



Merchant Shipping Act 1995

1995 CHAPTER 21

PART VI

PREVENTION OF POLLUTION

CHAPTER I

POLLUTION GENERALLY

128 Prevention of pollution from ships etc

- (1) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of any of the following which have been ratified by the United Kingdom—
- (a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2nd November 1973;
 - (b) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil which constitutes attachment 2 to the final act aforesaid;
 - (c) the Protocol relating to the said Convention which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th February 1978;
 - (d) the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (including the Final Act of the Conference and the attached resolutions) signed in London on 30th November 1990;
 - (e) any international agreement not mentioned in paragraphs (a) to (d) above which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships;

Status: This is the original version (as it was originally enacted).

and in paragraph (e) above the reference to an agreement includes an agreement which provides for the modification of another agreement, including the modification of an agreement mentioned in paragraphs (a) to (c) above.

- (2) The powers conferred by subsection (1) above to make provision for the purpose of giving effect to an agreement include power to provide for the provision to come into force although the agreement has not come into force.
- (3) Without prejudice to the generality of subsection (1) above, an Order under that subsection may in particular include provision—
- (a) for applying for the purpose mentioned in that subsection any enactment or instrument relating to the pollution of the sea or other waters and also any of sections 87, 268, 269 and 270;
 - (b) with respect to the carrying out of surveys and inspections for the purpose aforesaid and the issue, duration and recognition of certificates for that purpose;
 - (c) for repealing the provisions of any enactment or instrument so far as it appears to Her Majesty that those provisions are not required having regard to any provision made or proposed to be made by virtue of this section;
 - (d) with respect to the application of the Order to the Crown and the extra-territorial operation of any provision made by or under the Order;
 - (e) for the extension of any provisions of the Order, with or without modifications, to any relevant British possession;
 - (f) that a contravention of a provision made by or under the Order shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years and a fine;
 - (g) that any such contravention shall be an offence punishable only on summary conviction by a maximum fine of an amount not exceeding level 5 on the standard scale or such less amount as is prescribed by the Order;
 - (h) in connection with offences created by or under the Order, corresponding to that made in connection with offences under section 131 by section 143(6), 144 and 146 (whether by applying, or making provision for the application of, any of those sections, subject to such modifications as may be specified by or under the Order, or otherwise);
 - (i) for detaining any ship in respect of which such a contravention is suspected to have occurred and, in relation to such a ship, for applying section 284 with such modifications, if any, as are prescribed by the Order;

and nothing in any of the preceding provisions of this subsection shall be construed as prejudicing the generality of any other of those provisions and in particular neither paragraph (f) nor (g) above shall prejudice paragraph (a) above.

- (4) An Order under subsection (1) above may—
- (a) make different provision for different circumstances;
 - (b) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time;
 - (c) provide for exemptions from any provisions of the Order;
 - (d) provide for the delegation of functions exercisable by virtue of the Order;
 - (e) include such incidental, supplemental and transitional provisions as appear to Her Majesty to be expedient for the purposes of the Order;

Status: This is the original version (as it was originally enacted).

- (f) authorise the making of regulations and other instruments for any of the purposes of this section (except the purposes of subsection (3)(a) and (c) above) and apply the Statutory Instruments Act 1946 to instruments made under the Order; and
 - (g) provide that any enactment or instrument applied by the Order shall have effect as so applied subject to such modifications as may be specified in the Order.
- (5) Where an Order in Council under subsection (1) above authorises the making of regulations for the purpose of giving effect to an agreement mentioned in paragraphs (a) to (d) or falling within paragraph (e) of that subsection the Order also authorises the making of regulations for the purpose of giving effect to an agreement which provides for the modification of such an agreement.

This subsection applies in relation to Orders in Council and international agreements whenever made.

- (6) Regulations made by virtue of paragraph (f) of subsection (4) above may make provision corresponding to the provision authorised for an Order by paragraphs (a) to (e) of subsection (4) above.
- (7) An Order in Council in pursuance of subsection (1)(b) or (e) above may apply to areas of land or sea or other United Kingdom waters notwithstanding that the agreement in question does not relate to those areas.
- (8) A draft of an Order in Council proposed to be made by virtue of subsection (1) above shall not be submitted to Her Majesty in Council unless—
- (a) the draft has been approved by a resolution of each House of Parliament;
 - (b) the Order is to contain a statement that it is made only for any of the purposes specified in subsection (9) below; or
 - (c) the Order extends only to a possession mentioned in subsection (3)(e) above.
- (9) The purposes referred to in subsection (8)(b) above are—
- (a) giving effect to an agreement mentioned in subsection (1)(a) to (d) above;
 - (b) providing as authorised by subsection (2) above in relation to such an agreement and the purposes of subsection (5) above;
- and a statutory instrument containing an Order which contains a statement that it is made only for any of those purposes shall be subject to annulment in pursuance of a resolution of either House of Parliament.

129 Further provision for prevention of pollution from ships

- (1) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) for the protection and preservation of the marine environment from pollution by matter from ships.
- (2) Without prejudice to the generality of subsection (1) above, an Order under that subsection may in particular include provision—
- (a) corresponding to any provision that is authorised for the purposes of section 128 by subsections (3) and (4) of that section; and
 - (b) specifying areas of sea above any of the areas for the time being designated under section 1(7) of the Continental Shelf Act 1964 as waters within

Status: This is the original version (as it was originally enacted).

which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of that Convention for the protection and preservation of the marine environment;

and provision authorising the making of regulations authorises the amendment or revocation of regulations made by virtue of paragraph (f) of the said subsection (4).

- (3) A draft of an Order in Council proposed to be made by virtue of subsection (1) above shall not be submitted to Her Majesty in Council unless the draft has been approved by resolution of each House of Parliament.

130 Regulation of transfers between ships in territorial waters

- (1) The Secretary of State may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within United Kingdom waters, such provision as he considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.
- (2) Regulations under this section may, in particular, do any of the following things—
- (a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;
 - (b) make provision about—
 - (i) the design of, and standards to be met by, ships and equipment,
 - (ii) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board, and
 - (iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary thereto;
 - (c) provide for proposed transfers to be notified to and approved by persons appointed by the Secretary of State or another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
 - (d) provide—
 - (i) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations, and
 - (ii) for references in the regulations to any document so specified to operate as references to that document as revised or re-issued from time to time;
 - (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
 - (f) provide for the granting by the Secretary of State or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the Secretary of State or that other person may specify, and for altering or cancelling exemptions;
 - (g) limit any provision of the regulations to specified cases or kinds of case.
- (3) Regulations under this section may provide—
- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding £25,000 and on conviction on

Status: This is the original version (as it was originally enacted).

