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PART II

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**The following Notification is published for general information by Command of
His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam.**

No. S 18

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

PREVENTION OF POLLUTION OF THE SEA ORDER, 2005

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

PREVENTION OF POLLUTION OF THE SEA ORDER, 2005

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

PART I

PRELIMINARY

Citation and long title.

1. (1) This Order may be cited as the Prevention of Pollution of the Sea Order, 2005.

(2) The long title of this Order is "An Order to give effect to the International Convention for the Prevention of Pollution from Ships, 1973, as modified and added to by the Protocol of 1978, and to other international agreements relating to the prevention, reduction and control of pollution of the sea and pollution from ships; to make provision generally for the protection of the marine environment and for the prevention, reduction and control of pollution of the sea and pollution from ships, and for matters related thereto".

Interpretation.

2. (1) In this Order, unless the context otherwise requires –

"appointed authority" means the Ports Department and any person appointed by the Minister for the purposes of this Order;

"Authority" means the Ports Department;

"Brunei Darussalam ship" means a ship registered under Part II of the Merchant Shipping Order, 2002 (S27/02);

"Brunei Darussalam waters" means the following waters –

(a) the whole of the sea within the seaward limits of the territorial waters of Brunei Darussalam: and

(b) all other waters, including inland waters, which are within these limits and are subject to the ebb and flow of the ordinary tides;

"Convention" means the Convention of 1973 as modified and added to by the Protocol of 1978;

"Convention of 1973" means the International Convention for the Prevention of Pollution from Ships, including its protocols, annexes and appendices, which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2nd. November, 1973;

"country" includes a territory;

"Director" means the Director of Marine appointed under section 4 of the Merchant Shipping Order, 2002 (S27/02), and includes the Deputy Director of Marine;

"discharge", in relation to harmful substances or effluents containing such substances, means any release howsoever caused from a ship, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying but does not include —

(a) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on 13th. November, 1972;

(b) release of harmful substances directly arising from the exploration, exploitation and associated offshore processing of seabed mineral resources; or

(c) release of harmful substances for purposes of legitimate scientific research into pollution abatement or control;

"garbage" means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically except sewage originating from ships;

"harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control under this Order;

"in packaged form" means in an individual package or receptacle, including a freight container or a portable tank or tank container or tank vehicle or shipborne barge or other cargo unit containing harmful substances for shipment;

"inspector" means a person who –

(a) is a surveyor of ships; or

(b) is appointed as an inspector under section 117 of the Merchant Shipping Order, 2002 (S27/02);

"marine pollutant" means a substance which is identified as a marine pollutant in the International Maritime Dangerous Goods Code published by the International Maritime Organisation, as amended from time to time;

"MARPOL" refers to the Convention;

"MARPOL surveyor" means a surveyor appointed or registered by the Director or by or on behalf of the Government of a State Party to the Convention;

"master" includes every person, except a pilot, having command or charge of any ship;

"Minister" means the Minister of Communications;

"noxious liquid substance" means any substance which is prescribed by regulations as being a noxious liquid substance and which is subject to the provisions of Annex II of the Convention;

"oil" means petroleum in any form, including crude oil, fuel oil, sludge, oil refuse and refined products, other than petrochemicals which are prescribed by regulations as being subject to the provisions of Annex II of the Convention, and, without limiting the generality of the foregoing, includes the substances prescribed by regulations as being listed in Appendix I of Annex I of the Convention;

"oil residues" means any waste material consisting of, or arising from, oil or oily mixture;

"oil terminal" means any place having permanent means of loading or discharging oil, whether in bulk or package into or from any ship;

"oily mixture" means a mixture with an oil content of 15 parts or more in 1,000,000 parts of the mixture;

"owner", in relation to a ship, means the person registered as the owner of the ship or, in the absence of registration, the person owning the ship or the bareboat charterer of the ship; and, in the case of a ship owned

by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall include such State;

"plastics" includes, but is not limited to, synthetic ropes, synthetic fishing nets and plastic garbage bags;

"port" means any area in Brunei Darussalam declared to be a port under section 3 of the Ports Act (Chapter 144);

"prescribed" means prescribed by regulations made under this Order by the Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan;

"Protocol of 1978" means the Protocol relating to the Convention of 1973 which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th. February, 1978;

"reception facilities" means facilities which enable ships to discharge or deposit residues and mixtures, which residues and mixtures contain oil or noxious liquid substances;

"ship" means a vessel of any type operating in the marine environment and includes hydrofoil boats, air cushion vehicles, submersibles, floating craft and fixed or floating platforms;

