



# Merchant Shipping Act 1974

## 1974 CHAPTER 43

An Act to make further provision concerning oil pollution by ships and related matters; to give power to protect shipping and trading interests against foreign action concerning or affecting carriage of goods by sea; to make provision relating to the operation of submersible apparatus; to alter the constitution of the Commissioners of Northern Lighthouses; and to amend certain provisions of the Merchant Shipping Act 1970 relating to offences committed by seamen. [31st July 1974]

### Modifications etc. (not altering text)

- C1** Act modified by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), [s. 47\(2\)\(b\)](#), (with [s. 58\(4\)](#), [Sch. 8 para. 1](#)) and by [S.I. 1989/1991](#), [art. 10](#)  
Act: power to modify conferred (*prosp.*) by [1994 c. 28](#), [ss. 5\(3\)\(a\)](#), [10\(4\)](#) (which amending Act was repealed (1.1.1996) by [1995 c. 21](#), [s. 314\(1\)](#), [Sch.](#))
- C2** Act excluded by [S.I. 1989/1991](#), [arts. 11–14](#)

## PART I

### THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

#### 1 Interpretation of Part I.

(1) In this Part of this Act—

- (a) the “Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage opened for signature in Brussels on 29th November 1969;
- (b) the “Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18th December 1971;
- (c) “the Fund” means the International Fund established by the Fund Convention; and

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- (d) “Fund Convention country” means a country in respect of which the Fund Convention is in force.
- (2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Fund Convention in respect of any country so specified the Order shall, while in force, be conclusive evidence that that State is a party to the Convention in respect of that country.
- (3) In this Part of this Act, unless the context otherwise requires—  
the “Act of 1971” means the <sup>M1</sup>Merchant Shipping (Oil Pollution) Act 1971,  
“damage” includes loss,  
“discharge or escape”, in relation to pollution damage, means the discharge or escape of oil carried by the ship,  
“guarantor” means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 10 of the Act of 1971,  
“oil”, except in sections 2 and 3, means persistent hydrocarbon mineral oil,  
“owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as its operator,  
“pollution damage” means damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever the escape or discharge may occur, and includes the cost of preventive measures and further damage caused by preventive measures,  
“preventive measures” means any reasonable measures taken by any person after the occurrence to prevent or minimise pollution damage,  
“ship” means any sea-going vessel and any seaborne craft of any type whatsoever carrying oil in bulk as cargo.
- (4) For the purposes of this Part of this Act a ship’s tonnage shall be the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage.
- If the ship cannot be measured in accordance with the normal rules, its tonnage shall be deemed to be 40 per cent. of the weight in tons (of 2,240 lbs.) of oil which the ship is capable of carrying.
- (5) For the purposes of this Part of this Act, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.
- [<sup>F1</sup>(6) In this Part of this Act a franc shall be taken to be a unit of 65½ milligrammes of gold of millesimal fineness 900.
- (7) The Secretary of State may from time to time by order made by statutory instrument specify the amounts which for the purposes of this Part of this Act are to be taken as equivalent to any specified number of francs.]

#### **Textual Amendments**

**F1** S. 1(6)(7) repealed (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), s. 52(2), [Sch. 7 Pt. II](#)

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## Marginal Citations

M1 1971 c. 59.

## [<sup>F2</sup>1 Interpretation of Part I.

- (1) In this Part of this Act—
- <sup>F3</sup>(a) “the Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage 1984;
  - <sup>F3</sup>(b) “the Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1984;
  - (c) “the Fund” means the International Fund established by the Fund Convention; and
  - (d) “Fund Convention country” means a country in respect of which the Fund Convention is in force.
- (2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Fund Convention in respect of any country so specified, the Order shall, while in force, be conclusive evidence that that State is a party to the Convention in respect of that country.
- (3) In this Part of this Act, unless the context otherwise requires—
- “the Act of 1971” means the Merchant Shipping (Oil Pollution) Act <sup>M2</sup>1971;
  - “damage” includes loss;
  - “discharge or escape”, in relation to pollution damage, means the discharge or escape of oil from the ship;
  - “guarantor”, means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 10 of the Act of 1971;
  - “incident” means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination;
  - “oil”, except in sections 2 and 3, means persistent hydrocarbon mineral oil;
  - “owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as its operator;
  - “pollution damage” means (subject to subsection (4) below)—
    - (a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship,
    - (b) the cost of preventive measures, and
    - (c) further damage caused by preventive measures;
  - “preventive measures” means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken—
    - (a) after an incident has occurred, or
    - (b) in the case of an incident consisting of a series of occurrences, after the first of those occurrences;

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“relevant threat of contamination” means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship;

“ship” means any ship (within the meaning of the Act of 1971) to which section 1 of that Act applies.

- (4) In this Part of this Act “pollution damage” does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of—
- (a) any loss of profits, or
  - (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.
- (5) For the purposes of this Part of this Act—
- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and
  - (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.
- (6) References in this Part of this Act to the area of any country include (in addition to its territorial sea)—
- (a) in the case of the United Kingdom, any area within the British fishery limits set by or under the <sup>M3</sup>Fishery Limits Act 1976; and
  - (b) in the case of any other Fund Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by the State in question in accordance with international law;
- and references to pollution damage in the United Kingdom shall be construed accordingly.]

#### Textual Amendments

- F2** S. 1(1)–(6) substituted (*prosp.*) for s. 1(1)–(7) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 58(2), [Sch. 4 Pt. II para. 15](#), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of [1988 c. 12, s. 34](#), [Sch. 4](#) by [1993 c. 22, s. 8\(4\)](#), [Sch. 5 Pt. II](#); S.I. 1993/3137, art. 3(2), [Sch. 2](#))
- F3** Definitions in s. 1(1)(a)(b) amended (*prosp.*) by [1994 c. 28, ss. 5\(1\), 10\(4\)](#) (which amending Act was repealed (1.1.1996) by [1995 c. 21, s. 314\(1\)](#), [Sch. 12](#))

#### Marginal Citations

- M2** [1971 c.59 \(111\)](#).  
**M3** [1976 c.86 \(52:1\)](#).

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### *Contributions to Fund*

## **2 Contributions by importers of oil and others.**

- (1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in the United Kingdom.
- (2) Subsection (1) above applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.
- (3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in the United Kingdom after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.
- (4) The person liable to pay contributions is—
  - (a) in the case of oil which is being imported into the United Kingdom, the importer, and
  - (b) otherwise, the person by whom the oil is received.
- (5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tonnes.
- (6) For the purpose of subsection (5) above—
  - (a) all the members of a group of companies shall be treated as a single person, and
  - (b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.
- (7) The contributions payable by a person for any year shall—
  - (a) be of such amount as may be determined by the Assembly of the Fund under Articles 11 and 12 of the Fund Convention [<sup>F4</sup>(as amended by Article III of the protocol dated 19th November 1976 to that Convention)] and notified to him by the Fund;
  - (b) be payable in such instalments, becoming due at such times, as may be so notified to him;and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the said Assembly, until it is paid.
- (8) The Secretary of State may by regulations contained in a statutory instrument impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Secretary of State, or to the Fund.

Regulations under this subsection—

- (a) may contain such supplemental or incidental provisions as appear to the Secretary of State expedient,
  - (b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding [<sup>F5</sup>level 5 of the standard scale], or such lower limit as may be specified in the regulations, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this and the next following section, unless the context otherwise requires—

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“company” means a body incorporated under the law of the United Kingdom, or of any other country;

“group” in relation to companies, means a holding company and its subsidiaries as defined by [<sup>F6</sup>section 736 of the Companies Act 1985](or for companies in Northern Ireland [<sup>F7</sup>Article 4 of the Companies (Northern Ireland) Order 1986]), subject, in the case of a company incorporated outside the United Kingdom, to any necessary modifications of those definitions;

“importer” means the person by whom or on whose behalf the oil in question is entered for [<sup>F8</sup>customs or excise purposes] on importation, and “import” shall be construed accordingly;

“oil” means crude oil and fuel oil, and

- (a) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—
  - (i) crude oils from which distillate fractions have been removed, and
  - (ii) crude oils to which distillate fractions have been added,
- (b) “fuel oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D 396-69)”, or heavier;

“terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site.

- (10) In this section “sea” does not include any waters on the landward side of the baselines from which the territorial sea of the United Kingdom is measured.

