

SCHEDULES

SCHEDULE 1

Section 9.

AMENDMENTS OF MERCHANT SHIPPING ACT 1995 RELATING TO INSPECTION AND DETENTION OF SHIPS

Meaning of “dangerously unsafe ship”

- 1 (1) Section 94 of the 1995 Act (meaning of “dangerously unsafe ship”) is amended as follows.
- (2) In subsection (1), after “ship”, where first occurring, there is inserted “in port”.
- (3) After subsection (1) there is inserted—
- “(1A) For the purposes of those sections a ship at sea is “dangerously unsafe” if, having regard to the nature of the service for which it is being used or is intended, the ship is, by reason of the matters mentioned in subsection (2) below, either—
- (a) unfit to remain at sea without serious danger to human life, or
 - (b) unfit to go on a voyage without serious danger to human life.”

Power to detain dangerously unsafe ship

- 2 (1) Section 95 of the 1995 Act (power to detain dangerously unsafe ship) is amended as follows.
- (2) For subsection (1) there is substituted—
- “(1) Where a ship which is—
- (a) in a port in the United Kingdom, or
 - (b) at sea in United Kingdom waters,
- appears to a relevant inspector to be a dangerously unsafe ship, the ship may be detained.”
- (3) At the beginning of subsection (2) there is inserted “Subject to subsection (2A) below”, and after that subsection there is inserted—
- “(2A) The power of detention conferred by subsection (1)(b) is not exercisable in relation to a qualifying foreign ship while the ship is exercising—
- (a) the right of innocent passage, or
 - (b) the right of transit passage through straits used for international navigation.”
- (4) In subsection (3)(c), for “prohibit the ship from going to sea” there is substituted “require the ship to comply with the terms of the notice”.

Status: This is the original version (as it was originally enacted).

Fishing vessel without appropriate certificate

- 3 In section 125 of the 1995 Act (prohibition on fishing vessel going to sea without appropriate certificate), in subsection (3) (which confers a power of detention), for “the fishing vessel may be detained” there is substituted “the fishing vessel, if in United Kingdom waters, may be detained”.

Power to inspect ships and their equipment

- 4 (1) Section 258 of the 1995 Act (powers to inspect ships and their equipment, etc.) is amended as follows.
- (2) In subsection (1)—
- (a) for the words from the beginning to “Chapter) or” there is substituted “For the purposes of seeing that the provisions of this Act other than sections 131 to 141 and sections 143 to 151 and the provisions of regulations and rules made under this Act (other than those sections) are complied with or”,
 - (b) after “go on board a ship” there is inserted “in the United Kingdom or in United Kingdom waters”, and
 - (c) the words “other than Chapter II of Part VI” and “(other than that Chapter)”, in the second place where they occur, are omitted.
- (3) After subsection (1) there is inserted—
- “(1A) The powers conferred by subsection (1) above are not exercisable in relation to a qualifying foreign ship while the ship is exercising—
- (a) the right of innocent passage, or
 - (b) the right of transit passage through straits used for international navigation.”.

(4) In subsection (2), for “the United Kingdom” there is substituted “United Kingdom waters”.

Enforcing detention of ships

- 5 (1) Section 284 of the 1995 Act (enforcing detention of ship) is amended as follows.
- (2) In subsection (1), for paragraph (b) there is substituted—
- “(b) any officer of a Minister of the Crown or Northern Ireland department who is authorised by the Secretary of State, either generally or in a particular case, to exercise powers under this section.”.
- (3) After subsection (1) there is inserted—
- “(1A) A notice of detention may—
- (a) include a direction that the ship—
 - (i) must remain in a particular place, or
 - (ii) must be moved to a particular anchorage or berth, and
 - (b) if it includes such a direction, may specify circumstances relating to safety or the prevention of pollution in which the master may move his ship from that place, anchorage or berth.”.

(4) For subsection (2) there is substituted—

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

“(2) If a ship as respects which notice of detention has been served on the master proceeds to sea, otherwise than in accordance with such a notice, before it is released by a competent authority, the master of the ship shall be guilty of an offence.

(2A) If a ship as respects which notice of detention has been served on the master fails to comply with a direction given under subsection (1A)(a) above, the master of the ship shall be guilty of an offence.

(2B) A person guilty of an offence under subsection (2) or (2A) above shall be liable—

- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment, to a fine.”

(5) In subsection (3), after “subsection (2)” there is inserted “or (2A)”.