"surveyor" means a person appointed to be a surveyor of ships or a radio surveyor under section 5 of the Merchant Shipping Order, 2002 (S 27/02);

"tank" means an enclosed space which is formed by the permanent structure of a ship and which is designed for the carriage of liquid in bulk;

"terminal" means any terminal, including an oil or gas terminal, jetty, pier or mono-buoy, and a yard or drydock, including the precincts thereof, in which vessels are constructed, reconstructed, repaired, refitted, finished or broken up;

"terminal operator" means a person or body of persons having the management of a terminal in Brunei Darussalam;

"trade effluent" means the solid or liquid waste of any trade, business or manufacture.

(2) For the purpose of any provision of this Order relating to the discharge of oil, oily mixture, refuse, garbage, waste matter, plastics, marine pollutant in

packaged form, noxious liquid substance or trade effluent from a ship, any floating craft other than a ship which is attached to a ship shall be treated as part of the ship.

(3) Any reference to this Order to the discharge of any oil, oily mixture or noxious liquid substance from a ship shall, unless the context otherwise requires, be construed as a reference to the discharge of the oil, oily mixture or substance from the ship at any place in or outside the area of Brunei Darussalam and the reference to the area of Brunei Darussalam shall include the territorial waters of Brunei Darussalam.

(4) Any reference in this Order –

(a) to the Convention or any other international agreement shall be construed as including a reference to its protocols, annexes, appendices and other attachments;

(b) to a failure to do any act or thing includes a reference to a refusal or neglect to do that act or thing; and

(c) to this Order includes a reference to regulations made under this Order.

PART II

PREVENTION OF POLLUTION FROM APPARATUS

Prohibition of discharge of oil or oily mixture from apparatus.

3. If any oil or oily mixture is discharged into Brunei Darussalam waters from any apparatus used for transferring oil from or to a ship, whether to or from a terminal or to or from another ship, the terminal operator or the person in charge of the apparatus shall be guilty of an offence and liable on conviction to a fine of not less than \$1,000 and not more than \$1,000,000, imprisonment for a term not exceeding 2 years or both.

Special defences.

4. (1) Where a person is charged with an offence under section 3 as the terminal operator or as the person in charge of any apparatus, from which the oil or oily mixture is alleged to have been discharged, it shall be a defence to prove that the discharge of the oil or oily mixture was not due to any want of reasonable care, and that as soon as practicable after the discharge was discovered all reasonable steps were taken for stopping or reducing it.

(2) Without prejudice to subsection (1), it shall be a defence for the terminal operator who is charged with an offence under section 3 to prove that the discharge was caused by the act of a person who was in that place without the permission, either express or implied, of the terminal operator.

(3) Where a person is charged with an offence under section 3 in respect of the discharge of an oily mixture from a terminal, it shall, without prejudice to any other defence under this section, be a defence to prove that —

(a) the oil was contained in an effluent produced by operations for the refining of oil;

(b) it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into Brunei Darussalam waters; and

(c) all reasonably practicable steps had been taken for eliminating oil from the effluent.

(4) Where it is proved that, at the time to which the charge relates, the surface of the waters into which the oily mixture was discharged or the land adjacent to those waters was fouled by oil, the defence under subsection (3) shall not apply unless the court is satisfied that the fouling was not caused, or contributed to, by oil contained in any effluent discharged at or before that time from that place.

(5) Where any oil or oily mixture is discharged in consequence of the removal of sunk, stranded or abandoned ships by a person employed by or acting on behalf of the Director in exercise of any power conferred by any written law, and apart from this subsection, the person employed by or acting on behalf of the Director would be guilty of an offence under section 3 in respect of that discharge, the person shall not be convicted of that offence unless it is shown that the person failed to take such steps, if any, as were reasonable in the circumstances for preventing, stopping or reducing the discharge.

PART III

PREVENTION OF POLLUTION FROM SHIPS

Prohibition of discharge of refuse, garbage, waste, effluents, plastics and dangerous pollutants from ships.

5. (1) Subject to subsection (2) and any regulation made under subsection (5), if any disposal or discharge of refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form occurs from any ship into Brunei Darussalam waters, the master, the owner and the agent of the ship shall each be

guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) Subsection (1) shall not apply to the disposal or discharge of refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form from a ship —

(a) which is necessary for the purpose of securing the safety of a ship or saving life at sea; or

(b) if the refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form, as the case may be, escaped from the ship in consequence of damage, other than intentional damage, to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of the refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form, as the case may be.