- indictment by imprisonment for a term not exceeding two years or a fine or both;
- (b) that any such contravention shall be an offence punishable only on summary conviction by a fine not exceeding £25,000 or such lower amount as is prescribed by the regulations;
 - (c) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (a) or (b) above.
- (4) Regulations under this section may—
- (a) make different provision for different classes or descriptions of ships and for different circumstances; and
 - (b) make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient.

CHAPTER II

OIL POLLUTION

General provisions for preventing pollution

131 Discharge of oil from ships into certain United Kingdom waters

- (1) If any oil or mixture containing oil is discharged as mentioned in the following paragraphs into United Kingdom national waters which are navigable by sea-going ships, then, subject to the following provisions of this Chapter, the following shall be guilty of an offence, that is to say—
- (a) if the discharge is from a ship, the owner or master of the ship, unless he proves that the discharge took place and was caused as mentioned in paragraph (b) below;
 - (b) if the discharge is from a ship but takes place in the course of a transfer of oil to or from another ship or a place on land and is caused by the act or omission of any person in charge of any apparatus in that other ship or that place, the owner or master of that other ship or, as the case may be, the occupier of that place.
- (2) Subsection (1) above does not apply to any discharge which—
- (a) is made into the sea; and
 - (b) is of a kind or is made in circumstances for the time being prescribed by regulations made by the Secretary of State.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £50,000;
 - (b) on conviction on indictment, to a fine.
- (4) In this section “sea” includes any estuary or arm of the sea.
- (5) In this section “place on land” includes anything resting on the bed or shore of the sea, or of any other waters included in United Kingdom national waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed or shore of the sea or any such waters.

- (6) In this section “occupier”, in relation to any such thing as is mentioned in subsection (5) above, if it has no occupier, means the owner thereof.

132 Defences of owner or master charged with offence under section 131

- (1) Where a person is charged with an offence under section 131 as the owner or master of a ship, it shall be a defence to prove that the oil or mixture was discharged for the purpose of—
- (a) securing the safety of any ship;
 - (b) preventing damage to any ship or cargo, or
 - (c) saving life,
- unless the court is satisfied that the discharge of the oil or mixture was not necessary for that purpose or was not a reasonable step to take in the circumstances.
- (2) Where a person is charged with an offence under section 131 as the owner or master of a ship, it shall also be a defence to prove—
- (a) that the oil or mixture escaped in consequence of damage to the ship, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of the oil or mixture; or
 - (b) that the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

133 Defences of occupier charged with offence under section 131

Where a person is charged, in respect of the escape of any oil or mixture containing oil, with an offence under section 131 as the occupier of a place on land, it shall be a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

134 Protection for acts done in exercise of certain powers of harbour authorities, etc

- (1) Where any oil, or mixture containing oil, is discharged in consequence of—
- (a) the exercise of any power conferred by section 252 or 253; or
 - (b) the exercise, for the purpose of preventing obstruction or danger to navigation, of any power to dispose of sunk, stranded or abandoned ships which is exercisable by a harbour authority under any local enactment;
- and apart from this subsection the authority exercising the power, or a person employed by or acting on behalf of the authority, would be guilty of an offence under section 131 in respect of that discharge, the authority or person shall not be convicted unless it is shown that they or he failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping or reducing the discharge.
- (2) Subsection (1) above shall apply to the exercise of any power conferred by section 13 of the Dockyard Ports Regulation Act 1865 (removal of obstructions to dockyard ports) as it applies to the exercise of the powers under sections 252 and 253, and shall, as so applying, have effect as if references to the authority exercising the power were references to the Queen’s harbour master for the port in question.

135 Restrictions on transfer of oil at night

- (1) No oil shall be transferred between sunset and sunrise to or from a ship in any harbour in the United Kingdom unless the requisite notice has been given in accordance with this section or the transfer is for the purposes of a fire brigade.
- (2) A general notice may be given to the harbour master of a harbour that transfers of oil between sunset and sunrise will be frequently carried out at a place in the harbour within such period, not ending later than twelve months after the date on which the notice is given, as is specified in the notice; and if such a notice is given it shall be the requisite notice for the purposes of this section as regards transfers of oil at that place within the period specified in the notice.
- (3) Subject to subsection (2) above, the requisite notice for the purposes of this section shall be a notice given to the harbour master not less than three hours nor more than 96 hours before the transfer of oil begins.
- (4) In the case of a harbour which has no harbour master, references in this section to the harbour master shall be construed as references to the harbour authority.
- (5) If any oil is transferred to or from a ship in contravention of this section, the master of the ship, and, if the oil is transferred from or to a place on land, the occupier of that place, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

136 Duty to report discharge of oil into waters of harbours

- (1) If any oil or mixture containing oil—
 - (a) is discharged from a ship into the waters of a harbour in the United Kingdom; or
 - (b) is found to be escaping or to have escaped from a ship into any such waters;the owner or master of the ship shall forthwith report the occurrence to the harbour master, or, if the harbour has no harbour master, to the harbour authority.
- (2) A report made under subsection (1) above shall state whether the occurrence falls within subsection (1)(a) or (b) above.
- (3) If a person fails to make a report as required by this section he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Shipping casualties

137 Shipping casualties

- (1) The powers conferred by this section shall be exercisable where—
 - (a) an accident has occurred to or in a ship; and
 - (b) in the opinion of the Secretary of State oil from the ship will or may cause pollution on a large scale in the United Kingdom or in United Kingdom waters; and
 - (c) in the opinion of the Secretary of State the use of the powers conferred by this section is urgently needed;but those powers are subject to the limitations contained in subsections (6) and (7) below.

Status: This is the original version (as it was originally enacted).

