and
- (c) by the substitution for the expression “the Republic”, wherever it occurs, of the word “Namibia”.

Transitional provisions.

13. Anything done before the commencement of this Act under a provision of the principal Act shall be deemed to have been done under any such provision, as amended by this Act.

Short title.

14. This Act shall be called the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1991.