(6) In subsection (4)—

- (a) after “subsection (2) above” there is inserted “or failing to comply with a direction given under subsection (1A)(a) above”,
- (b) for “takes to sea” there is substituted “carries away without his consent”, and
- (c) in paragraph (i), for “taken to sea” there is substituted “carried away”.

(7) Any reference to section 284 of the 1995 Act, or to provisions of that section—

- (a) in any safety regulations within the meaning of the 1995 Act made before commencement,
- (b) in any Order in Council having effect under section 128 or 129 of the 1995 Act and made before commencement, or
- (c) in any regulations having effect under such an Order and made before commencement,

shall have effect as a reference to section 284, or those provisions, as amended by this paragraph.

(8) In sub-paragraph (7) above “commencement” means the commencement of this paragraph.

Powers of detention under provisions relating to load lines

6 (1) Schedule 3 to the 1995 Act (load lines) is amended as follows.

(2) In paragraph 3 (compliance with load line rules by United Kingdom ships) in sub-paragraph (3)—

- (a) after “sub-paragraph (1) above” there is inserted “proceeds or”, and
- (b) after “sub-paragraph (1)(a) and (b) above” there is inserted “and which is in United Kingdom waters”.

(3) In paragraph 13 (compliance with load line rules by other ships)—

- (a) in sub-paragraph (4)—
 - (i) after “this paragraph” there is inserted “proceeds or”, and
 - (ii) after “sub-paragraphs (1)(a) or (b) above” there is inserted “and which is in United Kingdom waters”, and
- (b) after that sub-paragraph there is inserted—

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

“(4A) The power of detention conferred by sub-paragraph (4) above is not exercisable in relation to a qualifying foreign ship while the ship is exercising—

- (a) the right of innocent passage, or
- (b) the right of transit passage through straits used for international navigation.”

(4) In paragraph 17 (inspection)—

- (a) in sub-paragraphs (1) and (2), for “any port in the United Kingdom” there is substituted “United Kingdom waters”, and
- (b) after sub-paragraph (2) there is inserted—

“(2A) No power of inspection conferred by sub-paragraph (1) or (2) above is exercisable in relation to a qualifying foreign ship while the ship is exercising—

- (a) the right of innocent passage, or
- (b) the right of transit passage through straits used for international navigation.”

SCHEDULE 2

Section 13.

FUNDING OF MARITIME SERVICES

1 After section 302 of the 1995 Act there is inserted—

“302A Funding of maritime services

Schedule 11A (funding of maritime services) shall have effect.”

2 After Schedule 11 to the 1995 Act there is inserted—

“SCHEDULE 11A

FUNDING OF MARITIME SERVICES

Interpretation

1 In this Schedule—

“general light dues” and “general lighthouse authority” have the same meaning as in Part VIII of this Act;
“prescribe” means prescribe by regulations.

Charges in respect of maritime matters

2 (1) Regulations under this Schedule may make provision imposing charges for the purpose of recovering the whole or a part of the costs incurred by the Secretary of State in connection with his maritime functions.

(2) In sub-paragraph (1) above “maritime functions” means—

- (a) functions conferred by or under any provision of this Act apart from Part II or Part VIII,

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

- (b) functions under any international agreement relating to—
 - (i) the safety of ships,
 - (ii) the prevention of pollution from ships, or
 - (iii) living and working conditions on board ships, and
- (c) other functions relating to the promotion of the safety of ships.

Charges relating to expenses payable out of General Lighthouse Fund

- 3 (1) If—
- (a) any Community obligation, or
 - (b) any international agreement made between any three or more countries including the Republic of Ireland and ratified by the United Kingdom,
- requires the United Kingdom to provide for any of the costs incurred by general lighthouse authorities in respect of lighthouses, buoys and beacons to be recovered otherwise than by means of the levying of general light dues in accordance with section 205 (as it has effect on the commencement of this Schedule), regulations under this Schedule may make provision imposing charges for the purposes of recovering all or any part of the costs required to be so recovered.
- (2) In this paragraph “buoys and beacons” includes equipment which is intended as an aid to the navigation of ships and, subject to that, expressions used in this paragraph and in Part VIII of this Act have the same meaning as in that Part.