(3) Subsection (1) shall not apply where a synthetic fishing net, or synthetic material used in the repair of such a net, on a ship is lost at sea, and all reasonable precautions were taken to prevent the loss.

(4) For the purposes of subsection (2), damage to a ship or to its equipment shall be taken to be intentional damage if the damage arose in circumstances in which the master, the owner or the agent of the ship —

(a) acted with intent to cause the damage; or

(b) acted recklessly and with knowledge that damage would probably result.

(5) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to exempt any ship from the operation of subsection (1), either absolutely or subject to any prescribed conditions, and either generally or as respects particular classes of ships, or in relation to particular descriptions of refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form or to the disposal or discharge thereof in prescribed circumstances, or in relation to particular areas of the sea.

Prohibition of discharge of oil or oily mixture from ships.

6, (1) Subject to subsection (2) and any regulation made under subsection (4), if any discharge of oil or oily mixture occurs from a Brunei Darussalam ship into any part of the sea or from any ship into Brunei Darussalam waters, the master, the owner and the agent of the ship shall each be guilty of an offence and liable

on conviction to a fine of not less than \$1,000 and not more than \$1,000,000, imprisonment for a term not exceeding 2 years or both.

(2) Subsection (1) shall not apply to the discharge of oil or oily mixture from a ship —

(a) which is necessary for the purpose of securing the safety of a ship or saving life at sea;

(b) if the oil or oily mixture, as the case may be, escaped from the ship in consequence of damage, other than intentional damage, to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of the oil or oily mixture, as the case may be; or

(c) in the case of an oily mixture, if the discharge was for the purpose of combating specific pollution incidents in order to minimise the damage from pollution and was approved by the Director and, where the discharge occurred in the jurisdiction of the government of a country other than Brunei Darussalam, by that government.

(3) For the purposes of subsection (2), damage to a ship or to its equipment shall be taken to be intentional damage if the damage arose in circumstances in which the master, the owner or the agent of the ship —

(a) acted with intent to cause the damage; or

(b) acted recklessly and with knowledge that damage would probably result.

(4) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to exempt any ship from the operation of subsection (1), either absolutely or subject to any prescribed conditions, and either generally or as respects particular classes of ships, or in relation to particular descriptions of oil or oily mixture or to the discharge of oil or oily mixture in prescribed circumstances, or in relation to particular areas of the sea.

Oil residues.

7. (1) Subject to subsection (2), if any oil residue that cannot be discharged from a Brunei Darussalam ship into the sea without contravening section 6 are not retained on board the ship, the master and the owner of the ship shall each be guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000.

(2) Oil residues may be discharged from a ship to a reception facility provided in accordance with section 10.

Notification of proposal to carry noxious liquid substances.

8. (1) Where a person who proposes to export or import a noxious liquid substance proposes to do so by having that liquid substance carried in bulk in a ship, that person or the master of the ship shall, in such manner and within such time as may be prescribed, notify the Authority of the proposal.

(2) If the Authority is not so notified of the proposal referred to in subsection (1) and the liquid substance is carried as proposed, that person and the master of the ship shall each be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Prohibition of discharge of noxious liquid substances from ships.

9. (1) Subject to subsection (2) and any regulation made under subsection (4), if any discharge of a noxious liquid substance, or of a mixture containing a noxious liquid substance, being a substance or mixture carried as cargo or part cargo in bulk, occurs from a Brunei Darussalam ship into the sea or from any ship into Brunei Darussalam waters, the master, the owner and the agent of the ship shall each be guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) Subsection (1) shall not apply to the discharge of a noxious liquid substance or a mixture containing such substance from a ship –

(a) which is necessary for the purpose of securing the safety of a ship or saving life at sea;

(b) if the substance or the mixture, as the case may be, escaped from the ship in consequence of damage, other than intentional damage, to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of the substance or the mixture, as the case may be; or

(c) if the discharge was for the purpose of combating specific pollution incidents in order to minimise the damage from pollution and was approved by the Director and where the discharge occurred in the jurisdiction of the government of a country other than Brunei Darussalam, by that government.

(3) For the purposes of subsection (2), damage to a ship or to its equipment shall be taken to be intentional damage if the damage arose in circumstances in which the master, the owner or the agent of the ship –

(a) acted with intent to cause the damage; or

(b) acted recklessly and with knowledge that damage would probably result.

