

---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

## 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

---

**Changes to legislation:** *Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- (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 <sup>M1</sup>Law Reform (Contributory Negligence) Act 1945 and, in Northern Ireland, the <sup>M2</sup>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.

**Marginal Citations**

- M1** 1945 c.28.  
**M2** 1948 c. 23 (N.I.)

*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

---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

(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 <sup>M3</sup>Law Reform (Contributory Negligence) Act 1945 and, in Northern Ireland, the <sup>M4</sup>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.

#### Marginal Citations

**M3** 1945 c.28.

**M4** 1948 c. 23 (N.I.).

#### *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—

---

**Changes to legislation:** *Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- (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,

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

---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

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;
  - (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,

---

*Changes to legislation: Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

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
  - (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—

---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

- (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.

#### *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

---

**Changes to legislation:** *Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- (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 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.



---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

- (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.

*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 <sup>M5</sup>Third Parties (Rights against Insurers) Act 1930 and the <sup>M6</sup>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.

**Marginal Citations**

- M5** 1930 c.25.  
**M6** 1930 c.9 (N.I.)

*Supplementary*

*Jurisdiction of United Kingdom courts and registration of foreign judgments.*

- 166
- (1) Paragraph 1(1)(d) of Schedule 1 to the <sup>M7</sup>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

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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 <sup>M8</sup>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.

#### Marginal Citations

**M7** 1956 c.46

**M8** 1933 c. 13.

#### *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.

---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

*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—
- (a) to payment into court, shall be construed as references to payment to the Accountant of Court for Consignation (within the meaning of the <sup>M9</sup>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.

**Marginal Citations**

**M9** 1895 c. 19.

**CHAPTER IV**

**INTERNATIONAL OIL POLLUTION**

**COMPENSATION FUND**

*Preliminary*

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

- 172 (1) In this Chapter—

---

*Changes to legislation: Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- (a) “the Liability Convention” has the same meaning as in Chapter III of this Part;
  - (b) “the Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18th December 1971;
  - (c) “the Fund” means the International Fund established by the Fund Convention; and
  - (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*

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

- 173 (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 Assembly of the Fund under articles 11 and 12 of the Fund Convention (as amended by article III of the protocol dated 19th November 1976 to that Convention) and notified to that person by the Fund;

---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

- (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.
- (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 <sup>M10</sup>Companies Act 1985 (or for companies in Northern Ireland Article 4 of the <sup>M11</sup>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.

#### Marginal Citations

**M10** 1985 c. 6

**M11** S.I. 1986/1032 (NI 6).

---

*Changes to legislation: Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

*Power to obtain information.*

- 174 (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.
- (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 intentionally 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*

*Liability of the Fund.*

- 175 (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 causing the damage—

---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

- (i) resulted from an exceptional, inevitable and irresistible phenomenon, or
  - (ii) was due wholly to anything done or left undone by another person (not being a servant or agent of the owner) with intent to do damage, or
  - (iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible,

(and because liability is accordingly wholly displaced by section 155), or

  - (b) because the owner or guarantor liable for the damage cannot meet his obligations in full, or
  - (c) because the damage exceeds the liability under section 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

---

*Changes to legislation: Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- (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) Subject to subsection (9) below, if the Fund proves that the pollution damage resulted wholly or partly—
- (a) from an act or omission done with intent to cause damage by the person who suffered the damage, or
  - (b) from the negligence of that person,
- the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person.
- (9) Subsection (8) above does not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimise pollution damage.
- (10) Where the liability under section 153 is limited to any extent by subsection (5) of that section, the Fund shall be exonerated to the same extent.

*Limitation of Fund's liability under section 175.*

- 176 (1) The Fund's liability under section 175 shall be subject to the limits imposed by paragraphs 4, 5 and 6 of article 4 of the Fund Convention (as amended by Article III of the protocol dated 19th November 1976 to that Convention) which impose an overall limit on the liabilities of the owner and of the Fund, and the text of which is set out in Part II of Schedule 5.
- (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 be received in evidence without proof of the official position or handwriting of the person signing the certificate.
- (3) For the purpose of giving effect to paragraphs 4, 5 and 6 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 for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to



---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

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 judgment is given; 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 so fixed for the day on which the judgment was given; or
- (b) that no sum has been fixed for that day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the judgment was given,

shall be conclusive evidence of those matters for the purposes of this 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.

#### *Indemnification of shipowners*

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

176A (1) Where a liability is incurred under section 153 in respect of a ship registered in a Fund Convention country the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of the liability which—

- (a) is in excess of an amount equivalent to 100 special drawing rights for each ton of the ship's tonnage or of an amount of 8,333,000 special drawing rights, whichever is the less, and
- (b) is not in excess of an amount equivalent to 133 special drawing rights for each ton of the said tonnage or an amount of 14 million special drawing rights, whichever is the less.

(2) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country (but is a country in respect of which the Liability Convention is in force), and either—

- (a) the incident has caused pollution damage in the territory of the United Kingdom (as well as in the territory of that other country); or
- (b) the headquarters of the Fund is for the time being in the United Kingdom,

subsection (1) above shall apply with the omission of the words “under section 153”.