- (2) For the purpose of preventing or reducing oil pollution, or the risk of oil pollution, the Secretary of State may give directions as respects the ship or its cargo—
 - (a) to the owner of the ship, or to any person in possession of the ship; or
 - (b) to the master of the ship; or
 - (c) to any salvor in possession of the ship, or to any person who is the servant or agent of any salvor in possession of the ship, and who is in charge of the salvage operation.
- (3) Directions under subsection (2) above may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the directions may require—
 - (a) that the ship is to be, or is not to be, moved, or is to be moved to a specified place, or is to be removed from a specified area or locality; or
 - (b) that the ship is not to be moved to a specified place or area, or over a specified route; or
 - (c) that any oil or other cargo is to be, or is not to be, unloaded or discharged; or
 - (d) that specified salvage measures are to be, or are not to be, taken.
- (4) If in the opinion of the Secretary of State the powers conferred by subsection (2) above are, or have proved to be, inadequate for the purpose, the Secretary of State may, for the purpose of preventing or reducing oil pollution, or the risk of oil pollution, take, as respects the ship or its cargo, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the Secretary of State may—
 - (a) take any such action as he has power to require to be taken by a direction under this section;
 - (b) undertake operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he can give directions;
 - (c) undertake operations which involve the taking over of control of the ship.
- (5) The powers of the Secretary of State under subsection (4) above shall also be exercisable by such persons as may be authorised for the purpose by the Secretary of State.
- (6) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.
- (7) The provisions of this section and of section 141 are without prejudice to any rights or powers of Her Majesty's Government in the United Kingdom exercisable apart from those sections whether under international law or otherwise.
- (8) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (4) or (5) above—
 - (a) does not constitute contempt of court; and
 - (b) does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.
- (9) In this section, unless the context otherwise requires—

Status: This is the original version (as it was originally enacted).

“accident” includes the loss, stranding, abandonment of or damage to a ship;

“owner”, in relation to the ship to or in which an accident has occurred, includes its owner at the time of the accident; and

“specified” in relation to a direction under this section, means specified by the direction;

and the reference in subsection (8) above to the Admiralty Marshal includes a reference to the Admiralty Marshal of the Supreme Court of Northern Ireland.

138 Right to recover in respect of unreasonable loss or damage

- (1) If any action duly taken by a person in pursuance of a direction given to him under section 137, or any action taken under section 137(4) or (5)—
 - (a) was not reasonably necessary to prevent or reduce oil pollution, or risk of oil pollution; or
 - (b) was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered, as a result of the action,a person incurring expense or suffering damage as a result of, or by himself taking, the action shall be entitled to recover compensation from the Secretary of State.
- (2) In considering whether subsection (1) above applies, account shall be taken of—
 - (a) the extent and risk of oil pollution if the action had not been taken;
 - (b) the likelihood of the action being effective; and
 - (c) the extent of the damage which has been caused by the action.
- (3) Any reference in this section to the taking of any action includes a reference to a compliance with a direction not to take some specified action.
- (4) The Admiralty jurisdiction of the High Court and of the Court of Session shall include jurisdiction to hear and determine any claim arising under this section.

139 Offences in relation to section 137

- (1) If the person to whom a direction is duly given under section 137 contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.
- (2) If a person intentionally obstructs any person who is—
 - (a) acting on behalf of the Secretary of State in connection with the giving or service of a direction under section 137;
 - (b) acting in compliance with a direction under that section; or
 - (c) acting under section 137(4) or (5);he shall be guilty of an offence.
- (3) In proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.
- (4) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding £50,000;
 - (b) on conviction on indictment, to a fine.

140 Service of directions under section 137

- (1) If the Secretary of State is satisfied that a company or other body is not one to whom section 695 or section 725 of the Companies Act 1985 (service of notices) applies so as to authorise the service of a direction on that body under either of those sections, he may give a direction under section 137 of this Act—
 - (a) to that body, as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship; or
 - (b) to that body, as a salvor, by serving the direction on the person in charge of the salvage operations.
- (2) For the purpose of giving or serving a direction under section 137 to or on any person on a ship, a person acting on behalf of the Secretary of State shall have the right to go on board the ship.
- (3) In the application of subsection (1) above to Northern Ireland, for references to sections 695 and 725 of the Companies Act 1985 there shall be substituted references to Articles 645 and 673 of the Companies (Northern Ireland) Order 1986.

141 Application of sections 137 to 140 to certain foreign and other ships

- (1) Her Majesty may by Order in Council provide that sections 137 to 140, together with any other provisions of this Chapter, shall apply to a ship—
 - (a) which is not a United Kingdom ship; and
 - (b) which is for the time being outside United Kingdom waters;in such cases and circumstances as may be specified in the Order, and subject to such exceptions, adaptations and modifications, if any, as may be so specified.
- (2) An Order in Council under subsection (1) above may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient.
- (3) Except as provided by an Order in Council under subsection (1) above, no direction under section 137 shall apply to a ship which is not a United Kingdom ship and which is for the time being outside United Kingdom waters, and no action shall be taken under section 137(4) or (5) as respects any such ship.
- (4) No direction under section 137 shall apply to any ship of Her Majesty's navy or to any Government ship and no action shall be taken under section 137(4) or (5) as respects any such ship.

*Enforcement***142 Oil records**

- (1) The Secretary of State may make regulations requiring oil record books to be carried in United Kingdom ships and requiring the master of any such ship to record in the oil record book carried by it—
 - (a) the carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed relating to—
 - (i) the loading of oil cargo,
 - (ii) the transfer of oil cargo during a voyage,
 - (iii) the discharge of oil cargo,

Status: This is the original version (as it was originally enacted).

- (iv) the ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and cleaning of, such tanks,
 - (v) the separation of oil from water, or from other substances, in any mixture containing oil,
 - (vi) the disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in (i) to (v) above, or
 - (vii) the disposal of any other oil residues;
 - (b) any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any ship, or of preventing damage to any ship or cargo, or of saving life;
 - (c) any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage.
- (2) The Secretary of State may make regulations requiring the keeping of records relating to the transfer of oil to and from ships while they are within United Kingdom waters; and the requirements of any regulations made under this subsection shall be in addition to the requirements of any regulations made under subsection (1) above.
- (3) Any records required to be kept by regulations made under subsection (2) above shall, unless the ship is a barge, be kept by the master of the ship, and shall, if the ship is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.
- (4) Regulations under this section requiring the carrying of oil record books or the keeping of records may—
 - (a) prescribe the form of the oil record books or records and the nature of the entries to be made in them;
 - (b) require the person providing or keeping the books or records to retain them for a prescribed period;
 - (c) require that person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations;
 - (d) provide for the custody or disposal of the books or records after their transmission to such a place or person.
- (5) Regulations under this section may—
 - (a) be made with respect to all or with respect to any one or more of the classes of ship or other matters to which this section relates;
 - (b) make different provision for different classes of ship or otherwise for different classes of case or different circumstances.
- (6) If any ship fails to carry such an oil record book as it is required to carry under this section the owner or master shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) If any person fails to comply with any requirements imposed on him by or under this section, he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) If any person makes an entry in any oil record book carried or record kept under this section which is to his knowledge false or misleading in any material particular, he shall be liable—

Status: This is the original version (as it was originally enacted).