(4) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to exempt any ship from the operation of subsection (1), either absolutely or subject to any prescribed conditions, and either generally or as respects particular classes of ships, or in relation to particular descriptions of noxious liquid substances or mixtures containing such substances or to the discharge of such substances or mixtures in prescribed circumstances, or in relation to particular areas of the sea.

PART IV

PREVENTIVE MEASURES AGAINST POLLUTION OF THE SEA

Reception facilities.

10. (1) The powers exercisable by the Authority in respect of the port shall include power to provide reception facilities for ships using the port or any terminal in Brunei Darussalam.

(2) Any power of the Authority to provide reception facilities shall include —

(a) power to join with any other person in providing them, and reference in this section to the provision of reception facilities by the Authority shall be construed accordingly;

(b) power to arrange for the provision of such facilities by any other person;

(c) power to require every ship to use the facilities; and

(d) power to provide reception facilities within the limits of the port.

(3) Subject to any direction given by the Minister under subsection (5), the Authority in respect of the port and a terminal operator in respect of his terminal shall ensure that —

(a) if the port or terminal has reception facilities, those facilities are adequate; or

(b) if the port or terminal has no reception facilities, such facilities are provided,

(g) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations in respect of every matter relating to the provision of reception facilities and other facilities for ships to deposit refuse, garbage, plastics or sewage and, in particular, those regulations may provide –

- (a) for fees to be levied for the use of the facilities;
- (b) for the conditions upon which ships may make use of the facilities;
and
- (c) that a contravention thereof shall be punishable by a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Regulations requiring keeping of oil record books.

11. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations requiring oil record books to be carried in all Brunei Darussalam ships and in all ships in Brunei Darussalam waters and requiring the master of any such ship to record in the oil record book carried by it –

- (a) the carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed –
 - (i) the loading of oil cargo;
 - (ii) the internal transfer of oil cargo during a voyage;
 - (iii) the unloading of oil cargo;
 - (iv) the ballasting of oil tanks, whether cargo or bunker fuel tanks, and dedicated clean ballast tanks;
 - (v) the cleaning of oil tanks, whether cargo or bunker fuel tanks, including crude oil washing;
 - (vi) the discharge of ballast except from segregated ballast tanks;
 - (vii) the discharge of water from slop tanks;
 - (viii) the closing of all applicable valves or similar devices after slop tanks discharge operations;
 - (ix) the closing of valves necessary for isolation of dedicated clean ballast tanks from cargo and stripping lines after slop tank discharge operations;

[x) the discharge of dirty ballast or cleaning water from oil fuel tanks;

(xi) the discharge overboard or disposal otherwise of bilge water, which has accumulated in machinery spaces;

[xii) the disposal of any oily residues (sludge) or

(xiii) the disposal of residues;

(b) any event of such discharge of oil or oily mixture as is referred to in subsection (2) of section 6 or any regulation made under subsection (4) of section 6; and

(c) in the event of accidental or other exceptional discharge of oil or oily mixture which is not referred to in subsection (2) of section 6.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations requiring the keeping of records relating to the transfer of oil to and from ships while they are in Brunei Darussalam waters.

(3) The requirements of any regulation made under subsection (2) shall be in addition to the requirements of any regulation made under subsection (1).

(4) Any record required to be kept by any regulation made under subsection (2) shall, unless the ship is a barge, be kept by the master of the ship and shall, if the ship is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.

(5) Regulations made under this section requiring the carrying of oil record books or the keeping of records may –

(a) prescribe the form of the oil record books or records and the nature of the entries to be made in them;

(b) require the person providing or keeping the oil record books or records to retain them for a prescribed period;

(c) require that person, at the end of the prescribed period, to transmit the oil record books or records to a place or person determined by the regulations; and

(d) provide for the custody or disposal of the oil record books or records after their transmission to such a place or person.

Regulations requiring keeping of cargo record books.

12. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations requiring cargo record books to be carried in all Brunei Darussalam ships and in all ships in Brunei Darussalam waters, being ships which carry noxious liquid substances in bulk, and requiring the master of any such ship to record in the cargo record book carried by it –

(a) the carrying out, on board or in connection with the ship, of such of the following operations with respect to a noxious liquid substance as may be prescribed –

- (i) the loading of cargo;
- (ii) the internal transfer of cargo;
- (iii) the unloading of cargo;
- (iv) the cleaning of cargo tanks;
- (v) the ballasting of cargo tanks;
- (vi) the discharge of ballast from cargo tanks;
- (vii) the disposal of residues to reception facilities; or
- (viii) the discharge into the sea or removal by ventilation of residues in accordance with any regulation made under this Order;

(b) in the event of any such discharge of any noxious liquid substance or a mixture containing such substance as is referred to in subsection (2) of section 9 or in any regulation made under subsection (4) of section 9; and

(c) any occasion on which the noxious liquid substance or a mixture containing such substance is discharged, whether intentionally or accidentally.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations requiring the keeping of records relating to the transfer of noxious liquid substances to and from ships while they are in Brunei Darussalam waters.