#### Textual Amendments

- F4** Words inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), **ss. 38(4)(b)**, 52(2)
- F5** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 40, 46**; (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F**, 289G and (N.I.) [S.I. 1984/703 \(N.I. 3\)](#), **arts. 5, 6**
- F6** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, **Sch. 2**
- F7** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, **Sch. 1 Pt. II**
- F8** Words substituted by [Customs and Excise Management Act 1979 \(c. 2\)](#), **Sch. 4 para. 12** Table Pt. I

#### Modifications etc. (not altering text)

- C3** The definition of “group” in s. 2(9) amended by [S.I. 1986/1035](#), **art. 22**

## 2 Contributions by importers of oil and others. **U.K.**

- (1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in the United Kingdom.
- (2) Subsection (1) above applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.

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- (3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in the United Kingdom after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.
- (4) The person liable to pay contributions is—
- (a) in the case of oil which is being imported into the United Kingdom, the importer, and
  - (b) otherwise, the person by whom the oil is received.
- (5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tonnes.
- (6) For the purpose of subsection (5) above—
- (a) all the members of a group of companies shall be treated as a single person, and
  - (b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.
- (7) The contributions payable by a person for any year shall—
- [<sup>F44</sup>(a) be of such amount as may be determined by the Assembly of the Fund under Articles 11 and 12 of the Fund Convention [<sup>F45</sup>(as amended by Article III of the protocol dated 19th November 1976 to that Convention)] and notified to him by the Fund;]
  - [<sup>F44</sup>(a) be of such amount as may be determined by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund;]
  - (b) be payable in such instalments, becoming due at such times, as may be so notified to him;
- and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the said Assembly, until it is paid.
- (8) The Secretary of State may by regulations contained in a statutory instrument impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Secretary of State, or to the Fund.

Regulations under this subsection—

- (a) may contain such supplemental or incidental provisions as appear to the Secretary of State expedient,
  - (b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding [<sup>F46</sup>level 5 of the standard scale], or such lower limit as may be specified in the regulations, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this and the next following section, unless the context otherwise requires—
- “company” means a body incorporated under the law of the United Kingdom, or of any other country;
- “group” in relation to companies, means a holding company and its subsidiaries as defined by [<sup>F47</sup>section 736 of the Companies Act 1985](or for companies in Northern Ireland [<sup>F48</sup>Article 4 of the Companies (Northern

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Ireland) Order 1986]), subject, in the case of a company incorporated outside the United Kingdom, to any necessary modifications of those definitions;

“importer” means the person by whom or on whose behalf the oil in question is entered for [<sup>F49</sup>customs or excise purposes] on importation, and “import” shall be construed accordingly;

“oil” means crude oil and fuel oil, and

(a) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—

(i) crude oils from which distillate fractions have been removed, and

(ii) crude oils to which distillate fractions have been added,

(b) “fuel oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D 396-69)”, or heavier;

“terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site.

(10) In this section “sea” does not include any waters on the landward side of the baselines from which the territorial sea of the United Kingdom is measured.

#### Textual Amendments

**F44** S. 2(7)(a) commencing “be of such amount as may be determined by the Director” substituted (*prosp.*) for s. 2(7)(a) commencing “be of such amount as may be determined by the Assembly” by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 58(2), [Sch. 4 Pt. II para. 16](#), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, [Sch. 4](#) by 1993 c. 22, s. 8(4), [Sch. 5 Pt. II](#); S.I. 1993/3137, art. 3(2), [Sch. 2](#))

**F45** Words inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), [ss. 38\(4\)\(b\)](#), 52(2)

**F46** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 40](#), 46; (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F](#), 289G and (N.I.) S.I. 1984/703 (N.I. 3), [arts. 5](#), 6

**F47** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

**F48** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, [Sch. 1 Pt. II](#)

**F49** Words substituted by [Customs and Excise Management Act 1979 \(c. 2\)](#), [Sch. 4 para. 12](#) Table Pt. I

#### Modifications etc. (not altering text)

**C10** The definition of “group” in s. 2(9) amended by S.I. 1986/1035, [art. 22](#)

### 3 Power to obtain information.

(1) For the purpose of transmitting to the Fund the names and addresses of the persons who under the last preceding section are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Secretary of State may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.



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- (2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by subsection (6) of the last preceding section.
- (3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.
- (4) In proceedings by the Fund against any person to recover any amount due under the last preceding section, particulars contained in any list transmitted by the Secretary of State to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.
- (5) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, he shall, unless the disclosure is made—
  - (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the execution of this section, or
  - (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings,be liable on summary conviction to a fine not exceeding [<sup>F9</sup>level 5 on the standard scale].
- (6) A person who—
  - (a) refuses or wilfully neglects to comply with a notice under this section, or
  - (b) in furnishing any information in compliance with a notice under this section makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,shall be liable—
  - (i) [<sup>F10</sup>on summary conviction to a fine not exceeding £500 in the case of an offence under paragraph (a) of this subsection and not exceeding £1,000 in the case of an offence under paragraph (b) of this subsection, and]
  - (ii) on conviction on indictment to a fine, or to imprisonment for a term not exceeding twelve months, or to both.

#### Textual Amendments

**F9** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 46](#); (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#) and (N.I.) [S.I. 1984/703 \(N.I. 3\), art. 5](#)

**F10** Words substituted for s. 3(6)(i) by [Merchant Shipping Act 1979 \(c. 39\), Sch. 6 Pt. VI para. 18](#)

#### Modifications etc. (not altering text)

**C4** [S. 3\(6\)\(i\)](#) amended by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 49\(1\)](#)

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### *Compensation for persons suffering pollution damage*

#### **4 Liability of the Fund.**

- (1) The Fund shall be liable for pollution damage in the United Kingdom if the person suffering the damage has been unable to obtain full compensation under section 1 of the Act of 1971 (which gives effect to the Liability Convention)—
- (a) because the discharge or escape causing the damage—
    - (i) resulted from an exceptional, inevitable and irresistible phenomenon, or
    - (ii) was due wholly to anything done or left undone by another person (not being a servant or agent of the owner) with intent to do damage, or
    - (iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible, (and because liability is accordingly wholly displaced by section 2 of the Act of 1971), or
  - (b) because the owner or guarantor liable for the damage cannot meet his obligations in full, or
  - (c) because the damage exceeds the liability under section 1 of the Act of 1971 as limited—
    - (i) by section 4 of the Act of 1971, . . . . . <sup>F11</sup>
    - (ii) . . . . . <sup>F11</sup>
- (2) Subsection (1) above shall apply with the substitution for the words “the United Kingdom” of the words “a Fund Convention country” where—
- (a) the headquarters of the Fund is for the time being in the United Kingdom, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country, or
  - (b) the incident has caused pollution damage both in the United Kingdom and in another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the United Kingdom.
- (3) Where the incident has caused pollution damage both in the United Kingdom and in another country in respect of which the Liability Convention is in force, references in this section to the provisions of the Act of 1971 shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.
- (4) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country and the Fund is liable for that pollution damage by virtue of subsection (2)(a) above, references in this section to the provisions of the Act of 1971 shall be treated as references to the corresponding provisions of the law of the country in which those proceedings were brought.
- (5) For the purposes of this section an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

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- (6) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 1 of the Act of 1971.
- (7) The Fund shall incur no obligation under this section if—
- (a) it proves that the pollution damage—
    - (i) resulted from an act of war, hostilities, civil war or insurrection, or
    - (ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on Government non-commercial service, or
  - (b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.
- (8) If the Fund proves that the pollution damage resulted wholly or partly—
- (a) from an act or omission done with intent to cause damage by the person who suffered the damage, or
  - (b) from the negligence of that person,
- the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person:  
Provided that this subsection shall not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimise pollution damage.
- (9) Where the liability under section 1 of the Act of 1971 is limited to any extent by subsection (5) of that section (contributory negligence), the Fund shall be exonerated to the same extent.
- (10) The Fund's liability under this section shall be subject to the limits imposed by paragraphs 4, 5 and 6 of Article 4 of the Fund Convention [<sup>F12</sup>as amended by Article III of the protocol dated 19th November 1976 to that convention)] which impose an overall liability on the liabilities of the owner and of the Fund, and the text of which is set out in Schedule 1 to this Act.
- (11) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.
- (12) For the purpose of giving effect to the said provisions of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under this section shall notify the Fund, and—
- (a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it,
  - (b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under the said provisions of Article 4 of the Fund Convention, or that it is to be reduced to a specified amount, and

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- (c) in the latter case the judgment shall be enforceable only for the reduced amount.

[<sup>F13</sup>(13) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (12) above shall be steps to obtain payment in sterling; and—

- (a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
- (i) the day on which the judgment is given, or
  - (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
- (b) a certificate given by or on behalf of the Treasury stating—
- (i) that a particular sum in sterling has been so fixed for the day on which the judgment was given, or
  - (ii) that no sum has been so fixed for that day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the judgment was given,

shall be conclusive evidence of those matters for the purposes of this Act;

- (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.]