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or imprisonment for a term not exceeding six months, or both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.
- (9) In any proceedings under this Chapter—
- (a) any oil record book carried or record kept in pursuance of regulations made under this section shall be admissible as evidence, and in Scotland shall be sufficient evidence, of the facts stated in it;
 - (b) any copy of an entry in such an oil record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a true copy of the entry shall be admissible as evidence, and in Scotland shall be sufficient evidence, of the facts stated in the entry;
 - (c) any document purporting to be an oil record book carried or record kept in pursuance of regulations made under this section, or purporting to be such a certified copy as is mentioned in paragraph (b) above, shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.
- (10) In this section “barge” includes a lighter and any similar vessel.

143 Prosecutions and enforcement of fines

- (1) Proceedings for an offence under this Chapter may, in England and Wales be brought only—
- (a) by or with the consent of the Attorney General, or
 - (b) if the offence is one to which subsection (4) below applies, by the harbour authority, or
 - (c) unless the offence is one mentioned in subsection (4)(b) or (c) below, by the Secretary of State or a person authorised by any general or special direction of the Secretary of State.
- (2) Subject to subsection (3) below, proceedings for an offence under this Chapter may, in Northern Ireland, be brought only—
- (a) by or with the consent of the Attorney General for Northern Ireland,
 - (b) if the offence is one to which subsection (4) below applies, by a harbour authority, or
 - (c) unless the offence is one mentioned in subsection (4)(b) or (c) below, by the Secretary of State or a person authorised by any general or special direction of the Secretary of State.
- (3) Subsection (2) above shall have effect in relation to proceedings for an offence under section 131 relating to the discharge of oil or a mixture containing oil from a ship in a harbour in Northern Ireland as if the references in paragraph (c) to the Secretary of State were references to the Secretary of State or the Department of the Environment for Northern Ireland.
- (4) This subsection applies to the following offences—
- (a) any offence under section 131 which is alleged to have been committed by the discharge of oil, or a mixture containing oil, into the waters of a harbour in the United Kingdom;

Status: This is the original version (as it was originally enacted).

- (b) any offence in relation to a harbour in the United Kingdom under section 135 or 136; and
 - (c) any offence under section 142 relating to the keeping of records of the transfer of oil within such a harbour.
- (5) The preceding provisions of this section shall apply in relation to any part of a dockyard port within the meaning of the Dockyard Ports Regulation Act 1865 as follows—
- (a) if that part is comprised in a harbour in the United Kingdom, the reference to the harbour authority shall be construed as including a reference to the Queen’s harbour master for the port;
 - (b) if that part is not comprised in a harbour in the United Kingdom, the references to such a harbour shall be construed as references to such a dockyard port and the reference to the harbour authority as a reference to the Queen’s harbour master for the port.
- (6) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under section 131 alleged to have been committed by the company as the owner of the ship shall be treated as duly served on that company if the document is served on the master of the ship.
- In this subsection “foreign company” means a company or body which is not one to which any of sections 695 and 725 of the Companies Act 1985 and Articles 645 and 673 of the Companies (Northern Ireland) Order 1986 applies so as to authorise the service of the document in question under any of those provisions.
- (7) Any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Chapter shall, for that purpose, have the right to go on board the ship in question.

144 Power to detain ships for section 131 offences

- (1) Where a harbour master has reason to believe that the master or owner of a ship has committed an offence under section 131 by the discharge from the ship of oil, or a mixture containing oil, into the waters of the harbour, the harbour master may detain the ship.
- (2) Section 284, in its application to the detention of a ship under this section, shall have effect with the omission of subsections (1), (6) and (7) and as if—
- (a) in subsection (2), the reference to competent authority were a reference to the harbour authority; and
 - (b) in subsection (4), the persons in relation to whom that subsection applies were the harbour master or any person acting on his behalf.
- (3) Where a harbour master detains a ship other than a United Kingdom ship under this section he shall immediately notify the Secretary of State, who shall then inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

In this subsection “United Kingdom ship” has the same meaning as in section 85.

- (4) A harbour master who detains a ship under this section shall immediately release the ship—

Status: This is the original version (as it was originally enacted).

- (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the ship is detained;
 - (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted;
 - (c) if either—
 - (i) the sum of £55,000 is paid to the harbour authority by way of security, or
 - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than £55,000 is given to the harbour authority,
 by or on behalf of the master or owner; or
 - (d) where the master or owner is convicted of the offence, if any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid.
- (5) The harbour authority shall repay any sum paid in pursuance of subsection (4)(c) above or release any security so given—
- (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted.
- (6) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (4)(c) above and the master or owner is convicted of the offence, the sum so paid or the amount made available under the security shall be applied as follows—
- (a) first in payment of any costs or expenses ordered by the court to be paid by the master or owner; and
 - (b) next in payment of any fine imposed by the court;
- and any balance shall be repaid to the first-mentioned person.
- (7) Any reference in this section to a harbour master or a harbour authority shall, where the harbour in question consists of or includes the whole or any part of a dockyard port within the meaning of the Dockyard Ports Regulation Act 1865, be construed as including a reference to the Queen's harbour master for the port.
- (8) This section does not apply in relation to a ship of Her Majesty's navy or any Government ship.

145 Interpretation of section 144

- (1) This section has effect for the interpretation of the references in section 144 to the institution of proceedings or their conclusion without the master or owner of a ship being convicted of an offence under section 131.
- (2) For the purposes of section 144 in its application to England and Wales—
 - (a) proceedings for an offence under section 131 are instituted—
 - (i) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of the offence;
 - (ii) when a person is charged with the offence after being taken into custody without a warrant;
 - (iii) when a bill of indictment is preferred under section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933; and

Status: This is the original version (as it was originally enacted).