(3) The requirements of any regulation made under subsection (2) shall be in addition to the requirements of any regulation made under subsection (1).

(4) Any record required to be kept by any regulation made under subsection (2) shall be kept by the master of the ship.

(5) Regulations made under this section requiring the carrying of cargo record books or the keeping of records may –

(a) prescribe the form of the cargo record books or records and the nature of the entries to be made in them;

(b) require the person providing or keeping the cargo record books or records to retain them for a prescribed period;

(c) require that person, at the end of the prescribed period, to transmit the cargo record books or records to a place or person determined by the regulations; and

(d) provide for the custody or disposal of the cargo record books or records after their transmission to such a place or person.

Failure to carry record books and evidence.

13. (1) If any ship fails to carry an oil record book or cargo record book as is required under section 11 or 12, the owner, the agent or the master of that ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(2) Any person who fails to comply with any of the requirements imposed by section 11 or 12 or any regulation made thereunder shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(3) Any person who makes an entry in any oil record book or cargo record book carried or any record kept under section 11 or 12 which is to his knowledge false or misleading in any material particular shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

(4) In any proceedings under this Order –

(a) any oil record book or cargo record book carried or any record kept in pursuance of any regulation made under section 11 or 12 shall be admissible as evidence of the facts stated in it;

(b) any copy of an entry in such oil record book or cargo record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a

true copy of the entry shall be admissible as evidence of the facts stated in the entry; and

(c) any document purporting to be an oil record book or cargo record book carried or a record kept under section 11 or 12, or purporting to be such a certified copy as is mentioned in paragraph (b) shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.

Duty to report discharges of harmful substances from ships.

14. (1) If any actual or probable discharge of any harmful substance occurs in prescribed circumstances from a Brunei Darussalam ship into any part of the sea or from any ship into Brunei Darussalam waters, the master of the ship shall without delay report the occurrence in such manner and to such officer as may be prescribed.

(2) It is a defence if a person charged with an offence against subsection (1) proves that he was unable to comply with that subsection in relation to the relevant occurrence.

(3) Where a discharge referred to in subsection (1) occurs and –

(a) the master of the ship is unable to comply with that subsection in relation to the occurrence; or

(b) the discharge occurs in circumstances in which the ship is abandoned,

the owner, charterer, manager and operator of the ship or an agent of the owner, charterer, manager or operator of the ship shall without delay report the occurrence in such manner and to such officer as may be prescribed.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(5) On the prosecution of a person for an offence under subsection (3), it is a defence if that person proves –

(a) that he was not aware of the relevant occurrence; or

(b) in the case of an offence to which paragraph (a) of subsection (3) applies, that he neither knew nor suspected that the master of the ship concerned was unable to comply with subsection (1) in relation to the relevant occurrence.

Duty to report discharges of oil, oily mixture and substances from terminal or apparatus.

15. If any actual or probable discharge into Brunei Darussalam waters of oil, oily mixture, noxious liquid substance or a mixture containing such substance occurs from a terminal or an apparatus used for transferring oil or that substance from or to a ship, the terminal operator or the person in charge of the apparatus, as the case may be, shall forthwith report the occurrence to the Director in the prescribed manner and, if he fails to do so, shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

PART V

RECOVERY OF COSTS

Recovery of costs for removing refuse, garbage, waste, plastics, effluents and dangerous pollutants discharged from ships.

16. (1) If any refuse, garbage, waste matter, plastics, marine pollutant in packaged form or trade effluent is discharged from any ship into Brunei Darussalam waters or into any part of the sea or waters outside Brunei Darussalam waters and the refuse, garbage, waste matter, plastics, marine pollutant or trade effluent subsequently drifts or flows into Brunei Darussalam waters, the owner of the ship shall be liable to pay for the costs of any measure reasonably taken by the Director or the appointed authority after the discharge for the purpose of removing it and for preventing or reducing any damage caused in Brunei Darussalam by contamination resulting from the discharge.