#### Textual Amendments

- F11** Word “or” and s. 4(1)(c)(ii) repealed by [Merchant Shipping Act 1979 \(c. 39\), ss. 50\(4\), 52\(2\), Sch. 7 Pt. I](#)
- F12** Words inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\), ss. 38\(4\)\(b\), 52\(2\)](#)
- F13** S. 4(13) inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\), ss. 38\(4\)\(c\), 52\(2\)](#)

#### 4 Liability of the Fund. **U.K.**

(1) The Fund shall be liable for pollution damage in the United Kingdom if the person suffering the damage has been unable to obtain full compensation under section 1 of the Act of 1971 (which gives effect to the Liability Convention)—

- (a) because the discharge or escape [<sup>F50</sup>causing the damage][<sup>F50</sup>, or the relevant threat of contamination, by reason of which the damage was caused]—
- (i) resulted from an exceptional, inevitable and irresistible phenomenon, or
  - (ii) was due wholly to anything done or [<sup>F51</sup>left undone][<sup>F51</sup>omitted to be done]by another person (not being a servant or agent of the owner) with intent to do damage, or
  - (iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible,

(and because liability is accordingly wholly displaced by section 2 of the Act of 1971), or

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*Status:* Point in time view as at 01/02/1991.

*Changes to legislation:* There are currently no known outstanding effects for the Merchant Shipping Act 1974. (See end of Document for details)

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- (b) because the owner or guarantor liable for the damage cannot meet his obligations in full, or
  - (c) because the damage exceeds the liability under section 1 of the Act of 1971 as limited—
    - (i) by section 4 of the Act of 1971, . . . <sup>F52</sup>
    - (ii) . . . . . <sup>F52</sup>
- (2) Subsection (1) above shall apply with the substitution for the words “the United Kingdom” of the words “a Fund Convention country” where—
- (a) the headquarters of the Fund is for the time being in the United Kingdom, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country, or
  - (b) the incident has caused pollution damage both in the United Kingdom and in another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the United Kingdom.
- (3) Where the incident has caused pollution damage both in the United Kingdom and in another country in respect of which the Liability Convention is in force, references in this section to the provisions of the Act of 1971 shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.
- (4) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country and the Fund is liable for that pollution damage by virtue of subsection (2)(a) above, references in this section to the provisions of the Act of 1971 shall be treated as references to the corresponding provisions of the law of the country in which those proceedings were brought.
- (5) For the purposes of this section an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.
- (6) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 1 of the Act of 1971.
- (7) The Fund shall incur no obligation under this section if—
- (a) it proves that the pollution damage—
    - (i) resulted from an act of war, hostilities, civil war or insurrection, or
    - (ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on Government non-commercial service, or
  - (b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.
- [<sup>XI</sup>(8) If the Fund proves that the pollution damage resulted wholly or partly—

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974. (See end of Document for details)*

(a) from an act or omission done with intent to cause damage by the person who suffered the damage, or

(b) from the negligence of that person,

the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person:

Provided that this subsection shall not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimise pollution damage.

(9) Where the liability under section 1 of the Act of 1971 is limited to any extent by subsection (5) of that section (contributory negligence), the Fund shall be exonerated to the same extent.]

[<sup>F53</sup>(8) If the Fund proves that the pollution damage resulted wholly or partly—

(a) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage, or

(b) from the negligence of that person,

the Fund may (subject to subsection (9A) below) be exonerated wholly or partly from its obligation to pay compensation to that person.

(9) Where the liability under section 1 of the Act of 1971 in respect of the pollution damage is limited to any extent by subsection (8) of that section (contributory negligence), the Fund shall (subject to subsection (9A) below) be exonerated to the same extent.

(9A) Subsections (8) and (9) above shall not apply where the pollution damage consists of the cost of preventive measures or any damage caused by such measures.]

[<sup>F54</sup>(10) The Fund's liability under this section shall be subject to the limits imposed by paragraphs 4, 5 and 6 of Article 4 of the Fund Convention [<sup>F55</sup>as amended by Article III of the protocol dated 19th November 1976 to that convention)] which impose an overall liability on the liabilities of the owner and of the Fund, and the text of which is set out in Schedule 1 to this Act.

(11) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(12) For the purpose of giving effect to the said provisions of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under this section shall notify the Fund, and—

(a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it,

(b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under the said provisions of Article 4 of the Fund Convention, or that it is to be reduced to a specified amount, and

(c) in the latter case the judgment shall be enforceable only for the reduced amount.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974. (See end of Document for details)*

- [ Any steps taken to obtain payment of an amount or a reduced amount in pursuance<sup>F56</sup>(13) of such a judgment as is mentioned in subsection (12) above shall be steps to obtain payment in sterling; and—
- (a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
    - (i) the day on which the judgment is given, or
    - (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
  - (b) a certificate given by or on behalf of the Treasury stating—
    - (i) that a particular sum in sterling has been so fixed for the day on which the judgment was given, or
    - (ii) that no sum has been so fixed for that day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the judgment was given,shall be conclusive evidence of those matters for the purposes of this Act;
  - (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.]]

#### Editorial Information

- X1** S. 4(8)–(9A) substituted (*prosp.*) for S. 4(8)(9) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 58(2), [Sch. 4 Pt. II para. 17\(3\)](#), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, [Sch. 4](#) by 1993 c. 22, s. 8(4), [Sch. 5 Pt.II](#); S.I. 1993/3137, art. 3(2), [Sch.2](#))

#### Textual Amendments

- F50** Words substituted (*prosp.*) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 58(2), [Sch. 4 Pt. II para. 17\(2\)\(a\)](#), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, [Sch. 4](#) by 1993 c. 22, s. 8(4), [Sch. 5 Pt.II](#); S.I. 1993/3137, art. 3(2), [Sch.2](#))
- F51** Words substituted (*prosp.*) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 58(2), [Sch. 4 Pt. II para. 17\(2\)\(b\)](#), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, [Sch. 4](#) by 1993 c. 22, s. 8(4), [Sch. 5 Pt.II](#); S.I. 1993/3137, art. 3(2), [Sch.2](#))
- F52** Word “or” and s. 4(1)(c)(ii) repealed by [Merchant Shipping Act 1979 \(c. 39\)](#), ss. 50(4), 52(2), [Sch. 7 Pt. I](#)
- F53** S. 4(8)–(9A) substituted (*prosp.*) for S. 4(8)(9) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 58(2), [Sch. 4 Pt. II para. 17\(3\)](#), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, [Sch. 4](#) by 1993 c. 22, s. 8(4), [Sch. 5 Pt.II](#); S.I. 1993/3137, art. 3(2), [Sch.2](#))
- F54** S. 4(10)–(13) repealed (*prosp.*) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 57(5), 58(2), [Sch. 4 Pt. II para. 17\(4\)](#), [Sch. 7](#), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, [Sch. 4](#) by 1993 c. 22, s. 8(4), [Sch. 5 Pt.II](#); S.I. 1993/3137, art. 3(2), [Sch.2](#))
- F55** Words inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), [ss. 38\(4\)\(b\)](#), 52(2)
- F56** S. 4(13) inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), [ss. 38\(4\)\(c\)](#), 52(2)

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974. (See end of Document for details)*

**[<sup>F14</sup>4A Limitation of Fund's liability under s. 4.**

- (1) The Fund's liability under section 4 of this Act shall be subject to the limits imposed by paragraphs 4 and 5 of Article 4 of the Fund Convention (which impose an overall limit on the liabilities of the Fund and the text of which is set out in Schedule 1 to this Act); and in those provisions references to the 1984 Liability Convention are references to the Liability Convention within the meaning of this Part of this Act.
- (2) A certificate given by the Director of the Fund stating that sub-paragraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 4 of this Act shall be conclusive evidence for the purposes of this Part of this Act that it is so applicable.
- (3) For the purpose of giving effect to paragraphs 4 and 5 of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under section 4 of this Act shall notify the Fund, and—
  - (a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it,
  - (b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount, and
  - (c) in the latter case the judgment shall be enforceable only for the reduced amount.
- (4) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (3) above shall be steps to obtain payment in sterling; and—
  - (a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
    - (i) the relevant day, namely the day on which the Assembly of the Fund decide the date for the first payment of compensation in respect of the incident, or
    - (ii) if no sum has been so fixed for the relevant day, the last day before that day for which a sum has been so fixed; and
  - (b) a certificate given by or on behalf of the Treasury stating—
    - (i) that a particular sum in sterling has been so fixed for the relevant day, or
    - (ii) that no sum has been so fixed for the relevant day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,
 shall be conclusive evidence of those matters for the purposes of this Part of this Act.
- (5) The Secretary of State may by order made by statutory instrument make such amendments of this section and of Schedule 1 to this Act as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the provisions set out in that Schedule.
- (6) Any document purporting to be such a certificate as is mentioned in subsection (2) or (4)(b) above shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.]



