

# ELIZABETH II



## Territories of South Georgia and the South Sandwich Islands

NIGEL JAMES PHILLIPS C.B.E.,  
*Commissioner.*

### HEAVY FUEL OIL (PROHIBITION OF CARRIAGE AND USE) ORDINANCE 2019

(No: 5 of 2019)

*(assented to: 18 October 2019)*

*(commencement: on publication)*

*(published: 21 October 2019)*

#### AN ORDINANCE

To provide for eliminating carriage or use of heavy fuel oil on a vessel in the Territories and the maritime zone, and for related purposes.

ENACTED by the Commissioner of South Georgia and the South Sandwich Islands —

#### **1. Title**

This Ordinance is the Heavy Fuel Oil (Prohibition of Carriage and Use) Ordinance 2019.

#### **2. Commencement**

This Ordinance comes into force on its publication in the *Gazette*.

#### **3. Interpretation**

(1) In this Ordinance, unless otherwise stated or the context otherwise requires —

“**Annex 1**” means Annex 1 to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978, as amended by Resolution MEPC.189(60) of the International Maritime Organisation;

“**heavy fuel oil**” means —

(a) crude oil having a density at 15°C higher than 900 kg/m<sup>3</sup>;

(b) oil, other than crude oil, having a density at 15°C higher than 900 kg/m<sup>3</sup> or a kinematic viscosity at 50°C higher than 180 mm<sup>2</sup>/s; or

(c) bitumen, tar and their emulsions;

“**designated area**” means the area of —

(a) the territorial waters; and

(b) the maritime zone established by Proclamation No. 1 of 1993,

that is east and south-east of the line 33.295732° W, 58.181013° S; 31.347187° W, 55.785836° S; 30.945788° W, 53.775386° S (as illustrated on the map in the Schedule);

“**vessel**” means a vessel, hovercraft or other means by which a person or thing is transported from place to place on, over or through water.

(2) Unless otherwise stated or the context otherwise requires, an expression in this Ordinance that is in this Ordinance and in Annex 1 has the same meaning as in Annex 1.

#### **4. Purpose**

The purpose of this Ordinance is to give effect to Annex 1, regulation 43 in the designated area.

#### **5. Ordinance binds the Crown**

(1) This Ordinance binds the Crown.

(2) This Ordinance does not operate to make the Crown liable to be prosecuted for an offence against this Ordinance, however, an officer, employee or agent of the South Georgia and South Sandwich Islands Government may be prosecuted for an offence against this Ordinance.

#### **6. Application of Ordinance**

(1) This Ordinance has effect in addition to, and not in derogation of or in substitution for, any other law prohibiting the carriage or use of heavy fuel oil in the Territories or the maritime zone.

(2) This Ordinance applies to a body corporate —

(a) regardless of where the body corporate was incorporated; and

(b) as if the body corporate were an individual person aged 18 or more.

#### **7. Prohibition**

The following are prohibited in the designated area —

(a) carriage of heavy fuel oil in bulk as cargo on a vessel;

(b) carriage for use, and use, of heavy fuel oil as fuel on a vessel;

(c) use of heavy fuel oil as ballast on a vessel.

#### **8. Offence and penalty**

(1) In this section —

“**person**”, in relation to a vessel —

(a) means —

(i) the person having command or charge of the vessel;

(ii) the person operating the vessel;

(iii) the owner of the vessel;

(iv) the charterer of the vessel; or

(v) the owner of the cargo carried on the vessel; and

(b) for the avoidance of doubt, includes a body corporate.

(2) A person must not engage in conduct that results in —

(a) heavy fuel oil being carried in bulk as cargo on a vessel in the designated area;

(b) heavy fuel oil being used, or carried for use, as fuel on a vessel in the designated area;  
or

(c) heavy fuel oil being used as ballast on a vessel in the designated area.

(3) Each person who contravenes subsection (2) commits an offence and is liable on conviction to a fine.

(4) It is a defence for a person charged with an offence under this section to prove that the vessel was in the designated area because of force majeure or for the purpose of securing the safety of a vessel or saving life at sea.

(5) A person does not commit an offence under this section if —

(a) heavy fuel oil was previously carried or used as fuel or ballast on the vessel;

(b) there is residue of the heavy fuel oil on the vessel; and

(c) the residue is heavy fuel oil that has not been cleaned or flushed from a tank or pipeline of the vessel.

## **9. Commission of offence by officer of body corporate**

(1) In this section —

“**officer of a body corporate**” means —

(a) a director, secretary, manager or other similar officer of a body corporate;

(b) if the body corporate is a limited liability partnership, a partner;

(c) if the affairs of the body corporate are managed by the members of the body corporate, a member of the body corporate; or

(d) if an officer of a body corporate is another body corporate, an officer of that other body corporate.

(2) If an offence under section 8 is proved to have been committed by a body corporate —

(a) the offence is also committed by each officer of the body corporate;

(b) the officer may be proceeded against and, if convicted, sentenced (even if the body corporate is sentenced); and

(c) the officer is liable on conviction to a fine.