(2) Where the refuse, garbage, waste matter, plastics, marine pollutant in packaged form or trade effluent is discharged from 2 or more ships —

(a) a liability is incurred under this section by the owner of each of them; but

(b) the damage or cost of which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly and severally with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

Recovery of costs for removing oil, oily mixture and substances discharged from ships.

17. (1) If any oil, oily mixture or noxious liquid substance is discharged from any ship into Brunei Darussalam waters or into any part of the sea or waters outside Brunei Darussalam waters and the oil, mixture or substance subsequently flows or drifts into Brunei Darussalam waters, the owner of the ship shall be liable to pay for the costs of any measure reasonably taken by the Director or the appointed authority after the discharge for the purpose of removing it and for preventing or reducing any damage caused in Brunei Darussalam by contamination resulting from the discharge.

(2) Where the oil, oily mixture or noxious liquid substance is discharged from 2 or more ships –

(a) a liability is incurred under this section by the owner of each of them; but

(b) the damage or cost of which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly and severally with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(3) The reference in this section to the measures reasonably taken after the discharge of oil, oily mixture or a noxious liquid substance for the purpose of preventing or reducing any damage caused by contamination resulting from the discharge shall include actions taken to remove the oil, mixture or substance from the water and foreshores or the taking of such other actions as may be necessary to minimise or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, foreshores and beaches.

Recovery of costs for removing oil, oily mixture and substances discharged from terminal or apparatus.

18. If any oil, oily mixture or noxious liquid substance is discharged from a terminal or from any apparatus used for transferring the oil, mixture or substance from or to any ship, whether to or from a terminal or to or from another ship, or for any other operation, the person in charge of that apparatus or the terminal operator, as the case may be, shall be liable to pay for the costs of any measure reasonably taken by the Director or the appointed authority after the discharge in removing or eliminating the oil, mixture or substance.

Costs recoverable as debt to Government.

19. Any costs due from and payable by any person by virtue of section 16, 17, or 18 may be recoverable by the Government as a debt due to the Government.

PART VI

MISCELLANEOUS PROVISIONS

Powers of inspectors.

20. (1) An inspector may exercise the powers referred to in subsection (2) only for the purpose of ascertaining —

(a) whether a provision of this Order that is applicable in relation to a Brunei Darussalam ship has been complied with in respect of that ship;

(b) whether there has been a discharge from a ship in contravention of this Order;

(c) whether a provision of the Convention that is applicable in relation to a ship other than a Brunei Darussalam ship has been complied with in respect of that ship; or

(d) whether a provision of a law of a country other than Brunei Darussalam giving effect to the Convention, being a provision that is applicable in relation to a ship other than a Brunei Darussalam ship, has been complied with in respect of that ship.

(2) An inspector may for any of the purposes referred to in subsection (1)—

(a) go on board a ship with such assistants and equipment as he considers necessary;

(b) require the master of a ship to take such steps as the inspector directs to facilitate the boarding;

(c) inspect and test any machinery or equipment of a ship;

(d) require the master of a ship to take such steps as the inspector directs to facilitate the inspection or testing of any machinery or equipment of the ship;

(e) open, or require the master of a ship to cause to be opened, any hold, bunker, tank, compartment or receptacle in or on board the ship and

inspect the contents of any hold, bunker, tank, compartment or receptacle in or on board the ship;

(f) require the master of a ship to produce a record book required by any regulation made under this Order to be carried in the ship or any other books, documents or records relating to the ship or its cargo that are carried in the ship;

(g) make copies of, or take extracts from, any such books, documents or records;

(h) require the master of a ship to certify that a true copy of an entry in a record book required by any regulation made under this Order to be carried in the ship is a true copy of such an entry;

(i) examine, and take samples of, any substances on board a ship; and

(j) require a person to answer questions.

(3) Any person who —

(a) without reasonable excuse, refuses or fails to comply with a requirement made of him by an inspector in the exercise of his powers under subsection (2); or

(b) in answer to a question that he is required to answer under subsection (2), makes a statement that is false or misleading in a material particular,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

Power to deny entry and to detain ship.

21. (1) Where the Director has reasonable cause to believe that a ship which proposes to enter a port does not comply with the requirements of this Order, he may deny the entry of such ship to that port.

(2) Where the Director has reasonable cause to believe that a ship —

(a) has incurred a liability under section 16 or 17; or

(b) has contravened any of the requirements of this Order and, in the opinion of the Director, the ship presents an unreasonable threat of harm to the marine environment or has caused harm to such environment,

the Director or any officer authorised in writing by the Director may detain that ship.