*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974. (See end of Document for details)*

### Textual Amendments

**F14** S. 4A inserted (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), **Sch. 4 Pt. II para. 17(5)**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) insertion fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)

### *Indemnification of shipowners*

## **5 Indemnification where damage is caused by ship registered in Fund Convention country.**

- (1) Where a liability is incurred under section 1 of the Act of 1971 in respect of a ship registered in a Fund Convention country the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of the liability which—
  - (a) is in excess of an amount equivalent to 1,500 francs for each ton of the ship's tonnage or of an amount of 125 million francs, whichever is the less, and
  - (b) is not in excess of an amount equivalent to 2,000 francs for each ton of the said tonnage or an amount of 210 million francs, whichever is the less.
- (2) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country (but is a country in respect of which the Liability Convention is in force), and either—
  - (a) the incident has caused pollution damage in the United Kingdom (as well as in that other country); or
  - (b) the headquarters of the Fund is for the time being in the United Kingdom, subsection (1) above shall apply with the omission of the words “under section 1 of the Act of 1971”.
- (3) The Fund shall not incur an obligation under this section where the pollution damage resulted from the wilful misconduct of the owner.
- (4) In proceedings to enforce the Fund's obligation under this section the court may exonerate the Fund wholly or partly if it is proved that, as a result of the actual fault or privity of the owner—
  - (a) the ship did not comply with such requirements as the Secretary of State may by order prescribe for the purposes of this section, and
  - (b) the occurrence or damage was caused wholly or partly by that non-compliance.
- (5) The requirements referred to in subsection (4) above are such requirements as appear to the Secretary of State appropriate to implement the provisions of—
  - (a) article 5(3) of the Fund Convention (marine safety conventions), and
  - (b) article 5(4) of the Fund Convention (which enables the Assembly of the Fund to substitute new conventions).
- (6) An order made under subsection (4) above—
  - (a) may be varied or revoked by a subsequent order so made, or
  - (b) may contain such transitional or other supplemental provisions as appear to the Secretary of State to be expedient, and
  - (c) shall be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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- (7) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise the pollution damage shall be treated as included in the owner's liability for the purposes of this section.

**[<sup>F57</sup>5 Indemnification where damage is caused by ship registered in Fund Convention country. U.K.]**

- (1) Where a liability is incurred under section 1 of the Act of 1971 in respect of a ship registered in a Fund Convention country the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of the liability which—
- (a) is in excess of an amount equivalent to [<sup>F58</sup>1,500 francs][<sup>F58</sup>100 special drawing rights] for each ton of the ship's tonnage or of an amount of [<sup>F58</sup>125 million francs][<sup>F58</sup>8,333,000 special drawing rights], whichever is the less, and
  - (b) is not in excess of an amount equivalent to [<sup>F58</sup>2,000 francs][<sup>F58</sup>133 special drawing rights] for each ton of the said tonnage or an amount of [<sup>F58</sup>210 million francs][<sup>F58</sup>14 million special drawing rights], whichever is the less.
- (2) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country (but is a country in respect of which the Liability Convention is in force), and either—
- (a) the incident has caused pollution damage in the United Kingdom (as well as in that other country); or
  - (b) the headquarters of the Fund is for the time being in the United Kingdom,
- subsection (1) above shall apply with the omission of the words “under section 1 of the Act of 1971”.
- (3) The Fund shall not incur an obligation under this section where the pollution damage resulted from the wilful misconduct of the owner.
- (4) In proceedings to enforce the Fund's obligation under this section the court may exonerate the Fund wholly or partly if it is proved that, as a result of the actual fault or privity of the owner—
- (a) the ship did not comply with such requirements as the Secretary of State may by order prescribe for the purposes of this section, and
  - (b) the occurrence or damage was caused wholly or partly by that non-compliance.
- (5) The requirements referred to in subsection (4) above are such requirements as appear to the Secretary of State appropriate to implement the provisions of—
- (a) article 5(3) of the Fund Convention (marine safety conventions), and
  - (b) article 5(4) of the Fund Convention (which enables the Assembly of the Fund to substitute new conventions).
- (6) An order made under subsection (4) above—
- (a) may be varied or revoked by a subsequent order so made, or
  - (b) may contain such transitional or other supplemental provisions as appear to the Secretary of State to be expedient, and
  - (c) shall be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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- (7) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise the pollution damage shall be treated as included in the owner's liability for the purposes of this section.
- [ For the purpose of converting into sterling the amount in special drawing rights
- <sup>F59</sup>(8) adjudged to be payable by the Fund by way of indemnity in such proceedings as are mentioned in subsection (4) of this section, paragraphs (a) to (c) of subsection (13) of section 4 of this Act shall have effect—
- (a) if the liability in question has been limited in pursuance of section 5 of the <sup>M8</sup>Merchant Shipping (Oil Pollution) Act 1971, as if—
- (i) for the reference in the said paragraph (a) to the amount there mentioned there were substituted a reference to the amount adjudged as aforesaid, and
- (ii) for any reference to the day on which the judgment is or was given there were substituted a reference to the day on which the determination of the limit was made in pursuance of the said section 5; and
- (b) if the liability in question has not been so limited, with the modification made by paragraph (a)(i) of this subsection and as if for any reference to the day on which the judgment is or was given there were substituted a reference to the day on which the said amount was so adjudged.]]

#### Textual Amendments

- F57** S. 5 repealed (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 57(5), 58(2), Sch. 4 Pt. II para. 18, Sch. 7, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch.2)
- F58** Words “100 special drawing rights” and “133 special drawing rights” substituted (*prosp.*) respectively for words “1,500 francs” and “2,000 francs”, and words “8,333,000 special drawing rights” and “14 million special drawing rights” substituted (*prosp.*) respectively for words “125 million francs” and “210 million francs” by Merchant Shipping Act 1979 (c. 39, SIF 111), ss. 38(4)(d), 52(d)
- F59** S. 5(8) inserted (*prosp.*) by Merchant Shipping Act 1979 (c. 39), ss. 38(4)(e), 52(2)

#### Marginal Citations

- M8** 1971 c. 59.

### Supplemental

## 6 Jurisdiction and effect of judgments.

- (1) [<sup>F15</sup>Paragraph 1(1)(d) of Schedule 1 to the Administration of Justice Act 1956](Admiralty jurisdiction in claims for damage done by ships) shall be construed as extending to any claim in respect of a liability falling on the Fund under this Part of this Act; and the Admiralty jurisdiction of the Court of Session shall extend to any case arising out of any such claim.
- (2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 1 of the Act of 1971, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the

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Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

- (3) Where a person incurs a liability under the law of a Fund Convention country corresponding to the Act of 1971 for damage which is partly in the area of the United Kingdom, subsection (2) above shall, for the purpose of proceedings under this Part of this Act, apply with any necessary modifications to a judgment in proceedings under that law of the said country.
- (4) Subject to subsection (5) below, Part I of the <sup>M4</sup>Foreign Judgments (Reciprocal Enforcement) Act 1933 shall apply, whether or not it would so apply apart from this subsection, to any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 4 or 5 of this Act; and in its application to such a judgment the said Part I shall have effect with the omission of subsections (2) and (3) of section 4 of the Act of 1933.
- (5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part I of the Act of 1933 gives leave to enforce it: and—
  - (a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention (as set out [<sup>F16</sup>as amended]in Schedule 1 to this Act) or that it is to be reduced to a specified amount; and
  - (b) in the latter case, the judgment shall be enforceable only for the reduced amount.

#### Textual Amendments

**F15** Words substituted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), s. 152(1), [Sch. 5](#)

**F16** Words inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), [ss. 38\(4\)\(f\)](#), 52(2)

#### Marginal Citations

**M4** [1933 c. 13](#).

## 6 Jurisdiction and effect of judgments. **U.K.**

- (1) [<sup>F60</sup>Paragraph 1(1)(d) of Schedule 1 to the Administration of Justice Act 1956](Admiralty jurisdiction in claims for damage done by ships) shall be construed as extending to any claim in respect of a liability falling on the Fund under this Part of this Act; and the Admiralty jurisdiction of the Court of Session shall extend to any case arising out of any such claim.
- (2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 1 of the Act of 1971, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.
- (3) Where a person incurs a liability under the law of a Fund Convention country corresponding to the Act of 1971 for damage which is partly in the area of the United Kingdom, subsection (2) above shall, for the purpose of proceedings under this Part of this Act, apply with any necessary modifications to a judgment in proceedings under that law of the said country.