(3) It is a defence for an officer of a body corporate charged with an offence under this section to prove that —

(a) the offence was committed without the officer's knowledge;

(b) the officer did not authorise, permit or participate in the commission of the offence;

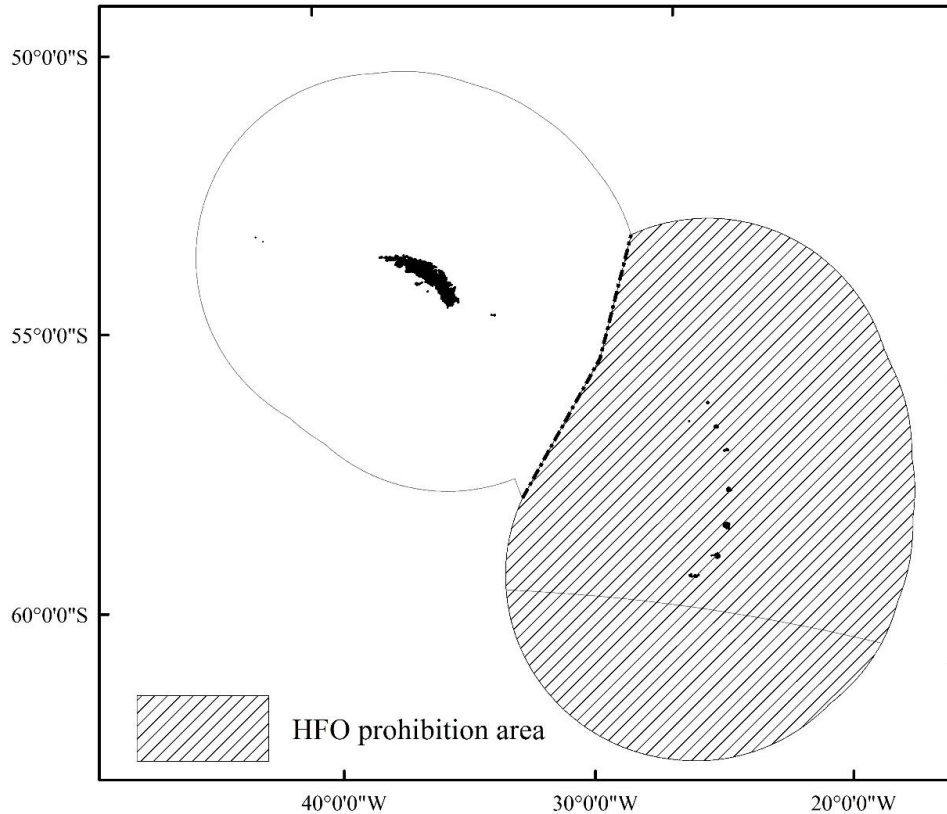
(c) the officer took all reasonable actions to prevent the commission of the offence; or

(d) the commission of the offence was not attributable to the negligence of the officer.

## SCHEDULE

section 3

Designated area - For purposes of the prohibition of heavy fuel oil



Enacted 18 October 2019

N. J. PHILLIPS C.B.E.,  
*Commissioner.*

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### EXPLANATORY NOTE *(not part of the Ordinance)*

The purpose of the Ordinance is to give effect to MARPOL 73/78, Annex 1, regulation 43 in the Territories and the maritime zone by prohibiting the carriage in bulk as cargo, and the carriage and use, of heavy fuel oil on a vessel in the designated area. "Designated area" is defined in *section 3* of the Bill.

The Ordinance binds the Crown in a manner that does not make the Crown liable to be prosecuted for contravening the Ordinance, although an officer, employee or agent of the South Georgia and South Sandwich Islands may be prosecuted for an offence against the Ordinance.

The Ordinance also applies to bodies corporate, regardless of where incorporated, as if bodies corporate were persons aged 18 or more.

If the owner, operator, charterer, person having command or charge of a vessel, or the owner of the cargo carried on a vessel engages in conduct that results in heavy fuel oil being carried in bulk as cargo, being used or carried for use as fuel or being used as ballast on the vessel, the owner, operator, charterer or person commits an offence and is liable to a fine of an unlimited amount.

A person does not commit the offence if it is proved that the vessel was in the designated area because of force majeure or for the purposes of saving life at sea. In addition, a person does not commit the offence if the heavy fuel oil on the vessel is the residue of heavy fuel oil previously carried or used as fuel or ballast on the vessel that has not been cleaned or flushed from a tank or pipeline on the vessel.

If the person who is proved to commit the offence is a body corporate, the offence is also committed by each officer of the body corporate. It is a defence if an officer of a body corporate proves that the officer did not know about, authorise, permit or participate in committing the offence, took all reasonable steps to prevent the offence being committed or the commission of the offence was not attributable to the negligence of the officer.

*Section 1* specifies the title of the Ordinance.

*Section 2* specifies the commencement of the Ordinance.

*Section 3* defines “heavy fuel oil”, “designated area” and “vessel”.

*Section 4* provides that the purpose of the Ordinance is to give effect to MARPOL 73/78, Annex 1, regulation 43, in the designated area.

*Section 5* provides that the Ordinance binds the Crown although the Crown is not liable to be prosecuted for an offence against the Ordinance. However, an officer, employee or agent of the South Georgia and South Sandwich Islands Government may be prosecuted for an offence against the Ordinance.

*Section 6* provides that the Ordinance applies —

- (a) in addition to any other law that has the effect of prohibiting the carriage or use of heavy fuel oil in the Territories or the maritime zone; and
- (b) to bodies corporate regardless where incorporated as if they were persons aged 18 years or more.

*Section 7* prohibits the carriage in bulk as cargo, and the carriage and use as fuel or ballast, of heavy fuel oil on a vessel in the designated area.

*Section 8* creates an offence for contravening the prohibition, specifies the penalty for the offence and provides a defence to committing the offence.

*Section 9* provides that if it is proved that a body corporate commits an offence under *section 8*, each of the officers of the body corporate also commit the offence and may be prosecuted and sentenced unless the officer proves that —

- (a) the offence was committed without the officer's knowledge;
- (b) the officer did not authorise, permit or participate in the commission of the offence;
- (c) the officer took all reasonable actions to prevent the commission of the offence; or
- (c) the commission of the offence was not attributable to the negligence of the officer.

The *Schedule* sets out the plan illustrating the designated area referred to in in *section 3(1)* of the Ordinance.