- (b) proceedings for the offence are concluded without the master or owner being convicted on the occurrence of one of the following events—
 - (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the master or owner;
 - (iii) the quashing of the master’s or owner’s conviction of the offence;
 - (iv) the grant of Her Majesty’s pardon in respect of the master’s or owner’s conviction of the offence.
- (3) For the purposes of section 144 in its application to Northern Ireland—
 - (a) proceedings for an offence under section 131 are instituted—
 - (i) when a justice of the peace issues a summons or warrant under Article 20 of the Magistrates’ Courts (Northern Ireland) Order 1981;
 - (ii) when a person is charged with the offence after being taken into custody without a warrant;
 - (iii) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969; and
 - (b) proceedings for an offence under section 131 are concluded without the master or owner being convicted on the occurrence of one of the following events—
 - (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the master or owner;
 - (iii) the quashing of the master’s or owner’s conviction of the offence;
 - (iv) the grant of Her Majesty’s pardon in respect of the master’s or owner’s conviction of the offence.
- (4) Where the application of subsection (2)(a) or (3)(a) above would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- (5) For the purposes of section 144 in its application to Scotland—
 - (a) proceedings for an offence under section 131 are instituted—
 - (i) on the granting by the sheriff of a warrant in respect of the offence on presentation of a petition under section 12 of the Criminal Procedure (Scotland) Act 1975;
 - (ii) when, in the absence of a warrant or citation, the master or owner is first brought before a court competent to deal with the case;
 - (iii) when, in a case where he is liberated upon a written undertaking in terms of section 18(2)(a), 294(2)(a) or 295(1)(a) of the Criminal Procedure (Scotland) Act 1975, the master or owner appears at the specified time;
 - (iv) when, in a case mentioned in (iii) above where the master or owner fails to appear at the specified court at the specified time, the court grants warrant for his apprehension;
 - (v) when summary proceedings are commenced in terms of section 331(3) of the Criminal Procedure (Scotland) Act 1975;
 - (b) proceedings for an offence under section 131 are concluded without the master or owner being convicted on the occurrence of one of the following events—
 - (i) the court makes a finding of not guilty or not proven against the master or owner in respect of the offence;
 - (ii) the proceedings are expressly abandoned (other than *pro loco et tempore*) by the prosecutor or are deserted simpliciter;

Status: This is the original version (as it was originally enacted).

- (iii) the conviction is quashed;
- (iv) the accused receives Her Majesty's pardon in respect of the conviction.

146 Enforcement and application of fines

- (1) Where a fine imposed by a court in proceedings against the owner or master of a ship for an offence under this Chapter is not paid, or any costs or expenses ordered to be paid by him are not paid, at the time ordered by the court, the court shall, in addition to any other powers of enforcing payment, have power—
 - (a) except in Scotland, to direct the amount remaining unpaid to be levied by distress,
 - (b) in Scotland, to grant warrant authorising the arrestment and sale, of the ship and its equipment.
- (2) Where a person is convicted of an offence under section 131, and the court imposes a fine in respect of the offence, then, if it appears to the court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

147 Enforcement of Conventions relating to oil pollution

- (1) Her Majesty may by Order in Council empower such persons as may be designated by or under the Order to go on board any Convention ship while the ship is within a harbour in the United Kingdom, and to require production of any oil record book required to be carried in accordance with the Convention.
- (2) An Order in Council under this section may, for the purposes of the Order, and with any necessary modifications, apply any of the provisions of this Chapter relating to the production and inspection of oil record books and the taking of copies of entries therein, and to the admissibility in evidence of such oil record books and copies, including any penal provisions of this Chapter in so far as they relate to those matters, and may also apply section 259.
- (3) Her Majesty, if satisfied that the government of any country has accepted, or denounced, the Convention, or that the Convention extends, or has ceased to extend, to any territory, may by Order in Council make a declaration to that effect.
- (4) In this section—
 - “the Convention” means any Convention accepted by Her Majesty's Government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil; and
 - “Convention ship” means a ship registered in—
 - (a) a country the government of which has been declared by an Order in Council under subsection (3) above to have accepted the Convention, and has not been so declared to have denounced it; or
 - (b) a territory to which it has been so declared that the Convention extends, not being a territory to which it has been so declared that the Convention has ceased to extend.

Miscellaneous and supplementary

148 Power of Secretary of State to grant exemptions

The Secretary of State may exempt from any of the provisions of this Chapter or of any regulations made thereunder, either absolutely or subject to such conditions as he thinks fit—

- (a) any ship or classes of ships;
- (b) any discharge of, or of a mixture containing, oil.

149 Application to Government ships

- (1) This Chapter does not apply to ships of Her Majesty's navy, nor to Government ships in the service of the Secretary of State while employed for the purposes of Her Majesty's navy.
- (2) Subject to subsection (1) above and to section 141(4) and section 144(8)—
 - (a) provisions of this Chapter which are expressed to apply only to United Kingdom ships apply to Government ships registered in the United Kingdom and also to Government ships not so registered but held for the purposes of Her Majesty's Government in the United Kingdom;
 - (b) provisions of this Chapter which are expressed to apply to ships generally apply to Government ships.

150 Annual Report

- (1) The Secretary of State shall, as soon as possible after the end of each calendar year, make a report on the exercise and performance of his functions under this Chapter during that year.
- (2) Every such report shall include such observations as he may think fit to make on the operation during that year of this Chapter and of any Convention accepted by Her Majesty's Government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil.
- (3) The Secretary of State shall lay a copy of every such report before each House of Parliament.

151 Interpretation

- (1) In this Chapter—
 - “harbour authority” means a person or body of persons empowered by an enactment to make charges in respect of ships entering a harbour in the United Kingdom or using facilities therein;
 - “harbour in the United Kingdom” means a port, estuary, haven, dock or other place the waters of which are within United Kingdom national waters and in respect of entry into or the use of which by ships a person or body of persons is empowered by an enactment (including a local enactment) to make any charges other than charges in respect of navigational aids or pilotage;
 - “harbour master” includes a dock master or pier master, and any person specially appointed by a harbour authority for the purpose of enforcing the provisions of this Chapter in relation to the harbour;

Status: This is the original version (as it was originally enacted).

“local enactment” means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special Parliamentary procedure;

“oil” means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;

“oil residues” means any waste consisting of, or arising from, oil or a mixture containing oil;

“place on land” has the meaning given in section 131;

“transfer”, in relation to oil, means transfer in bulk.