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- (4) Subject to subsection (5) below, Part I of the <sup>M9</sup>Foreign Judgments (Reciprocal Enforcement) Act 1933 shall apply, whether or not it would so apply apart from this subsection, to any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 4 <sup>F61</sup>or 5]of this Act; and in its application to such a judgment the said Part I shall have effect with the omission of subsections (2) and (3) of section 4 of the Act of 1933.
- (5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part I of the Act of 1933 gives leave to enforce it: and—
- (a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention (as set out <sup>F62</sup>as amended<sup>F63</sup>) in Schedule 1 to this Act) or that it is to be reduced to a specified amount; and
- (b) in the latter case, the judgment shall be enforceable only for the reduced amount.

#### Textual Amendments

- F60** Words substituted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), s. 152(1), [Sch. 5](#)
- F61** Words repealed (*prosp.*) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 57(5), 58(2), [Sch. 4 Pt. II para. 19\(a\)](#), [Sch. 7](#), (with s. 58(4), [Sch. 8 para. 1](#)) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of [1988 c. 12, s. 34](#), [Sch. 4](#) by [1993 c. 22, s. 8\(4\)](#), [Sch. 5 Pt.II](#); [S.I. 1993/3137](#), art. 3(2), [Sch.2](#))
- F62** Words repealed (*prosp.*) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 57(5), 58(2), [Sch. 4 Pt. II para. 19\(b\)](#), [Sch. 7](#), (with s. 58(4), [Sch. 8 para. 1](#)) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of [1988 c. 12, s. 34](#), [Sch. 4](#) by [1993 c. 22, s. 8\(4\)](#), [Sch. 5 Pt.II](#); [S.I. 1993/3137](#), art. 3(2), [Sch.2](#))
- F63** Words inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), [ss. 38\(4\)\(f\)](#), 52(2)

#### Marginal Citations

- M9** [1933 c. 13](#).

## 7 Extinguishment of claims.

- (1) No action to enforce a claim against the Fund under this Part of this Act shall be entertained by a court in the United Kingdom unless—
- (a) the action is commenced, or
- (b) a third-party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund,
- not later than three years after the claim against the Fund arose.
- In this subsection “third party notice” means a notice of the kind described in subsections (2) and (3) of the last preceding section.
- (2) No action to enforce a claim against the Fund under this Part of this Act shall be entertained by a court in the United Kingdom unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the claim against the Fund arose.
- (3) Notwithstanding the preceding provision of this section, a person’s right to bring an action under section 5 of this Act shall not be extinguished before six months from the date when that person first acquired knowledge of the bringing of an action against

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him under the Act of 1971 (that is to say an action to enforce a liability against which he seeks indemnity), or under the corresponding provisions of the law of any country outside the United Kingdom giving effect to the Liability Convention.

## 7 Extinguishment of claims. **U.K.**

- (1) No action to enforce a claim against the Fund under this Part of this Act shall be entertained by a court in the United Kingdom unless—
- (a) the action is commenced, or
  - (b) a third-party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund,
- not later than three years after the claim against the Fund arose.

In this subsection “third party notice” means a notice of the kind described in subsections (2) and (3) of the last preceding section.

- (2) No action to enforce a claim against the Fund under this Part of this Act shall be entertained by a court in the United Kingdom unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape <sup>[F64]</sup>, or (as the case may be) in the relevant threat of contamination,] by reason of which the claim against the Fund arose.

- <sup>[F65]</sup>(3) Notwithstanding the preceding provision of this section, a person’s right to bring an action under section 5 of this Act shall not be extinguished before six months from the date when that person first acquired knowledge of the bringing of an action against him under the Act of 1971 (that is to say an action to enforce a liability against which he seeks indemnity), or under the corresponding provisions of the law of any country outside the United Kingdom giving effect to the Liability Convention.]

### Textual Amendments

- F64** Words inserted (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), **Sch 4 Pt. II para. 20(a)**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) insertion fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt. II**; S.I. 1993/3137, art. 3(2), **Sch. 2**)
- F65** S. 7(3) repealed (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 57(5), 58(2), Sch. 4 Pt. II para. 20(b), **Sch. 7**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt. II**; S.I. 1993/3137, art. 3(2), **Sch. 2**)

## 8 Subrogation and rights of recourse.

- (1) In respect of any sum paid under section 4(1)(b) of this Act (default by owner or guarantor on liability for pollution damage) the Fund shall acquire by subrogation the rights of the recipient against the owner or guarantor.
- (2) The right of the Fund under subsection (1) above is subject to any obligation of the Fund under section 5 of this Act to indemnify the owner or guarantor for any part of the liability on which he has defaulted.
- (3) In respect of any sum paid—
- (a) under paragraph (a) or paragraph (c) of section 4(1); or
  - (b) under section 5,



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the Fund shall acquire by subrogation any rights of recourse or subrogation which the owner or guarantor or any other person has in respect of his liability for the damage in question.

- (4) In respect of any sum paid by a public authority in the United Kingdom as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under this Part of this Act.

## 8 Subrogation and rights of recourse. **U.K.**

- (1) In respect of any sum paid under section 4(1)(b) of this Act (default by owner or guarantor on liability for pollution damage) the Fund shall acquire by subrogation the rights of the recipient against the owner or guarantor.

[<sup>F66</sup>(2) The right of the Fund under subsection (1) above is subject to any obligation of the Fund under section 5 of this Act to indemnify the owner or guarantor for any part of the liability on which he has defaulted.]

[<sup>F67F67</sup>(3) In respect of any sum paid—

- (a) under paragraph (a) or paragraph (c) of section 4(1); or  
(b) under section 5,

the Fund shall acquire by subrogation any rights of recourse or subrogation which the owner or guarantor or any other person has in respect of his liability for the damage in question.]

[<sup>F67</sup>(3) In respect of any sum paid under section 4(1)(a) or (c) of this Act (exclusion or limitation of liability for pollution damage) the Fund shall acquire by subrogation any rights of recourse in respect of the damage in question which the recipient has against any person other than the owner or guarantor.]

- (4) In respect of any sum paid by a public authority in the United Kingdom as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under this Part of this Act.

### Textual Amendments

- F66** S. 8(2) repealed (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 57(5), 58(2), Sch. 4 Pt. II para. 21(a), Sch. 7, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt. II; S.I. 1993/3137, art. 3(2), Sch. 2)
- F67** S. 8(3) commencing “In respect of any sum paid under section 4(1)(a)” substituted (*prosp.*) for s. 8(3) commencing “In respect of any sum paid (a) under paragraph (a)” by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), Sch. 4 Pt. II para. 21(b), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt. II; S.I. 1993/3137, art. 3(2), Sch. 2)

### [<sup>F17</sup>8A) Supplementary provisions as to proceedings involving the Fund

- (1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund’s representative.
- (2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be

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given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.]

**Textual Amendments**

**F17** S. 8A inserted (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), **Sch. 4 Pt. II para. 22**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) insertion fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)

**9** ..... **F18**

**Textual Amendments**

**F18** S. 9 repealed by Merchant Shipping Act 1979 (c. 39, SIF 111), ss. 47(2), 50(4), **Sch. 7 Pt. I**

**PART II**

**10–13** ..... **F19**

**Textual Amendments**

**F19** Ss. 10–13 repealed by S.I. 1983/1106, art. 2, **Sch.**

**PART III**

PROTECTION OF SHIPPING AND TRADING INTERESTS

**14 Foreign action affecting shipping.**

[<sup>F20</sup>(1) The Secretary of State may exercise the powers conferred by this section if he is satisfied that—

- (a) a foreign government, or
- (b) persons purporting to exercise governing authority over any territory outside the United Kingdom, or
- (c) any agency or authority of a foreign government or of such persons, have adopted, or propose to adopt, measures or practices concerning or affecting any shipping services which—
  - (i) are damaging or threaten to damage the shipping or trading interests of the United Kingdom, or
  - (ii) are damaging or threaten to damage the shipping or trading interests of another State,



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and, in the latter case, the Secretary of State is satisfied that action under this section would be in fulfilment of the obligations of the United Kingdom to that other State or would be appropriate in view of any arrangements made between Her Majesty's Government and the government of that other State.]

(2) The Secretary of State may by order make provision for requiring persons in the United Kingdom carrying on any trade or business to provide the Secretary of State with all such information as he may require for the purpose of enabling him—

- (a) to determine what further action to take under this section, and
- (b) to ensure compliance with any orders or directions made or given under this section.