Ships in respect of which charges may be imposed

- 4 (1) Regulations under this Schedule may not require a charge to be paid except in respect of—
- (a) a ship which has entered a port in the United Kingdom,
 - (b) a ship which is anchored off a port in the United Kingdom, or
 - (c) a ship which is anchored within 500 metres of an installation which is in United Kingdom waters or a part of the sea specified by virtue of section 129(2)(b).
- (2) Nothing in any regulations under this Schedule shall be construed as requiring a charge to be paid in respect of a qualifying foreign ship which is exercising—
- (a) the right of innocent passage, or
 - (b) the right of transit passage through straits used for international navigation,
- except to the extent that international law allows such a charge to be imposed.
- (3) Subject to sub-paragraphs (1) and (2) above, the regulations may impose a charge in respect of such description of ship as may be prescribed.
- (4) In particular—

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

- (a) regulations may impose a charge in respect of a ship even though no service has been provided or function exercised in the case of that ship; and
 - (b) regulations may provide that no charge is imposed in respect of a ship which does not exceed a prescribed tonnage or does not exceed a prescribed length.
- (5) For the purposes of sub-paragraph (1)(a) above, the circumstances in which a ship shall be regarded as entering a port in the United Kingdom include circumstances in which the ship enters any United Kingdom waters which are regulated or managed by a harbour authority.
- (6) In sub-paragraph (1)(c) above “installation” means an installation which—
- (a) is an offshore installation within the meaning of the Mineral Workings (Offshore Installations) Act 1971; or
 - (b) is to be taken to be an installation for the purposes of sections 21 to 23 of the Petroleum Act 1987.

Persons by whom charges to be paid

- 5 (1) Regulations under this Schedule may not require a charge to be paid in respect of a ship by a person who is not—
- (a) the owner of the ship;
 - (b) the person registered as the owner of the ship;
 - (c) the operator of the ship;
 - (d) the manager of the ship;
 - (e) the charterer of the ship; or
 - (f) the agent of a person mentioned in any of paragraphs (a) to (e) above.
- (2) Subject to sub-paragraph (1) above, charges imposed by the regulations shall be payable by such persons as may be prescribed.

Amount of charges

- 6 (1) Regulations under this Schedule may impose a charge—
- (a) of a fixed amount, or
 - (b) of an amount determined in accordance with the regulations, and may impose different charges in relation to ships of different descriptions or in different circumstances.
- (2) Regulations under this Schedule may, in particular, impose in respect of a ship a charge whose amount depends on—
- (a) whether action has been or is being taken with a view to—
 - (i) enforcing international shipping standards in the case of that ship, or
 - (ii) preventing, reducing or minimising the effects of pollution from that ship; and
 - (b) if any such action has been or is being so taken, the nature of the action.

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

- (3) Regulations under this Schedule may, in particular, impose in respect of a ship a charge whose amount depends on the tonnage or length of the ship.

Powers to require information

- 7 (1) Regulations under this Schedule may include provision requiring any relevant authority or any person who is or may be liable to pay charges under the regulations in respect of a ship, to provide any collecting authority with such information as the collecting authority may reasonably require for the purposes of the regulations.
- (2) In this paragraph—
- “collecting authority” means—
 - (a) the Secretary of State,
 - (b) a Departmental officer, and
 - (c) a general lighthouse authority;
 - “relevant authority” means—
 - (a) a harbour authority,
 - (b) the Commissioners of Customs and Excise, and
 - (c) a conservancy authority.

Disclosure of information

- 8 (1) No obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise) shall prevent a Minister of the Crown or a Northern Ireland department from disclosing—
 - (a) to the Secretary of State, or
 - (b) to a person appointed by the Secretary of State to collect charges under regulations made under this Schedule,information for the purpose of enabling or assisting the Secretary of State to perform his functions under the regulations.
- (2) Information obtained by any person by virtue of sub-paragraph (1) above shall not be disclosed by him to any other person except where the disclosure is made—
 - (a) to a person falling within sub-paragraph (1)(a) or (b) above, or
 - (b) for the purposes of any legal proceedings arising out of the regulations.

Collection and recovery, etc.

- 9 (1) Regulations under this Schedule may make provision—
 - (a) with respect to the collection and recovery of charges; and
 - (b) for charges which fall due under the regulations but which are not paid to carry interest.
- (2) Regulations made under this Schedule by virtue of sub-paragraph (1) above may in particular confer on general lighthouse authorities functions relating to the collection and recovery of charges.

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

- 10 Regulations under this Schedule may make provision for appeals against decisions that charges are due in respect of ships.