- (2) For the purposes of the definition of “harbour in the United Kingdom” “charges in respect of navigational aids” means general light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons.
- (3) Any reference in any provision of this Chapter to a mixture containing oil shall be construed as a reference to any mixture of oil (or, as the case may be, of oil of a description referred to in that provision) with water or with any other substance.
- (4) Any reference in this Chapter, other than in section 136, to the discharge of oil or a mixture containing oil, or to its being discharged, from a ship, place or thing, except where the reference is to its being discharged for a specific purpose, includes a reference to the escape of oil or mixture, or (as the case may be) to its escaping, from that ship, place or thing.
- (5) For the purposes of any provision of this Chapter relating to the discharge of oil or a mixture containing oil from a ship, any floating craft (other than a ship) which is attached to a ship shall be treated as part of the ship.
- (6) Any power conferred by section 259 in its application to this Chapter to test any equipment on board a ship shall be construed as including a power to require persons on board the ship to carry out such work as may be requisite for the purpose of testing the equipment; and any provision of that section as to submitting equipment for testing shall be construed accordingly.
- (7) Subject to section 18 of the Interpretation Act 1978 (offence under two or more laws) nothing in this Chapter shall—
 - (a) affect any restriction imposed by or under any other enactment, whether contained in a public general Act or a local or private Act; or
 - (b) derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

CHAPTER III

LIABILITY FOR OIL POLLUTION

Preliminary

152 Meaning of “the Liability Convention” and related expressions

- (1) In this Chapter—

“the Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage 1992;

Status: This is the original version (as it was originally enacted).

“Liability Convention country” means a country in respect of which the Liability Convention is in force; and

“Liability Convention State” means a State which is a party to the Convention.

- (2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Liability 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 Liability Convention in respect of that country.

Liability

153 Liability for oil pollution in case of tankers

- (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—
- (a) for any damage caused outside the ship in the territory of the United Kingdom by contamination resulting from the discharge or escape; and
 - (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the United Kingdom by contamination resulting from the discharge or escape; and
 - (c) for any damage caused in the territory of the United Kingdom by any measures so taken.
- (2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—
- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the United Kingdom; and
 - (b) for any damage caused outside the ship in the territory of the United Kingdom by any measures so taken;
- and in this Chapter any such threat is referred to as a relevant threat of contamination.
- (3) Subject to subsection (4) below, this section applies to any ship constructed or adapted for carrying oil in bulk as cargo.
- (4) Where any ship so constructed or adapted is capable of carrying other cargoes besides oil, this section shall apply to any such ship—
- (a) while it is carrying oil in bulk as cargo; and
 - (b) unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil, but not otherwise.
- (5) Where a person incurs a liability under subsection (1) or (2) above he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the territory of the United Kingdom included the territory of any other Liability Convention country.
- (6) Where—

Status: This is the original version (as it was originally enacted).

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

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

(7) For the purposes of this Chapter—

- (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;
- (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, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
- (c) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

(8) The Law Reform (Contributory Negligence) Act 1945 and, in Northern Ireland, the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.

154 Liability for oil pollution in case of other ships

(1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship other than a ship to which section 153 applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for any damage caused outside the ship in the territory of the United Kingdom by contamination resulting from the discharge or escape; and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the United Kingdom by contamination resulting from the discharge or escape; and
- (c) for any damage so caused in the territory of the United Kingdom by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a ship to which section 153 applies by the contamination which might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the United Kingdom; and
- (b) for any damage caused outside the ship in the territory of the United Kingdom by any measures so taken;

and in the subsequent provisions of this Chapter any such threat is referred to as a relevant threat of contamination.

(3) Where—

Status: This is the original version (as it was originally enacted).

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
 - (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,
- each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.
- (4) The Law Reform (Contributory Negligence) Act 1945 and, in Northern Ireland, the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.
- (5) In this section “ship” includes a vessel which is not seagoing.

155 Exceptions from liability under sections 153 and 154

No liability shall be incurred by the owner of a ship under section 153 or 154 by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or (as the case may be) the threat of contamination—

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) 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.

156 Restriction of liability for oil pollution

- (1) Where, as a result of any occurrence—
- (a) any oil is discharged or escapes from a ship (whether one to which section 153 or one to which section 154 applies), or
 - (b) there arises a relevant threat of contamination,
- then, whether or not the owner of the ship in question incurs a liability under section 153 or 154—
- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it, and
 - (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.
- (2) Subsection (1)(ii) above applies to—
- (a) any servant or agent of the owner of the ship;
 - (b) any person not falling within paragraph (a) above but employed or engaged in any capacity on board the ship or to perform any service for the ship;
 - (c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship;

Status: This is the original version (as it was originally enacted).

- (d) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
 - (e) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 153 or 154;
 - (f) any servant or agent of a person falling within paragraph (c), (d) or (e) above.
- (3) The liability of the owner of a ship under section 153 or 154 for any impairment of the environment shall be taken to be a liability only in respect of—
- (a) any resulting loss of profits, and
 - (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

Limitation of liability

157 Limitation of liability under section 153

- (1) Where, as a result of any occurrence, the owner of a ship incurs liability under section 153 by reason of a discharge or escape or by reason of any relevant threat of contamination, then (subject to subsection (3) below)—
- (a) he may limit that liability in accordance with the provisions of this Chapter, and
 - (b) if he does so, his liability (being the aggregate of his liabilities under section 153 resulting from the occurrence) shall not exceed the relevant amount.
- (2) In subsection (1) above, “the relevant amount” means—
- (a) in relation to a ship not exceeding 5,000 tons, three million special drawing rights;
 - (b) in relation to a ship exceeding 5,000 tons, three million special drawing rights together with an additional 420 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 59.7 million special drawing rights;
- but the Secretary of State may by order make such amendments of paragraphs (a) and (b) above as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in paragraph 1 of Article V of the Liability Convention.
- (3) Subsection (1) above shall not apply in a case where it is proved that the discharge or escape, or (as the case may be) the relevant threat of contamination, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in section 153 or recklessly and in the knowledge that any such damage or cost would probably result.
- (4) For the purposes of this section a ship’s tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Secretary of State.
- (5) Any such order shall, so far as it appears to the Secretary of State to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.

158 Limitation actions

- (1) Where the owner of a ship has or is alleged to have incurred a liability under section 153 he may apply to the court for the limitation of that liability to an amount determined in accordance with section 157.
- (2) If on such an application the court finds that the applicant has incurred such a liability and is entitled to limit it, the court shall, after determining the limit of the liability and directing payment into court of the amount of that limit—
 - (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
 - (b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.
- (3) A payment into court of the amount of a limit determined in pursuance of this section shall be made 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 determination is made; 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 determination was made, 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 determination was made,shall be conclusive evidence of those matters for the purposes of this Chapter;
 - (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.
- (4) No claim shall be admitted in proceedings under this section unless it is made within such time as the court may direct or such further time as the court may allow.
- (5) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends—
 - (a) by the owner or the persons referred to in section 165 as “the insurer”; or
 - (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 153, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of section 185 or 186;the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.
- (6) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended he shall be in the same position with

Status: This is the original version (as it was originally enacted).

respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

- (7) The court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the United Kingdom.
- (8) No lien or other right in respect of any ship or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2)(b) above.

