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SCHEDULES

SCHEDULE 4

PREVENTION OF OIL POLLUTION: TRANSITORY PROVISIONS

CHAPTER III

LIABILITY FOR OIL POLLUTION

- 152 (1) In this Chapter—
- “the Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels in 1969;
 - “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

Liability for oil pollution in case of tankers

- 153 (1) Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by the ship (whether as part of the cargo or otherwise) is discharged or escapes from the ship, the owner of the ship shall be liable, (except as otherwise provided by this Chapter),—
- (a) for any damage caused 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 reducing any such damage in the territory of the United Kingdom; and
 - (c) for any damage caused in the territory of the United Kingdom by any measures so taken.
- (2) Where a person incurs a liability under subsection (1) above he shall also be liable for any damage or cost for which he would be liable under that subsection if the references therein to the territory of the United Kingdom included the territory of any other Liability Convention country.
- (3) Where persistent oil is discharged or escapes from two or more ships and—
- (a) a liability is incurred under this section by the owner of each of them; but

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- (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) For the purposes of this Chapter, 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.
- (5) 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.

Liability for oil pollution in case of other ships

- 154 (1) Where, as a result of any occurrence, any persistent 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 persistent 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—

- (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.

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- (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.

Exceptions from liability under section 153

- 155 The owner of a ship from which persistent oil has been discharged or has escaped shall not incur any liability under section 153 if he proves that the discharge or escape—
- (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 left undone 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.

Exceptions from liability under section 154

- 155A No liability shall be incurred by the owner of a ship under section 154 by reason of any discharge or escape of persistent 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.

Restriction of liability for oil pollution

- 156 Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by the ship is discharged or escapes then, whether or not the owner incurs a liability under section 153—
- (a) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned therein; and
 - (b) no servant or agent of the owner nor any person performing salvage operations with the agreement of the owner shall be liable for any such damage or cost.

Restriction of liability for oil pollution from ship within section 154

- 156A (1) Where, as a result of any occurrence—
- (a) any persistent oil is discharged or escapes from a ship to which section 154 applies, or
 - (b) there arises a relevant threat of contamination,

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then, whether or not the owner of the ship in question incurs a liability under section 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 by him 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) of this section 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;
- (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 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 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

Limitation of liability under section 153

157 (1) Where the owner of a ship incurs liability under section 153 by reason of a discharge or escape which has occurred without his actual fault or privity then—

- (a) he may limit that liability in accordance with the provisions of this Chapter, and
- (b) if he does so, his liability (that is to say, the aggregate of his liabilities under section 153 resulting from the discharge or escape) shall not exceed 133 special drawing rights for each ton of the ship's tonnage nor (where that tonnage would result in a greater amount) 14 million special drawing rights.

(2) For the purposes of this section the tonnage of a ship shall be ascertained as follows—

- (a) where the registered tonnage of the ship has been or can be ascertained in accordance with the tonnage regulations, the ship's tonnage shall be the registered tonnage of the ship as so ascertained but without making any deduction required by those regulations of any tonnage allowance for propelling machinery space;
- (b) where the ship is of a description with respect to which no provision is for the time being made by the tonnage regulations, the tonnage of the ship shall be taken to be 40 per cent of the weight (expressed in tons of 2,240 lbs) of oil which the ship is capable of carrying;

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- (c) where the tonnage of the ship cannot be ascertained in accordance with either paragraph (a) or paragraph (b) above, a surveyor of ships shall, if so directed by the court, certify what, on the evidence specified in the direction, would in his opinion be the tonnage of the ship as ascertained in accordance with paragraph (a), or (as the case may be) paragraph (b), above if the ship could be duly measured for the purpose; and the tonnage stated in his certificate shall be taken to be the tonnage of the ship.

Limitation actions

- 158 (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 the 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 subsections (7) to (10) below.
- (3) A payment into court of the amount of a limit determined in pursuance of this section shall be made in sterling in accordance with subsection (4) below.
- (4) 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—
- (a) the day on which the determination is made, or
 - (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.
- (5) A certificate given by or on behalf of the Treasury stating—
- (a) that a particular sum in sterling has been fixed by the International Monetary Fund for the day on which the determination was made; or
 - (b) 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.
- (6) 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.
- (7) 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.
- (8) 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 person referred to in section 165 as “the insurer”; or

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- (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.
- (9) 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 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.
- (10) 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.

Restriction on enforcement after establishment of limitation fund

- 159 (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.

Concurrent liabilities of owners and others

- 160 Where, as a result of any discharge or escape of persistent oil from a ship, 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) 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.

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Establishment of limitation fund outside United Kingdom

- 161 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.

Extinguishment of claims

- 162 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 by reason of which the liability was incurred.

Compulsory insurance

Compulsory insurance against liability for pollution

- 163 (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 persistent 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).

For the purposes of this subsection the reference in Article VII to Article V of the Liability Convention shall be construed as a reference to Article V as amended by Article II of the protocol dated 19th November 1976 to the Liability Convention.

- (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 a certificate recognised for the purposes of this paragraph by regulations made under this section.
- (4) The Secretary of State may by regulations provide that certificates in respect of ships registered in any, or any specified, country which is not a Liability Convention country shall, in such circumstances as may be specified in the regulations, be recognised for the purposes of subsection (3)(c) above if issued by or under the authority of the government of the country designated in the regulations for that

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purpose; and the country that may be so designated may be either or both of the following, that is to say—

- (a) the country in which the ship is registered; and
 - (b) any country specified in the regulations for the purposes of this paragraph.
- (5) 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.
- (6) 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—
- (a) on summary conviction, to a fine not exceeding £50,000;
 - (b) on conviction on indictment, to a fine.
- (7) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (5) above, the master shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) If a ship attempts to leave a port in the United Kingdom in contravention of this section the ship may be detained.

Issue of certificate by Secretary of State

- 164 (1) Subject to subsection (2) below, if the Secretary of State is satisfied, on an 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.

For the purposes of this subsection the reference in Article VII to Article V of the Liability Convention shall be construed as a reference to Article V as amended by Article II of the protocol dated 19th November 1976 to the Liability Convention.

- (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 certificates.
- (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.

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Rights of third parties against insurers

- 165 (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 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 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 occurred without the owner’s fault or privity.
- (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

Jurisdiction of United Kingdom courts and registration of foreign judgments

- 166 (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 any persistent 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 reduce such damage in that territory, no court in the United Kingdom shall entertain an action (whether in rem or in personam) to enforce a claim arising from—
- (a) any damage caused in the territory of another Liability Convention country by contamination resulting from the discharge or escape;
 - (b) any cost incurred in taking measures to prevent or reduce such damage in the territory of another Liability Convention country; or
 - (c) any damage caused by any measures so taken.
- (3) 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 section 4(2) and (3) of that Act.

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Government ships

- 167 (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.
- (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 Liability Convention as amended by Article II of the protocol dated 19th November 1976 to the Liability 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.

Limitation of liability under section 154

- 168 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 Liability Convention in Part I of Schedule 7.

Saving for recourse actions

- 169 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.

Interpretation

- 170 (1) In this Chapter—
- “the court” means the High Court or the Court of Session;
 - “damage” includes loss;
 - “owner”, in relation to a registered ship, means the person registered as its owner, 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; and
 - “relevant threat of contamination” shall be construed in accordance with section 154(2).
- (2) In relation to any damage or cost resulting from the discharge or escape of any oil carried in 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—

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- (a) to payment into court, shall be construed as references to 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.