Distress

- 11 Regulations under this Schedule may make provision in respect of England and Wales and Northern Ireland—
- (a) for authorising distress to be levied on any ship in respect of which the owner or master has failed to pay charges due under the regulations, and on any goods, equipment or other thing belonging to, or on board, the ship,
 - (b) for the disposal of any ship, goods, equipment or other thing on which distress is levied in accordance with the regulations, and
 - (c) for the imposition and recovery of costs, charges, expenses and fees in connection with anything done under regulations made by virtue of paragraph (a) or (b) above.

Further powers in relation to General Lighthouse Fund etc

- 12 If regulations under this Schedule make any provision by virtue of paragraph 3 above, regulations under this Schedule may also—
- (a) provide for payments which, apart from the regulations, would fall to be made out of the General Lighthouse Fund to be made by the Secretary of State out of money provided by Parliament,
 - (b) provide for amounts which, apart from the regulations, would fall to be paid into the General Lighthouse Fund (other than general light dues levied in accordance with section 205) to be paid by the Secretary of State into the Consolidated Fund,
 - (c) provide for the payment out of money provided by Parliament into the General Lighthouse Fund of amounts representing the whole or part of any charges imposed by virtue of paragraph 3, and
 - (d) make such amendments, repeals or other modifications of any of the provisions of this Act relating to the General Lighthouse Fund or general light dues as appear to the Secretary of State to be necessary or expedient in consequence of, or in connection with, the provision made by virtue of paragraph 3 above or paragraph (a), (b) or (c) above.
- 13 If regulations under this Schedule make any provision by virtue of paragraph 9(2) above, regulations under this Schedule may also provide for the making by the Secretary of State to each general lighthouse authority out of money provided by Parliament of payments in respect of expenses incurred by that authority in connection with the collection or recovery of charges.

Supplementary

- 14 Regulations under this Schedule may include such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or appropriate.

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

- 15 Any sums received in consequence of regulations under this Schedule shall be paid into the Consolidated Fund.
- 16 (1) Regulations under this Schedule shall be made by the Secretary of State with the consent of the Treasury.
- (2) Regulations shall not be made under this Schedule unless a draft of them has been laid before, and approved by a resolution of, the House of Commons.”

SCHEDULE 3

Section 14(2).

PROVISIONS TO BE INSERTED AS SCHEDULE 5A TO THE MERCHANT SHIPPING ACT 1995

TEXT OF INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA

The States parties to the present Convention,

Conscious of the dangers posed by the world-wide carriage by sea of hazardous and noxious substances,

Convinced of the need to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of such substances,

Desiring to adopt uniform international rules and procedures for determining questions of liability and compensation in respect of such damage,

Considering that the economic consequences of damage caused by the carriage by sea of hazardous and noxious substances should be shared by the shipping industry and the cargo interests involved,

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

DEFINITIONS

Article 1

For the purposes of this Convention:

- 1 “Ship” means any seagoing vessel and seaborne craft, of any type whatsoever.
- 2 “Person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

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

- 3 “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. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “owner” shall mean such company.
- 4 “Receiver” means either:
- (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or
 - (b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).
- 5 “Hazardous and noxious substances” (HNS) means:
- (a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
 - (i) oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
 - (ii) noxious liquid substances carried in bulk referred to in appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category A, B, C or D in accordance with regulation 3(4) of the said Annex II;
 - (iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code;
 - (iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;
 - (v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
 - (vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed cup test);
 - (vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the

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

provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and

- (b) residues from the previous carriage in bulk of substances referred to in (a) (i) to (iii) and (v) to (vii) above.

6 “Damage” means:

- (a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;
- (b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;
- (c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- (d) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.

In this paragraph, “caused by those substances” means caused by the hazardous or noxious nature of the substances.

7 “Preventive measures” means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.

8 “Incident” means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

9 “Carriage by sea” means the period from the time when the hazardous and noxious substances enter any part of the ship’s equipment, on loading, to the time they cease to be present in any part of the ship’s equipment, on discharge. If no ship’s equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship’s rail.

10 “Contributing cargo” means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

11 The “HNS Fund” means the International Hazardous and Noxious Substances Fund established under article 13.

12 “Unit of account” means the Special Drawing Right as defined by the International Monetary Fund.

13 “State of the ship’s registry” means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.

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

- 14 “Terminal” means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.
- 15 “Director” means the Director of the HNS Fund.
- 16 “Organization” means the International Maritime Organization.
- 17 “Secretary-General” means the Secretary-General of the Organization.