[<sup>F21</sup>(3) The Secretary of State may by order provide for—

- (a) regulating the provision of any shipping services and the rates, fares or other amounts which may or must be charged for providing those services;
- (b) regulating—
  - (i) the admission and departure of ships to and from United Kingdom ports,
  - (ii) the nature of the shipping services they may be used to provide (whether by reference to the cargoes or passengers they may carry or otherwise), and
  - (iii) the loading or unloading of cargoes, the embarkation or disembarkation of passengers, or the doing of other things in connection with the provision of any shipping services;
- (c) regulating the making and implementation of agreements (including charter-parties) whose subject matter relates directly or indirectly to the provision of any shipping services, and requiring such agreements to be subject to the Secretary of State's approval in such cases as he may specify;
- (d) imposing charges in respect of ships which enter United Kingdom ports in connection with the provision of any shipping services;
- (e) imposing, in pursuance of any Community obligation, such tax or duty payable by such persons and in such circumstances as the Secretary of State may specify;

and in this subsection “regulating”, except in relation to the rates, fares or other amounts which may or must be charged as mentioned in paragraph (a) above, includes imposing a prohibition.]

- (a) regulating the carriage of goods in ships and the rates which may or must be charged for carrying them;
- (b) regulating the admission and departure of ships to and from United Kingdom ports, the cargoes they may carry, and the loading or unloading of cargoes;
- (c) regulating the making and implementation of agreements (including charter-parties) whose subject matter relates directly or indirectly to the carriage of goods by sea, and requiring such agreements to be subject to the Secretary of State's approval in such cases as he may specify;
- (d) imposing charges in respect of ships which enter United Kingdom ports to load or unload cargo,

[<sup>F22</sup>and in this subsection “regulating”, except in relation to the rates which may or must be charged for carrying goods, includes imposing a prohibition].

(4) In a case falling within [<sup>F23</sup>subsection (1)(i)]above, an order under subsection (3) above shall specify the measures or practices which in the opinion of the Secretary of

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State are damaging or threaten to damage shipping or trading interests of the United Kingdom.

- (5) An order under this section may authorise the Secretary of State to give directions to any person for the purposes of the order:

Provided that this subsection shall not apply for the purpose of recovering [<sup>F24</sup>any charge, tax or duty imposed under subsection (3)(d) or (e) above].

- (6) Any order or direction made or given under this section—

- (a) may be either general or special, and may be subject to such conditions or exceptions as the Secretary of State specifies (including conditions and exceptions operating by reference to the giving or withholding of his approval for any course of action);
- (b) may be in terms that require compliance either generally or only in specified cases;
- (c) may be varied or revoked by a subsequent order, or as the case may be, a subsequent direction, so made or given,

and an order made pursuant to this section shall be contained in a statutory instrument.

- (7) Before the Secretary of State makes an order under this section he shall consult such representatives of the shipping or trading interests of the United Kingdom, and such other persons, as appear to him appropriate.

- (8) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, he shall, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the execution of this section, or
- (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings, [<sup>F25</sup>or
- (d) in pursuance of a Community obligation to a Community institution],

be liable on summary conviction to a fine not exceeding [<sup>F26</sup>level 5 on the standard scale].

- (9) A person who—

- (a) refuses or wilfully neglects to furnish any information which he is required to furnish under this section, or
- (b) in furnishing any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be liable on summary conviction to a fine not exceeding [<sup>F27</sup>[<sup>F26</sup>level 4 on the standard scale]in the case of an offence under paragraph (a) of this subsection and not exceeding [<sup>F26</sup>level 5 on the standard scale]in the case of an offence under paragraph (b) of this subsection].

- (10) A person who wilfully contravenes or fails to comply with any provision of an order or direction made or given pursuant to this section, other than a provision requiring him to give any information, shall be liable—

- (a) on summary conviction to a fine of not more than £5,000;
- (b) on conviction on indictment to a fine;

and where the order or direction requires anything to be done, or not to be done, by, to or on a ship, and the requirement is not complied with, the owner and master of

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the ship are each to be regarded as wilfully failing to comply, without prejudice to the liability of anyone else.

[<sup>F28</sup>(11) In this section—

- (a) “foreign government” means the government of any State other than the United Kingdom ;
- (b) references to an agency or authority of a foreign government or of such persons as are mentioned in subsection (1)(b) above include references to any undertaking appearing to the Secretary of State to be, or to be acting on behalf of, an undertaking which is in effect owned or controlled (directly or indirectly) by a State other than, or by a territory outside, the United Kingdom;
- (c) “shipping services” means services provided by means of ships, and includes the carriage of goods or passengers by sea, cable laying, dredging, and services provided by offshore support vessels; and
- (d) references to ships are to ships of any registration.

(11A) A recital in an order under this section that the persons who have adopted, or propose to adopt, the measures or practices in question are—

- (a) a foreign government, or
  - (b) such persons as are mentioned in subsection (1)(b) above, or
  - (c) an agency or authority of a foreign government or of such persons,
- shall be conclusive.]

(12) Schedule 4 to this Act shall have effect for supplementing this section, which in that Schedule is called “the principal section”.

#### Textual Amendments

- F20** S. 14(1) substituted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), **s. 38(2)**, (with s. 58(4), Sch. 8 para. 1)
- F21** S. 14(3) substituted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), **s. 38(3)**, (with s. 58(4), Sch. 8 para. 1)
- F22** Words inserted by [Merchant Shipping Act 1979 \(c. 39\)](#), **s. 40(1)(a)**
- F23** Words substituted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), **s. 38(4)**, (with s. 58(4), Sch. 8 para. 1)
- F24** Words substituted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), **s. 38(5)**, (with s. 58(4), Sch. 8 para. 1)
- F25** Words inserted by [Merchant Shipping Act 1979 \(c. 39\)](#), **s. 40(1)(b)**
- F26** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 46**; (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G** and (N.I.) [S.I. 1984/703 \(N.I. 3\)](#), **art. 5**
- F27** Words substituted by [Merchant Shipping Act 1979 \(c. 39\)](#), **Sch. 6 Pt. VI para. 19**
- F28** S. 14(11)(11A) substituted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), **s. 38(6)**, (with s. 58(4), Sch. 8 para. 1)

## 15 Parliamentary control of orders under Part III.

(1) [<sup>F29</sup>Subject to subsection (2A) below,]no order shall be made in exercise of the powers conferred by subsection (3) of the last preceding section unless—

- (a) a draft has been approved by resolution of each House of Parliament, or

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- (b) it is declared in the order that it appears to the Secretary of State that by reason of urgency it is necessary to make the order without a draft having been so approved.
- (2) [<sup>F29</sup>Subject to subsection (2A) below,]an order made in exercise of the powers conferred by the said subsection (3) without a draft having been approved by resolution of each House of Parliament shall cease to have effect at the expiration of a period of 28 days beginning with the date on which it was made unless before the expiration of that period it has been approved by resolution of each House of Parliament, but without prejudice to anything previously done, or to the making of a new order.

In reckoning for the purposes of this subsection any period of 28 days, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

- [<sup>F30</sup>(2A) Subsections (1) and (2) above do not apply to an order under the said subsection (3) which is made for the purpose only of implementing any Community obligation.]
- (3) An order under the last preceding section which is not made in exercise of the powers conferred by subsection (3) of that section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) If an order under that section recites [<sup>F31</sup>that it is made as mentioned in subsection (2A) above, or]that it is not made in exercise of the powers conferred by the said subsection (3), the recital shall be conclusive.

#### Textual Amendments

- F29** Words inserted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), **s. 38(7)(a)**, (with s. 58(4), Sch. 8 para. 1)
- F30** [S. 15\(2A\)](#) inserted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), **s. 38(7)(b)**, (with s. 58(4), Sch. 8 para. 1)
- F31** Words inserted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), **s. 38(7)(c)**, (with s. 58(4), Sch. 8 para. 1)

## PART IV

### SUBMERSIBLE APPARATUS

#### 16 Apparatus to which Part IV applies.

- (1) This Part of this Act applies to any submersible or supporting apparatus—
- operated within waters which are in the United Kingdom or which are adjacent thereto and within the seaward limits of territorial waters, or
  - launched or operated from, or comprising, a ship registered in the United Kingdom or a British ship of a specified description (being a British ship which is not registered in the United Kingdom).
- (2) In this section—
- “apparatus” includes any vessel, vehicle or hovercraft, any structure, any diving plant or equipment and any other form of equipment,

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“specified” means specified in regulations made by the Secretary of State for the purposes of this section,

“submersible apparatus” means any apparatus used, or designed for use, in supporting human life on or under the bed of any waters or elsewhere under the surface of any waters, and

“supporting apparatus” means any apparatus used or designed for use, in connection with the operation of any submersible apparatus.