(3) The Director may release a ship detained under subsection (2) if the owner of the ship deposits with the Government a sum of money or furnishes such security which would, in the opinion of the Director, be adequate to meet the owner's liability under this Order.

Detained ship proceeding to sea.

22. (1) If any ship is detained under subsection (2) of section 21 and the ship proceeds to sea before it is released by the Director, the master of the ship, the owner thereof and any person who sends the ship to sea, if that master, owner or person is party or privy to the act of sending the ship to sea, shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) The Director or any officer authorised by the Director to detain a ship may, if he thinks it necessary, place a police officer on board as a guard, referred to in this section as a police guard.

(3) Where a ship proceeding to sea takes to sea when any officer authorised to detain the ship, police guard or inspector is on board in the execution of his duty, the owner and the master of the ship shall each be liable to pay all expenses of and incidental to the officer, police guard or inspector being so taken to sea, and shall also be liable to pay a sum not exceeding \$2,000, or a sum not exceeding \$200 for every day until the officer, police guard or inspector returns or until such time as would enable him after leaving the ship to return to the port from which he was taken, and the expenses ordered to be paid may be recoverable as a debt due to the Government.

(4) Any police guard so placed on board a ship may take such steps as are necessary to prevent the ship from leaving the port.

(5) Any person who opposes or in any way obstructs any officer authorised to detain the ship, a police guard or an inspector shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Sale of ship.

23. Where the owner, master or agent of a ship has been convicted of an offence under this Order and any fine imposed in respect of the conviction is not paid at the time ordered by the court, the court shall, in addition to any power for enforcing payment, have the power to direct the amount remaining unpaid to be levied by distress and sale of the ship, its tackle, furniture and apparel.

Exemptions.

24. (1) This Order shall not apply to any warship, naval auxiliary or other ship owned or operated by a State, including the Government, and used for the time being, only on government non-commercial service.

(2) The Minister may, in his discretion, exempt any ship or person or description of ships or persons from all or any of the provisions of this Order.

(3) Any exemption granted by the Minister under subsection (2) may be granted subject to such conditions as the Minister thinks fit and the exemption shall not have effect unless those conditions are complied with.

Power to enter on land.

25. (1) The Government may, by its officers, employees, or agents or contractors, enter upon any land adjoining the sea or foreshore for the purpose of removing or eliminating any oil, oily mixture, refuse, garbage, waste matter, plastics, marine pollutant in packaged form, noxious liquid substance or trade effluent from Brunei Darussalam waters.

(2) The Government shall pay compensation to the owner of the land for any permanent damage caused to the land arising out of the exercise of the powers conferred by subsection (1).

(3) Except as provided in subsection (2), the Government shall not be liable to pay any compensation in respect of any damage caused arising out of the exercise of the powers conferred by subsection (1).

Powers of arrest.

26. (1) The Director, the Authority, a police officer or any person authorised in writing by the Director or Authority, may arrest without warrant any person who has committed or whom he reasonably believes to have committed an offence under this Order and take him before a court to be dealt with according to law.

(2) Any article concerning, by or for which an offence has been committed may be seized and taken to a police station, unless given up sooner by order of a court until the charge is decided in due course of law.

Delegation of powers.

27. The Director may appoint such officers as he may think fit for the purpose of exercising the powers conferred and performing the duties imposed on the Director under this Order.

Protection from personal liability.

28. No act or omission by the Minister, the Director, the Authority, any officer employed in the administration of this Order or any other person acting under the direction of the Minister, the Director or the Authority shall, if the act or omission was *bona fide* for the purpose of executing this Order, subject them or any of them personally to any action, liability, claim or demand.

Evidence of analyst.

29. (1) The Director may, by instrument in writing under his hand, appoint persons who in his opinion are qualified to be analysts for the purposes of this Order.

(2) Subject to subsection (4), a certificate of an analyst appointed under subsection (1) stating that he has analysed or examined a substance and stating the result of his analysis or examination is admissible in evidence in any proceedings for an offence under this Order as *prima facie* evidence of the facts stated in the certificate and of the correctness of the result of the analysis or examination.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) on its production by the prosecution shall, unless the contrary is proved, be deemed to be such a certificate.

(4) A certificate referred to in subsection (2) shall not be received in evidence in pursuance of that subsection unless the person charged has been given a copy of the certificate together with reasonable notice of the intention of the prosecution to produce the certificate as evidence in the proceedings.

(5) Where a certificate of an analyst appointed under subsection (1) is admitted in evidence under subsection (2), the person charged may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he had given evidence of the matters stated in the certificate.