ANNEXES

Article 2

The Annexes to this Convention shall constitute an integral part of this Convention.

SCOPE OF APPLICATION

Article 3

This Convention shall apply exclusively:

- (a) to any damage caused in the territory, including the territorial sea, of a State Party;
- (b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and
- (d) to preventive measures, wherever taken.

Article 4

- 1 This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.
- 2 This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.
- 3 This Convention shall not apply:
- (a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and

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

- (b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.

4 Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

5 A State Party may decide to apply this Convention to its warships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

6 With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 38 and shall waive all defences based on its status as a sovereign State.

Article 5

1 A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships:

- (a) which do not exceed 200 gross tonnage; and
- (b) which carry hazardous and noxious substances only in packaged form; and
- (c) while they are engaged on voyages between ports or facilities of that State.

2 Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1(a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.

3 Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.

4 A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.

5 Where a State has made a declaration under paragraph 1 or 2 and has not withdrawn it, hazardous and noxious substances carried on board ships covered by that paragraph shall not be considered to be contributing cargo for the purpose of application of articles 18, 20, article 21, paragraph 5 and article 43.

6 The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:

- (a) the damage as defined in article 1, paragraph 6(a), (b) or (c) was caused in:
 - (i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or
 - (ii) the exclusive economic zone, or area mentioned in article 3(b), of the State or States referred to in (i);
- (b) the damage includes measures taken to prevent or minimize such damage.

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

DUTIES OF STATE PARTIES

Article 6

Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.

CHAPTER II

LIABILITY

LIABILITY OF THE OWNER

Article 7

1 Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2 No liability shall attach to the owner if the owner proves that:

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
- (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either
 - (i) has caused the damage, wholly or partly; or
 - (ii) has led the owner not to obtain insurance in accordance with article 12;
 provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3 If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

4 No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5 Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

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

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures; and
- (f) the servants or agents of persons mentioned in (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

- 6 Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

INCIDENTS INVOLVING TWO OR MORE SHIPS

Article 8

- 1 Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.
- 2 However, owners shall be entitled to the limits of liability applicable to each of them under article 9.
- 3 Nothing in this article shall prejudice any right of recourse of an owner against any other owner.

LIMITATION OF LIABILITY

Article 9

- 1 The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:
- (a) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and
 - (b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):
 - for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account
 - for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account
- provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

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

- 2 The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
- 3 The owner shall, for the purpose of benefitting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.
- 4 Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.
- 5 If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
- 6 The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.
- 7 Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce the claim against the fund.
- 8 Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall rank equally with other claims against the fund.
- 9 (a) The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.
- (b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare

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

that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

- (c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10 For the purpose of this article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11 The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 10

1 Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

- (a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and
- (b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2 The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

DEATH AND INJURY

Article 11

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.

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

COMPULSORY INSURANCE OF THE OWNER

Article 12

- 1 The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention.
- 2 A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:
- (a) name of the ship, distinctive number or letters and port of registry;
 - (b) name and principal place of business of the owner;
 - (c) IMO ship identification number;
 - (d) type and duration of security;
 - (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
 - (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.
- 3 The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.
- 4 The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.
- 5 An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.
- 6 The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.
- 7 Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as

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

- having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.
- 8 Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.
- 9 Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.
- 10 A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.
- 11 Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.
- 12 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

CHAPTER III

COMPENSATION BY THE INTERNATIONAL HAZARDOUS AND NOXIOUS SUBSTANCES FUND (HNS FUND)

ESTABLISHMENT OF THE HNS FUND

Article 13

- 1 The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:
- (a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and

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

(b) to give effect to the related tasks set out in article 15.

- 2 The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

COMPENSATION

Article 14

- 1 For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of chapter II:

- (a) because no liability for the damage arises under chapter II;
- (b) because the owner liable for the damage under chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under chapter II after having taken all reasonable steps to pursue the available legal remedies;
- (c) because the damage exceeds the owner's liability under the terms of chapter II.

- 2 Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this article.

- 3 The HNS Fund shall incur no obligation under the preceding paragraphs if:
- (a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or
 - (b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

- 4 If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

- 5 (a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under chapter II for damage within

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

- the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.
- (b) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account.
- (c) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.
- (d) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.
- 6 Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants
- Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.
- 7 The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with chapter II. In such cases paragraph 5(d) applies accordingly.