## **17 Safety of submersible and supporting apparatus.**

- (1) The Secretary of State may make regulations—
  - (a) for the safety of submersible and supporting apparatus;
  - (b) for the prevention of accidents in or near submersible or supporting apparatus;
  - (c) for the safety, health and welfare of persons on or in submersible and supporting apparatus;
  - (d) for prohibiting or otherwise restricting the operation of any submersible apparatus except in accordance with the conditions of a licence granted under the regulations; and
  - (e) for the registration of submersible apparatus.
- (2) Regulations made under this section shall be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Schedule 5 to this Act shall have effect for supplementing the provisions of this section.

## **PART V**

### MISCELLANEOUS AND SUPPLEMENTAL

## **18 Commissioners of Northern Lighthouses.**

- (1) Section 668 of the <sup>M5</sup>Merchant Shipping Act 1894 (constitution of Commissioners of Northern Lighthouses) shall be amended as follows.
- (2) After paragraph (d) of subsection (1) there shall be inserted—

“(dd) a person nominated by the Lieutenant-Governor of the Isle of Man and appointed by the Secretary of State”.
- (3) At the end of the said section 668 there shall be added—
  - “(4) The Commissioners may elect, as members of their body, not more than four other persons.
  - (5) A person appointed by the Secretary of State under subsection (1) (dd) above, or a person appointed by the Commissioners under subsection (4) above, shall hold office for three years, but shall be eligible for re-appointment.”

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**Modifications etc. (not altering text)**

- C5** The text of S. 18 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

- M5** 1894 c. 60.

**19 Offences by seamen.**

- (1) The <sup>M6</sup>Merchant Shipping Act 1970 shall be amended in accordance with the following provisions of this section.
- (2) In section 27 (which creates an offence in relation to misconduct endangering a ship or persons on board, punishable on summary conviction with a fine not exceeding £200) for the words “£200” there shall be substituted the words “£400”.
- (3) Section 29 (which makes it an offence wilfully to disobey a lawful command relating to, or likely to affect, the operation of a ship or of its equipment) and section 31 (which makes it an offence in certain circumstances for a seaman to be absent without leave at the time of sailing) are hereby repealed.
- (4) In section 30 (continued or concerted disobedience, neglect of duty, etc.) for the words from the beginning of paragraph 9c0 to the end there shall be substituted:—
  - “(c) combines with other seamen employed in that ship—
    - (i) to disobey lawful commands which are required to be obeyed at a time while the ship is at sea ;
    - (ii) to neglect any duty which is required to be discharged at such a time ; or
    - (iii) to impede, at such a time, the progress of a voyage or the navigation of the ship,
 he shall be liable on summary conviction to a fine not exceeding £100.

For the purposes of this section a ship shall be treated as being at sea at any time when it is not securely moored in a safe berth. ”

- (5) In section 34(2) (which imposes a limit of £10 on the amount of any fine which may be imposed on a seaman for a “disciplinary offence”) for the words “£10” there shall be substituted the words “£20”.
- (6) The following provisions referring to sections repealed by subsection (3) above shall be amended, that is to say—
  - (a) in section 32 the words “29” shall be omitted;
  - (b) in paragraph 2 of Schedule 2 the words “29”, in both places, and the words “or 31” shall be omitted;
  - (c) in section 95(1)(a) for the words “29 to” there shall be substituted the words “30 and”.

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**Modifications etc. (not altering text)**

- C6** The text of S. 19 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

- M6** 1970 c. 36.

*Supplemental*

**20 Extension to British possessions etc.**

- (1) Her Majesty may by Order in Council direct that specified provisions of this Act shall extend, subject to specified exceptions, modifications or adaptations, to any of the following countries, that is to say—
- (a) the Isle of Man;
  - (b) any of the Channel Islands;
  - (c) any colony other than one for whose external relations a country other than the United Kingdom is responsible;
  - (d) any country outside Her Majesty’s dominions in which Her Majesty has jurisdiction in right of Her Majesty’s Government in the United Kingdom.
- (2) In respect of any country falling within any of paragraphs (a) to (d) of subsection (1) above, Her Majesty may by Order in Council, specifying that country, direct that, with specified exceptions, adaptations or modifications, specified provisions of this Act shall have effect as if references therein to the United Kingdom included references to that country.
- (3) In subsections (1) and (2) above “specified” means specified by an Order under this section.
- (4) Any Order made under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

- C7** S. 20 explained by [Merchant Shipping Act 1979 \(c. 39\), s. 38\(5\)](#)

**21 Financial provisions.**

Any sum received by a Minister under this Act shall be paid into the Consolidated Fund.

**22 Offences by bodies corporate.**

Where an offence under this Act, or under regulations made under any of its provisions, which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body

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*Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974. (See end of Document for details)*

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corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this section “director”, in relation to a body corporate established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

### 23 Construction and interpretation.

- (1) This Act shall be construed as one with the Merchant Shipping Acts 1894 to 1971, and without prejudice to the generality of this provision, references in those Acts to the Merchant Shipping Acts shall be construed as including references to this Act.
- (2) References in this Act to the area of any country include the territorial sea of that country, and references to pollution damage in the United Kingdom shall be construed accordingly.
- (3) It is hereby declared that any power to give directions conferred by this Act includes a power to vary or revoke directions so given.
- (4) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment.

### 23 Construction and interpretation. **U.K.**

- (1) This Act shall be construed as one with the Merchant Shipping Acts 1894 to 1971, and without prejudice to the generality of this provision, references in those Acts to the Merchant Shipping Acts shall be construed as including references to this Act.
- (2) References in this Act to the area of any country include the territorial sea of that country [<sup>F68</sup>, and references to pollution damage in the United Kingdom shall be construed accordingly.]
- (3) It is hereby declared that any power to give directions conferred by this Act includes a power to vary or revoke directions so given.
- (4) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment.

#### Textual Amendments

**F68** Words repealed (*prosp.*) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 57(5), 58(2), [Sch. 4 Pt. II para. 23](#), [Sch. 7](#), (with s. 58(4), [Sch. 8 para. 1](#)) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of [1988 c. 12, s. 34](#), [Sch. 4](#) by [1993 c. 22, s. 8\(4\)](#), [Sch. 5 Pt.II](#); [S.I. 1993/3137](#), art. 3(2), [Sch.2](#))

### 24 Citation, commencement, repeals and extent.

- (1) This Act may be cited as the Merchant Shipping Act 1974; and this Act and the Merchant Shipping Acts 1894 to 1971 may be cited together as the Merchant Shipping Acts 1894 to 1974.



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- (2) This Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument; and different days may be appointed for different provisions, or for different purposes.
- (3) An order under subsection (2) above may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions, or any provisions of this Act then in force, as appear to him to be necessary or expedient in consequence of the partial operation of this Act (whether before or after the day appointed by the order).
- (4) ..... F32
- (5) This Act extends to Northern Ireland.

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**Textual Amendments**

**F32** S. 24(4) repealed by [Statute Law Repeals Act 1986 \(c. 12\)](#), s. 1(1), **Sch. 1 Pt. XI**

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**Modifications etc. (not altering text)**

**C8** Power of appointment conferred by s. 24(2) partly exercised by [S.I. 1974/1792](#), 1975/866, 1978/1466, 1979/808: unrepealed provisions of Act wholly in force

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## SCHEDULES

### SCHEDULE 1

Sections 4(10) 6(5).

#### OVERALL LIMIT ON LIABILITY OF FUND

##### *Article 4—paragraphs 4, 5 and 6*

- 4
- (a) Except as otherwise provided in sub-paragraph (b) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage caused in the territory of the Contracting States, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to Article 5, paragraph 1, of this Convention, shall not exceed [F<sup>33</sup>30 million special drawing rights].
  - (b) The aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed [F<sup>33</sup>30 million special drawing rights].

#### Textual Amendments

**F33** Words substituted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), **ss. 38(4)(g)**, 52(2)

- 5
- Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under the Liability Convention and this Convention shall be the same for all claimants.
- 6
- The Assembly of the Fund (hereinafter referred to as “the Assembly”) may, having regard to the experience of incidents which have occurred and in particular the amount of damage resulting therefrom and to changes in the monetary values, decide that the amount of [F<sup>34</sup>30 million special drawing rights] referred to in paragraph 4, subparagraph (a) and (b), shall be changed; provided, however, that this amount shall in no case exceed [F<sup>34</sup>60 million special drawing rights] or be lower than [F<sup>34</sup>30 million special drawing rights]. The changed amount shall apply to incidents which occur after the date of the decision effecting the change.