159 Restriction on enforcement after establishment of limitation fund

- (1) Where the court has found that a person who has incurred a liability under section 153 is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount—
- (a) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and
 - (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs (or, in Scotland, expenses);

if the sum paid into court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 158 had been taken.

- (2) In the application of this section to Scotland, any reference (however expressed) to release from arrest shall be construed as a reference to the recall of an arrestment.

160 Concurrent liabilities of owners and others

Where, as a result of any discharge or escape of oil from a ship or as a result of any relevant threat of contamination, the owner of the ship incurs a liability under section 153 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) or (2) of that section then, if—

- (a) the owner has been found, in proceedings under section 158 to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount; and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of section 185 or 186;

no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the owner paid the sum into court, no further steps shall be taken in the proceedings except in relation to costs.

161 Establishment of limitation fund outside United Kingdom

Where the events resulting in the liability of any person under section 153 also resulted in a corresponding liability under the law of another Liability Convention country sections 159 and 160 shall apply as if the references to sections 153 and 158 included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability.

162 Extinguishment of claims

No action to enforce a claim in respect of a liability incurred under section 153 or 154 shall be entertained by any court in the United Kingdom unless the action is commenced not later than three years after the claim arose nor 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 liability was incurred.

Compulsory insurance

163 Compulsory insurance against liability for pollution

- (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) below shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of oil of a description specified in regulations made by the Secretary of State.
- (2) The ship shall not enter or leave a port in the United Kingdom or arrive at or leave a terminal in the territorial sea of the United Kingdom nor, if the ship is a United Kingdom ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) below and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention (cover for owner's liability).
- (3) The certificate must be—
 - (a) if the ship is a United Kingdom ship, a certificate issued by the Secretary of State;
 - (b) if the ship is registered in a Liability Convention country other than the United Kingdom, a certificate issued by or under the authority of the government of the other Liability Convention country; and
 - (c) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Secretary of State or by or under the authority of the government of any Liability Convention country other than the United Kingdom.
- (4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of customs and excise or of the Secretary of State and, if the ship is a United Kingdom ship, to any proper officer.
- (5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2) above, the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding £50,000.
- (6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4) above, the master shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) If a ship attempts to leave a port in the United Kingdom in contravention of this section the ship may be detained.

Status: This is the original version (as it was originally enacted).

164 Issue of certificate by Secretary of State

- (1) Subject to subsection (2) below, if the Secretary of State is satisfied, on the application for such a certificate as is mentioned in section 163 in respect of a United Kingdom ship or a ship registered in any country which is not a Liability Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Secretary of State shall issue such a certificate to the owner.
- (2) If the Secretary of State is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 153 in all circumstances, he may refuse the certificate.
- (3) The Secretary of State may make regulations providing for the cancellation and delivery up of a certificate under this section in such circumstances as may be prescribed by the regulations.
- (4) If a person required by regulations under subsection (3) above to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) The Secretary of State shall send a copy of any certificate issued by him under this section in respect of a United Kingdom ship to the Registrar General of Shipping and Seamen, and the Registrar shall make the copy available for public inspection.

165 Rights of third parties against insurers

- (1) Where it is alleged that the owner of a ship has incurred a liability under section 153 as a result of any discharge or escape of oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 163 related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as "the insurer").
- (2) In any proceedings brought against the insurer by virtue of this section it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the owner himself.
- (3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from anything done or omitted to be done by the owner as mentioned in section 157(3).
- (4) Where the owner and the insurer each apply to the court for the limitation of his liability any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.
- (5) The Third Parties (Rights against Insurers) Act 1930 and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 shall not apply in relation to any contract of insurance to which such a certificate as is mentioned in section 163 relates.

Supplementary

166 Jurisdiction of United Kingdom courts and registration of foreign judgments

- (1) 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 incurred under this Chapter, and the Admiralty jurisdiction of the Court of Session shall extend to any case arising out of any such claim.
- (2) Where—
- (a) any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of the United Kingdom and no measures are reasonably taken to prevent or minimise such damage in that territory, or
 - (b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the United Kingdom,
- no court in the United Kingdom shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost—
- (i) against the owner of the ship, or
 - (ii) against any person to whom section 156(1)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.
- (3) In subsection (2) above, “relevant damage or cost” means—
- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Liability Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country,
 - (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; or
 - (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b) above;
- and section 156(2)(e) shall have effect for the purposes of subsection (2)(ii) above as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b) above.
- (4) Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 153; and in its application to such a judgment that Part shall have effect with the omission of sections 4(2) and (3) of that Act.

167 Government ships

- (1) Nothing in the preceding provisions of this Chapter applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

Status: This is the original version (as it was originally enacted).

- (2) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with section 163(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Convention.
- (3) Every Liability Convention State shall, for the purposes of any proceedings brought in a court in the United Kingdom to enforce a claim in respect of a liability incurred under section 153, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution, or in Scotland the execution of diligence, against the property of any State.

168 Limitation of liability under section 154

For the purposes of section 185 any liability incurred under section 154 shall be deemed to be a liability to damages in respect of such damage to property as is mentioned in paragraph 1(a) of Article 2 of the Convention in Part I of Schedule 7.

169 Saving for recourse actions

Nothing in this Chapter shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Chapter may have against another person in respect of that liability.

170 Interpretation

- (1) In this Chapter—
- “the court” means the High Court or, in Scotland, the Court of Session;
 - “damage” includes loss;
 - “oil” 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;
 - “relevant threat of contamination” shall be construed in accordance with section 153(2) or 154(2); and
 - “ship” (subject to section 154(5)) means any sea-going vessel or sea-borne craft of any type whatsoever.
- (2) In relation to any damage or cost resulting from the discharge or escape of any oil from a ship, or from a relevant threat of contamination, references in this Chapter to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape or (as the case may be) in the threat of contamination.
- (3) References in this Chapter in its application to Scotland—

Status: This is the original version (as it was originally enacted).

- (a) to payment into court, shall be construed as references to the payment to the Accountant of Court for Consignation (within the meaning of the Court of Session Consignations (Scotland) Act 1895; and
 - (b) to costs, shall be construed as references to expenses.
- (4) References in this Chapter to the territory of any country include the territorial sea of that country and—
- (a) in the case of the United Kingdom, any area within the British fishery limits set by or under the Fishery Limits Act 1976; and
 - (b) in the case of any other Liability 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 that State in question in accordance with international law.