RELATED TASKS OF THE HNS FUND

Article 15

For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall have the following tasks:

- (a) to consider claims made against the HNS Fund;
- (b) to prepare an estimate in the form of a budget for each calendar year of:

Expenditure:

- (i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and
- (ii) payments to be made by the HNS Fund in the relevant year;

Income:

- (iii) surplus funds from operations in preceding years, including any interest;
- (iv) initial contributions to be paid in the course of the year;
- (v) annual contributions if required to balance the budget; and
- (vi) any other income;
- (c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as

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

are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and

- (d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

GENERAL PROVISIONS ON CONTRIBUTIONS

Article 16

- 1 The HNS Fund shall have a general account, which shall be divided into sectors.
- 2 The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:
- (a) oil as defined in article 1, paragraph 5(a)(i) (oil account);
 - (b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and
 - (c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).
- 3 There shall be initial contributions and, as required, annual contributions to the HNS Fund.
- 4 Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or article 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.
- 5 For the purposes of article 18, article 19, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(c), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.
- 6 “Associated person” means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

GENERAL PROVISIONS ON ANNUAL CONTRIBUTIONS

Article 17

- 1 Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.

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

- 2 Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph 5 shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received or, in respect of cargoes referred to in article 19, paragraph 1(b), discharged during the preceding calendar year or such other year as the Assembly may decide.
- 3 The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and article 21, paragraph 5, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.
- 4 The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.
- 5 The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

ANNUAL CONTRIBUTIONS TO THE GENERAL ACCOUNT

Article 18

- 1 Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1, which fall within the following sectors:
- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
 - (b) substances referred to in paragraph 2; and
 - (c) other substances.
- 2 Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.

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

ANNUAL CONTRIBUTIONS TO SEPARATE ACCOUNTS

Article 19

- 1 Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:
- (a) in the case of the oil account,
 - (i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and
 - (ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
 - (b) in the case of the LNG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State;
 - (c) in the case of the LPG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG.
- 2 Subject to paragraph 3, the separate accounts referred to in paragraph 1 above shall become effective at the same time as the general account.
- 3 The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:
- (a) 350 million tonnes of contributing cargo in respect of the oil account;
 - (b) 20 million tonnes of contributing cargo in respect of the LNG account; and
 - (c) 15 million tonnes of contributing cargo in respect of the LPG account.
- 4 The Assembly may suspend the operation of a separate account if:
- (a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or
 - (b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten per cent of the most recent levy to that account in accordance with paragraph 1.
- 5 The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.
- 6 Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or

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

suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.

INITIAL CONTRIBUTIONS

Article 20

- 1 In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5 be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received or, in the case of LNG, discharged in that State, during the calendar year preceding that in which this Convention enters into force for that State.
- 2 The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.
- 3 Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

REPORTS

Article 21

- 1 Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.
- 2 For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.
- 3 For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be *prima facie* evidence of the facts stated therein.
- 4 Where a State Party does not fulfil its obligations to communicate to the Director the information referred to in paragraph 2 and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a State Party.

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

- 5 In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either:
- (a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or
 - (b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party, for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.

NON-PAYMENT OF CONTRIBUTIONS

Article 22

- 1 The amount of any contribution due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.
- 2 Where a person who is liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

OPTIONAL LIABILITY OF STATES PARTIES FOR THE PAYMENT OF CONTRIBUTIONS

Article 23

- 1 Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 in respect of hazardous and noxious substances received or discharged in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.
- 2 Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with article 46, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.
- 3 A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

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

- 4 A declaration made in accordance with this article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director's receipt thereof.
- 5 Any State which is bound by a declaration made under this article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

ORGANIZATION AND ADMINISTRATION

Article 24

The HNS Fund shall have an Assembly and a Secretariat headed by the Director.

ASSEMBLY

Article 25

The Assembly shall consist of all States Parties to this Convention.

Article 26

The functions of the Assembly shall be:

- (a) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;
- (b) to determine its own rules of procedure, subject to the provisions of this Convention;
- (c) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in article 13, paragraph 1(a), and the related tasks of the HNS Fund listed in article 15;
- (d) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
- (e) to adopt the annual budget prepared in accordance with article 15(b);
- (f) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;
- (g) to appoint auditors and approve the accounts of the HNS Fund;
- (h) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with article 14 and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;
- (i) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to

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

secure an equitable geographical distribution of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

- (j) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;
- (k) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;
- (l) to supervise the proper execution of this Convention and of its own decisions;
- (m) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and
- (n) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

Article 27

- 1 Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.
- 2 Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

Article 28

A majority of the members of the Assembly shall constitute a quorum for its meetings.