Composition of offences.

30. (1) The Director, the Authority or any person authorised in writing by the Director or the Authority may compound any offence under this Order which is prescribed as a compoundable offence, by collecting from any person reasonably suspected of having committed that offence a sum not exceeding \$2,000.

(2) All sums collected under subsection (1) shall be paid to the Government.

Regulations for survey of ships and issue of certificates.

31. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the purposes of authorising any organisation for the survey or inspection of Brunei Darussalam ships and issue of any certificate under this Order.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, in the regulations –

(a) specify the surveys or inspections and the issue of certificates or endorsement;

(b) provide for the registration of any person belonging to or acting on behalf of any organisation as a surveyor for the purposes of surveying or inspecting Brunei Darussalam ships; and

(c) prescribe the conditions for the registration of any person under paragraph (b) and the cancellation of the registration of any person.

(3) Any certificate issued or endorsement made by any authorised organisation in accordance with any regulation made under this section shall be deemed to be issued or made by the Director for the purposes of this Order.

Documents to be in approved form.

32. Every certificate, register, licence, book, record, instrument or other document prescribed by this Order shall be made in such form, if any, as may be approved by the Director or as near thereto as circumstances permit.

Regulations.

33. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as appear to the Minister necessary or expedient for the purposes of carrying out the provisions of this Order and for prescribing anything which may be prescribed under this Order and, in particular, for the purpose of –

(a) giving effect to any provision of the Convention which has not been given effect to in this Order;

(b) giving effect to any provision of the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, including the Final Act of the Conference and the attached resolutions, signed in London on 30th. November 1990;

(c) giving effect to any provision of any international agreement not mentioned in paragraph (a) or (b) which relates to the prevention, reduction or control of pollution of the sea or pollution from ships;

(d) giving effect to any international agreement which modifies any of the international agreements mentioned in paragraph (a), (b) or (c); and

(e) prescribing any measure which the Minister considers necessary for the prevention, control or reduction of pollution of the sea or pollution from ships.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by such regulations —

(a) require persons carrying on any trade, business or manufacture to install such equipment as may be prescribed for the purpose of eliminating any oil in any trade effluent and for preventing or reducing the discharge of any trade effluent into Brunei Darussalam waters;

(b) require the owners or operators of cargo terminals, shipyards, oil refineries and oil terminals in Brunei Darussalam, and such other facilities in Brunei Darussalam as the Authority may determine, to store such detergents dispersants and equipment as may be prescribed to deal with any pollution of Brunei Darussalam waters;

(c) provide for the conduct of investigations of casualties in respect of any discharge from a ship or any contravention of the provisions of this Order;

(d) provide for the appointment, registration, duties and powers of MARPOL surveyors and the approval of the organisation employing such surveyors for the purposes of giving effect of Annex II to the Convention;

(e) prescribe fees to be paid in respect of the issue or recording of any certificate, license or other instrument or the doing of any other thing in pursuance of this Order;

(f) provide for the approval of documents and the carrying out of surveys and inspections for the purpose of giving effect to any of the international agreements referred to in paragraphs (a) to (d) of subsection (1), or to a measure referred to in paragraph (e) of subsection (1), and the issue, duration and recognition of any certificate for that purpose;

(g) provide for the denial of entry or prohibition of proceeding to sea of any ship which does not have in force a certificate issued pursuant to any regulation made under this paragraph; and

(h) provide for the extra-territorial application of any of the regulations to Brunei Darussalam ships and to persons on board such ships.

(3) Any regulations made under this section may —

(a) make different provisions for different circumstances;

(b) empower any specified person to grant exemption from all or any of the provisions of the regulations;

(c) provide for the delegation of functions exercisable by virtue of the regulations;

(d) include such incidental, supplemental and transitional provisions as appear to the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, to be expedient for the purposes of the regulations; and

(e) provide that a contravention thereof shall be punishable by a fine not exceeding \$20,000, imprisonment for a term not exceeding 2 years or both.

Repeal of section 25 of Chapter 144.

34. Section 25 of the Ports Act is repealed.

Application to Government.

35. This Order shall bind the Government.

Made this 17th. day of Safar, 1426 Hijriah corresponding to the 28th. day of March, 2005 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

**Dicetak oleh AWANG MOHIDIN BIN HAJI DAUD, Pengarah Percetakan,
di Jabatan Percetakan Kerajaan, Bandar Seri Begawan BB3510, Negara Brunei Darussalam.**

Harga B\$5.00