171 Transitory text of this Chapter and power to make transitional provisions

- (1) Until such day as the Secretary of State may by order appoint, the provisions set out in Schedule 4 as Chapter III shall have effect instead of the foregoing provisions of this Chapter; and references in that Schedule to a section whose number is included in that Schedule is a reference to the section so included.
- (2) Notwithstanding subsection (1) above, Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate in connection with the implementation of any transitional provisions contained in the 1992 Protocol or the Conventions which they amend; and any such Order may in particular provide, in relation to occurrences of any description specified in the Order—
 - (a) for specified provisions of this Chapter, whether as contained in this Chapter or in the Chapter III set out in Schedule 4, to have effect;
 - (b) for any such provisions to have effect subject to specified modifications.
- (3) In subsection (2) above—
 - “the 1992 Protocol” means the Protocol of 1992 to amend the International Convention for Oil Pollution Damage 1969 signed in London on 27th November 1992; and
 - “specified” means specified in the Order.

CHAPTER IV

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

Preliminary

172 Meaning of the “Liability Convention”, “the Fund Convention” and related expressions

- (1) In this Chapter—
 - (a) “the Liability Convention” has the same meaning as in Chapter III of this Part;

Status: This is the original version (as it was originally enacted).

- (b) “the Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;
 - (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 that Convention in respect of that country.

Contributions to Fund

173 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 otherwise than on a voyage only within its national waters.
- (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 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 Assembly of the Fund, until it is paid.

Status: This is the original version (as it was originally enacted).

- (8) The Secretary of State may by regulations 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 the Fund.
- (9) Regulations under subsection (8) above—
- (a) may contain such supplemental or incidental provisions as appear to the Secretary of State expedient, and
 - (b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding level 5 on the standard scale, or such lower limit as may be specified in the regulations.
- (10) In this section and in section 174, 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 section 736 of the Companies Act 1985 (or for companies in Northern Ireland 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 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 D396-69)”, 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.

174 Power to obtain information

- (1) For the purpose of transmitting to the Fund the names and addresses of the persons who under section 173 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.
- (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 section 173(6).
- (3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.

Status: This is the original version (as it was originally enacted).

- (4) In proceedings by the Fund against any person to recover any amount due under section 173, 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, then, 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,
- he shall be liable on summary conviction to a fine not exceeding 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) on summary conviction, to a fine not exceeding level 4 on the standard scale in the case of an offence under paragraph (a) above and not exceeding the statutory maximum in the case of an offence under paragraph (b) above, and
 - (ii) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding twelve months, or to both.

Compensation for persons suffering pollution damage

175 Liability of the Fund

- (1) The Fund shall be liable for pollution damage in the territory of the United Kingdom if the person suffering the damage has been unable to obtain full compensation under section 153—
- (a) because the discharge or escape, 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 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 155), or

Status: This is the original version (as it was originally enacted).

- (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 153 as limited by section 157.
- (2) Subsection (1) above shall apply with the substitution for the words “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 in the territory of the United Kingdom and of 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 in the territory of the United Kingdom and of another country in respect of which the Liability Convention is in force, references in this section to the provisions of Chapter III of this Part 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 Chapter III of this Part 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 153.
- (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 anything done or omitted to be done with intent to cause damage by the person who suffered the damage, or

Status: This is the original version (as it was originally enacted).

- (b) from the negligence of that person,
the Fund may (subject to subsection (10) below) be exonerated wholly or partly from its obligations to pay compensation to that person.
- (9) Where the liability under section 153 in respect of the pollution damage is limited to any extent by subsection (8) of that section, the Fund shall (subject to subsection (10) below) be exonerated to the same extent.
- (10) Subsections (8) and (9) above shall not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures.

176 Limitation of Fund's liability under section 175

- (1) The Fund's liability under section 175 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 Part I of Schedule 5), and in those provisions references to the Liability Convention are references to the Liability Convention within the meaning of this Chapter.
- (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 175 shall be conclusive evidence for the purposes of this Chapter 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 175 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

Status: This is the original version (as it was originally enacted).

- (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 Chapter.
- (5) The Secretary of State may by order make such amendments of this section and Part I of Schedule 5 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.

Supplemental

177 Jurisdiction and effect of judgments

- (1) 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 Chapter; 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 153, 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 Chapter III of this Part for damage which is partly in the territory of the United Kingdom, subsection (2) above shall, for the purpose of proceedings under this Chapter, 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 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 175; and in its application to such a judgment the said Part I shall have effect with the omission of sections 4(2) and (3).
- (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 in Part I of Schedule 5 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.

Status: This is the original version (as it was originally enacted).

178 Extinguishment of claims

- (1) No action to enforce a claim against the Fund under this Chapter 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 section 177(2) and (3).

- (2) No action to enforce a claim against the Fund under this Chapter 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.

179 Subrogation

- (1) In respect of any sum paid by the Fund as compensation for pollution damage the Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.
- (2) 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 Chapter.

180 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 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.

181 Interpretation

- (1) In this Chapter, unless the context otherwise requires—
- “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 163;
 - “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;

Status: This is the original version (as it was originally enacted).

“oil”, except in sections 173 and 174, 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—

- (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,

but does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of—

- (i) any loss of profits, or
- (ii) the cost of any reasonable measures of reinstatement actually taken or to be taken;

“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;

“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; and

“ship” means any ship (within the meaning of Chapter III of this Part) to which section 153 applies.

(2) For the purposes of this Chapter—

- (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.

(3) References in this Chapter to the territory of any country shall be construed in accordance with section 170(4) reading the reference to a Liability Convention country as a reference to a Fund Convention country.

182 Transitory text of this Chapter and power to make transitional provisions

(1) Until such day as the Secretary of State may by order appoint the provisions set out in Schedule 4 as Chapter IV shall have effect instead of the foregoing provisions of this Chapter; and references in that Schedule to a section whose number is included in that Schedule is a reference to the section so included.

(2) Notwithstanding subsection (1) above, Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate in connection with the implementation of any transitional provisions contained in the 1992 Protocol or the Conventions which they amend; and any such Order may in particular provide, in relation to occurrences of any description specified in the Order—

Status: This is the original version (as it was originally enacted).

- (a) for specified provisions of this Chapter, whether as contained in this Chapter or in the Chapter IV set out in Schedule 4, to have effect;
 - (b) for any such provisions to have effect subject to specified modifications.
- (3) In subsection (2) above—
- “the 1992 Protocol” means the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 signed in London on 27th November 1992; and
 - “specified” means specified in the Order.