SECRETARIAT

Article 29

- 1 The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.
- 2 The Director shall be the legal representative of the HNS Fund.

Article 30

- 1 The Director shall be the chief administrative officer of the HNS Fund. Subject to the instructions given by the Assembly, the Director shall perform those functions which are assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.
- 2 The Director shall in particular:
 - (a) appoint the personnel required for the administration of the HNS Fund;

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

- (b) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;
- (c) collect the contributions due under this Convention while observing in particular the provisions of article 22, paragraph 2;
- (d) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;
- (e) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;
- (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
- (g) prepare, in consultation with the President of the Assembly, and publish a report on the activities of the HNS Fund during the previous calendar year; and
- (h) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies.

Article 31

In the performance of their duties the Director and the staff and experts appointed by the Director shall not seek or receive instructions from any Government or from any authority external to the HNS Fund. They shall refrain from any action which might adversely reflect on their position as international officials. Each State Party on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties.

FINANCES

Article 32

- 1 Each State Party shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.
- 2 Any other expenses incurred in the operation of the HNS Fund shall be borne by the HNS Fund.

VOTING

Article 33

The following provisions shall apply to voting in the Assembly:

- (a) each member shall have one vote;
- (b) except as otherwise provided in article 34, decisions of the Assembly shall be made by a majority vote of the members present and voting;
- (c) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and

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

- (d) for the purpose of this article the phrase “members present” means “members present at the meeting at the time of the vote”, and the phrase “members present and voting” means “members present and casting an affirmative or negative vote”. Members who abstain from voting shall be considered as not voting.

Article 34

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under article 19, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;
- (b) a decision under article 22, paragraph 2, not to take or continue action against a contributor;
- (c) the appointment of the Director under article 26(d);
- (d) the establishment of subsidiary bodies, under article 26(i), and matters relating to such establishment; and
- (e) a decision under article 51, paragraph 1, that this Convention shall continue to be in force.

TAX EXEMPTIONS AND CURRENCY REGULATIONS

Article 35

- 1 The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.
- 2 When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.
- 3 No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.
- 4 The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.
- 5 Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

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

- 6 Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction.

CONFIDENTIALITY OF INFORMATION

Article 36

Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

CHAPTER IV

CLAIMS AND ACTIONS

LIMITATION OF ACTIONS

Article 37

- 1 Rights to compensation under chapter II shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.
- 2 Rights to compensation under chapter III shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.
- 3 In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.
- 4 Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

JURISDICTION IN RESPECT OF ACTION AGAINST THE OWNER

Article 38

- 1 Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(b), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of any such States Parties.
- 2 Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(c) have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may

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

be brought against the owner or other person providing financial security for the owner's liability only in the courts of:

- (a) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or
- (b) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or
- (c) the State Party where a fund has been constituted in accordance with article 9, paragraph 3.

3 Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant.

4 Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

5 After a fund under article 9 has been constituted by the owner or by the insurer or other person providing financial security in accordance with article 12, the courts of the State in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.

JURISDICTION IN RESPECT OF ACTION AGAINST THE HNS FUND OR TAKEN BY THE HNS FUND

Article 39

1 Subject to the subsequent provisions of this article, any action against the HNS Fund for compensation under article 14 shall be brought only before a court having jurisdiction under article 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.

2 In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of article 38, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.

3 Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.

4 Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 in respect of the same damage.

5 Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.

6 Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

7 Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance

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

with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

RECOGNITION AND ENFORCEMENT

Article 40

- 1 Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:
 - (a) where the judgement was obtained by fraud; or
 - (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.
- 2 A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.
- 3 Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3 shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

SUBROGATION AND RECOURSE

Article 41

- 1 The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.
- 2 Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
- 3 Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

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

SUPERSESSION CLAUSE

Article 42

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.

CHAPTER V

TRANSITIONAL PROVISIONS

INFORMATION ON CONTRIBUTING CARGO

Article 43

When depositing an instrument referred to in article 45, paragraph 3, and annually thereafter until this Convention enters into force for a State, that State shall submit to the Secretary-General data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year in respect of the general account and each separate account.

FIRST SESSION OF THE ASSEMBLY

Article 44

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

CHAPTER VI

FINAL CLAUSES

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

Article 45

- 1 This Convention shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 and shall thereafter remain open for accession.
- 2 States may express their consent to be bound by this Convention by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

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

(c) accession.