(3) The Fund shall not incur an obligation under this section where the pollution damage resulted from the wilful misconduct of the owner.

(4) In proceedings to enforce the Fund's obligation under this section the court may exonerate the Fund wholly or partly if it is proved that, as a result of the actual fault or privity of the owner—

- (a) the ship did not comply with such requirements as the Secretary of State may by order prescribe for the purposes of this section, and
- (b) the occurrence or damage was caused wholly or partly by that non-compliance.

(5) The requirements referred to in subsection (4) above are such requirements as appear to the Secretary of State appropriate to implement the provisions of—

---

*Changes to legislation: Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- (a) Article 5(3) of the Fund Convention (marine safety conventions), and
  - (b) Article 5(4) of the Fund Convention (which enables the Assembly of the Fund to substitute new conventions).
- (6) An order made under subsection (4) above may contain such transitional and other supplemental provisions as appear to the Secretary of State to be expedient.
- (7) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise the pollution damage shall be treated as included in the owner's liability for the purposes of this section.
- (8) For the purpose of converting into sterling the amount in special drawing rights adjudged to be payable by the Fund by way of indemnity in such proceedings as are mentioned in subsection (4) above, subsections (4) to (6) of section 176 shall have effect—
- (a) if the liability in question has been limited in pursuance of section 158, as if—
    - (i) for the reference in the said subsection (4) to the amount there mentioned there were substituted a reference to the amount adjudged as aforesaid, and
    - (ii) for any reference to the day on which the judgment is or was given there were substituted a reference to the day on which the determination of the limit was made in pursuance of the said section 158; and
  - (b) if the liability in question has not been so limited, with the modification made by paragraph (a)(i) of this subsection and as if for any reference to the day on which the judgment is or was given there were substituted a reference to the day on which the said amount was so adjudged.

### *Supplemental*

#### *Jurisdiction and effect of judgments.*

- 177 (1) Paragraph 1(1)(d) of Schedule 1 to the <sup>M12</sup>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.

---

**Changes to legislation:** Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

---

- (4) Subject to subsection (5) below, Part I of the <sup>M13</sup>Foreign Judgments (Reciprocal Enforcement) Act 1933 shall apply, whether or not it would so apply apart from this subsection, to any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 175 or 176A; and in its application to such a judgment the said Part I shall have effect with the omission of sections 4(2) and (3) of the Act of 1933.
- (5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part I of the Act of 1933 gives leave to enforce it; and—
- (a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of article 4 of the Fund Convention (as set out in Part II of Schedule 5) 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.

**Marginal Citations**

**M12** 1956 c.46

**M13** 1933 c. 13.

*Extinguishment of claims.*

- 178 (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 by reason of which the claim against the Fund arose.
- (3) Notwithstanding the preceding provisions of this section, a person’s right to bring an action under the section 176A shall not be extinguished before six months from the date when that person first acquired knowledge of the bringing of an action against him under Chapter III of this Part, or under the corresponding provisions of the law of any country outside the United Kingdom giving effect to the Liability Convention.

*Subrogation.*

- 179 (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.

---

*Changes to legislation: Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- (2) The right of the Fund under subsection (1) above is subject to any obligation of the Fund under section 176A above to indemnify the owner or guarantor for any part of the liability on which he has defaulted.
- (3) 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.

*Interpretation.*

- 181 (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 carried by the ship;
  - “guarantor” means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 163;
  - “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 damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever the escape or discharge may occur, and includes the cost of preventive measures and further damage caused by preventive measures;
  - “preventive measures” means any reasonable measures taken by any person after the occurrence to prevent or minimise pollution damage; and
  - “ship” means any sea-going ship and any seaborne craft of any type whatsoever carrying oil in bulk as cargo.
- (2) References in this Chapter to the territory of any country include the territorial sea of that country, and references to pollution damage in the United Kingdom shall be construed accordingly.
  - (3) For the purposes of this Chapter a ship’s tonnage shall be the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage.  
  
If the ship cannot be measured in accordance with the normal rules, its tonnage shall be deemed to be 40 per cent of the weight in tons (of 2,240 lbs) of oil which the ship is capable of carrying.
  - (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.

**Changes to legislation:**

Merchant Shipping Act 1995, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 145(2)(a)(ia) inserted by [2003 c. 44 Sch. 36 para. 13\(2\)](#)
- s. 145(2)(a)(ia) words substituted by [2015 c. 2 Sch. 11 para. 16\(2\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 145(2)(a)(ia) by 2003 c. 44, Sch. 36 para. 13 is still prospective.)
- s. 145(2A) inserted by [2003 c. 44 Sch. 36 para. 13\(3\)](#)
- s. 145(2A) words substituted by [2015 c. 2 Sch. 11 para. 16\(3\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 145(2A) by 2003 c. 44, Sch. 36 para. 13 is still prospective.)