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*Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974. (See end of Document for details)*

#### Textual Amendments

**F34** Words substituted (*prosp.*) by Merchant Shipping Act 1979 (c. 39), ss. 38(4)(g), 52(2)

### [<sup>F35</sup>SCHEDULE 1

#### OVERALL LIMIT ON LIABILITY OF FUND]

#### Textual Amendments

**F35** Sch. 1 headed “Article 4 paragraphs 4 and 5” substituted (*prosp.*) for Sch. 1 headed “Article 4 paragraph 4,5 and 6” by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), Sch. 4 Pt. II para. 24, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch.2)

### <sup>F36</sup>Article 4—paragraphs 4and 5

#### Textual Amendments

**F36** Sch. 1 headed "Article 4 paragraph 4 and 5" substituted (*prosp.*) for Sch. 1 headed "Article 4 paragraph 4, 5 and 6" by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), Sch. 4 Pt. II para. 24 (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch.2)

- <sup>F37</sup>4
- (a) Except as otherwise provided in sub-paragraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the [<sup>F38</sup>1984] Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of account.
  - (b) Except as otherwise provided in sub-paragraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 135 million units of account.
  - (c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.
  - (d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the [<sup>F38</sup>1984] Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

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- (e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

#### Textual Amendments

- F37** Sch. 1 headed "Article 4 paragraph 4 and 5" substituted (*prosp.*) for Sch. 1 headed "Article 4 paragraph 4, 5 and 6" by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), Sch. 4 Pt. II para. 24 (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch.2)
- F38** Word in para. 4(a)(d) repealed (*prosp.*) by 1994 c. 28, ss. 5(2)(a), 10(4) (which amending Act was repealed (1.1.1996) by 1995 c. 21, s. 314(1), Sch. 12)

- F39**<sup>5</sup> Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

#### Textual Amendments

- F39** Sch. 1 headed "Article 4 paragraph 4 and 5" substituted (*prosp.*) for Sch. 1 headed "Article 4 paragraph 4, 5 and 6" by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), Sch. 4 Pt. II para. 24 (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch.2).

## SCHEDULES 2, 3

. . . **F40**

#### Textual Amendments

- F40** Schs. 2, 3 repealed by S.I. 1983/1106, art. 2, Sch. 2

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## SCHEDULE 4

Section 14(12).

### PROTECTION OF SHIPPING AND TRADING INTERESTS

#### *Customs powers*

- 1 (1) An order made under the principal section with the consent of the Commissioners of Customs and Excise may provide for the enforcement and execution of any order or direction under the principal section by officers of customs and excise.
- (2) Officers of customs and excise acting under any provision made under subparagraph (1) above shall have power to enter any premises or vessel.
- (3) [<sup>F41</sup>Section 65 of the <sup>M7</sup>Customs and Excise Management Act 1979] (power to refuse or cancel clearance of ship or aircraft) shall apply as if the principal section and this Schedule were contained in that Act.

#### **Textual Amendments**

**F41** Words substituted by [Customs and Excise Management Act 1979 \(c. 2\)](#), [Sch. 4 para. 12](#) Table Pt. I

#### **Marginal Citations**

**M7** [1979 c. 2](#).

#### *[<sup>F42</sup> Orders imposing charges, taxes or duties]*

#### **Textual Amendments**

**F42** [Sch. 4 para. 2](#) substituted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), [s. 38\(8\)](#) (with [s. 58\(4\)](#), [Sch. 8 para. 1](#))

- 2 (1) An order under subsection (3)(d) or (e) of the principal section—
  - (a) may apply to ships of any description specified in the order, and may apply in particular to ships registered in a specified country, or to ships carrying goods or cargoes of a specified description, or providing any other specified shipping services (within the meaning of the principal section), and
  - (b) may contain such provisions as appear to the Secretary of State expedient to enable the Commissioners of Customs and Excise to collect any charge, tax or duty imposed by the order, and
  - (c) may apply, subject to any modifications or exceptions specified in the order, any of the enactments for the time being in force relating to duties (whether of customs or excise) chargeable on goods imported into the United Kingdom.
- (2) Any charge, tax or duty so imposed may be a fixed amount, or an amount depending on the tonnage of the ship.
- (3) Any such charge, tax or duty shall be payable to the Secretary of State.

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- (4) An order shall not be made by the Secretary of State under subsection (3)(d) or (e) of the principal section except with the consent of the Treasury.
- (5) Nothing in this paragraph prejudices subsection (6) of that section.

*Criminal proceedings*

- 3 A person shall not be guilty of an offence against any provision contained in or having effect under the principal section or this Schedule by reason only of something done by that person wholly outside the area of the United Kingdom unless that person is a British subject or a company incorporated under the law of any part of the United Kingdom.

*Interpretation*

- 4 In the principal section “port” includes an off-shore terminal, and references to entering or leaving a port shall include references to using or ceasing to use an off-shore terminal.

SCHEDULE 5

Section 17(3).

REGULATIONS RELATING TO SUBMERSIBLE AND SUPPORTING APPARATUS

- 1 (1) In this Schedule “regulations” means regulations made under section 17 of this Act, and “prescribed” means prescribed by regulations.
- (2) Nothing in this Schedule shall be taken to prejudice the generality of section 17 of this Act.

*Registration of submersible apparatus*

- 2 Regulations made by virtue of section 17(1)(e) of this Act may make provision—
- (a) for all matters relevant to the maintenance of a register of submersible apparatus,
  - (b) without prejudice to sub-paragraph (a) above, for the period for which any registration or exemption is to remain effective without renewal, the alteration or cancellation in any prescribed circumstances of registration or exemption or of any conditions attached thereto, the person by whom and manner in which applications in connection with any registration or exemption are to be made, and information and evidence to be furnished in connection with any such application,
  - (c) for the marking or other means of identification of any submersible apparatus,
  - (d) for the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of them,

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- (e) for matters arising out of the termination of any registration or exemption, or any conditions attached thereto.

### *Offences*

- 3 (1) Subject to sub-paragraph (2) below, regulations—
- (a) may provide for the creation of offences and for their punishment on summary conviction or on conviction on indictment, and
  - (b) may afford, in respect of any description of offence created by the regulations, such defence (if any) as may be prescribed.
- (2) The punishment for an offence created by regulations shall be—
- (a) [<sup>F43</sup>on summary conviction a fine not exceeding £1,000],
  - (b) on conviction on indictment imprisonment for a term not exceeding 2 years, or a fine, or both,
- but without prejudice to any further restriction contained in the regulations on the punishments which can be awarded and without prejudice to the exclusion by the regulations of proceedings on indictment.

#### **Textual Amendments**

**F43** Words substituted by [Merchant Shipping Act 1979 \(c. 39\), Sch. 6 Pt. VI para. 20](#)

#### **Modifications etc. (not altering text)**

**C9** [Sch. 5 para. 3](#) amended by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 49\(1\)](#)

### *Exemptions from regulations*

- 4 (1) The operation of any regulations may be excluded in whole or in part in relation to any class or description of submersible or supporting apparatus by regulations, or in relation to any particular apparatus by the direction of the Secretary of State given in such manner as he thinks appropriate.
- (2) Any exemption or exclusion by regulations or by directions of the Secretary of State under this paragraph may be made subject to the imposition of conditions specified by the regulations or directions.
- (3) Where, in pursuance of this paragraph, a person is exempted or excluded from the requirements of the provisions of regulations but, subject to a condition, and the condition is not observed, the exemption or exclusion shall not have effect, and accordingly proceedings may be brought in respect of any offence created by the regulations.

### *General*

- 5 Regulations—

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- (a) may provide for their operation anywhere outside the United Kingdom and for their application to persons, whether or not British subjects, and to companies, whether or not incorporated under the law of any part of the United Kingdom,
- (b) may provide that in any proceedings for an offence under the regulations an averment in any process of the fact that anything was done or situated within waters to which this Act applies shall, until the contrary is proved, be sufficient evidence of that fact as stated in the averment,
- (c) may provide that proceedings for any offence under the regulations may be taken, and the offence be treated for all incidental purposes as having been committed, in any place in the United Kingdom,
- (d) may provide for any provisions of the Merchant Shipping Acts 1894 to 1970 relating to inquiries and investigations into shipping casualties to apply (with such modifications as may be specified) in relation to casualties involving any submersible apparatus which is not a ship as they apply to ships,
- (e) may provide that specified provisions of any enactment (other than this Act) shall, in such circumstances as may be prescribed, not have effect in relation to such class or description of, or to such particular, submersible or supporting apparatus as may be prescribed;
- (f) may make different provision for different classes or descriptions of submersible or supporting apparatus and for different circumstances,
- (g) may contain such supplemental, and incidental provisions as appear to the Secretary of State to be expedient, including provision for requiring the payment of fees in connection with the making of applications and the granting of licences or issue of certificates, or other matters.



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