- 3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ENTRY INTO FORCE

Article 46

- 1 This Convention shall enter into force eighteen months after the date on which the following conditions are fulfilled:
- (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
 - (b) the Secretary-General has received information in accordance with article 43 that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c) have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.
- 2 For a State which expresses its consent to be bound by this Convention after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Convention enters into force in accordance with paragraph 1, whichever is the later.

REVISION AND AMENDMENT

Article 47

- 1 A conference for the purpose of revising or amending this Convention may be convened by the Organization.
- 2 The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of six States Parties or one-third of the States Parties, whichever is the higher figure.
- 3 Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

AMENDMENT OF LIMITS

Article 48

- 1 Without prejudice to the provisions of article 47, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1 and article 14, paragraph 5.
- 2 Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

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

- 3 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
- 4 All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
- 5 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.
- 6 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5.
- 7 (a) No amendment of the limits under this article may be considered less than five years from the date this Convention was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.
- (b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention increased by six per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.
- (c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention multiplied by three.
- 8 Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States
- The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
- 9 An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.
- 10 All Contracting States shall be bound by the amendment, unless they denounce this Convention in accordance with article 49, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
- 11 When an amendment has been adopted but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.

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

DENUNCIATION

Article 49

- 1 This Convention may be denounced by any State Party at any time after the date on which it enters into force for that State Party.
- 2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
- 3 Denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
- 4 Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Convention relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5 in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

EXTRAORDINARY SESSIONS OF THE ASSEMBLY

Article 50

- 1 Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.
- 2 The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.
- 3 If the Assembly, at an extraordinary session, convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from the same date.

CESSATION

Article 51

- 1 This Convention shall cease to be in force:
 - (a) on the date when the number of States Parties falls below 6; or
 - (b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, if the data shows that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in that preceding calendar year was less than 30 million tonnes.

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

Notwithstanding (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Convention shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

- 2 States which are bound by this Convention on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 52 and shall, for that purpose only, remain bound by this Convention.

WINDING UP OF THE HNS FUND

Article 52

- 1 If this Convention ceases to be in force, the HNS Fund shall nevertheless:
- (a) meet its obligations in respect of any incident occurring before this Convention ceased to be in force; and
 - (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.
- 2 The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.
- 3 For the purposes of this article the HNS Fund shall remain a legal person.

DEPOSITARY

Article 53

- 1 This Convention and any amendment adopted under article 48 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
- (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 48, paragraph 2;
 - (iv) any amendment which has been adopted in accordance with article 48, paragraph 5;
 - (v) any amendment deemed to have been accepted under article 48, paragraph 8, together with the date on which that amendment shall

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

- enter into force in accordance with paragraphs 9 and 10 of that article;
 - (vi) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect; and
 - (vii) any communication called for by any article in this Convention; and
 - (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
- 3 As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

LANGUAGES

Article 54

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

SCHEDULE 4

Section 25.

AMENDMENTS OF PART III OF AVIATION AND MARITIME SECURITY ACT 1990

- 1 Part III of the Aviation and Maritime Security Act 1990 (protection of ships and harbour areas against acts of violence) shall have effect subject to the amendments made by this Schedule.

Meaning of “harbour area”

- 2 In section 18 (purposes to which Part III applies), for subsection (3) there is substituted—

“(3) In this Part of this Act “harbour area” means—

- (a) the aggregate of—
 - (i) any harbour in the United Kingdom in respect of which there is a harbour authority within the meaning of the Merchant Shipping Act 1995, and
 - (ii) any land which is adjacent to such a harbour and which is either land occupied by the harbour authority or land in respect of which the harbour authority has functions of improvement, maintenance or management, or
- (b) any hoverport which does not form part of any area which falls within paragraph (a)(i) or (ii) above.”

Designation of restricted zones

- 3 (1) Section 20 (designation of restricted zones of harbour areas) is amended as follows.

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

(2) After subsection (1) there is inserted—

“(1A) A harbour operator may, and shall if so requested in writing by the Secretary of State, apply to the Secretary of State for the designation of the whole or any part of the operating area as a restricted zone for the purposes of this Part of this Act.”

(3) In subsections (2) and (3), after “(1)” there is inserted “or (1A)”.

(4) In subsection (4), for “harbour authority” there is substituted “applicant”.

(5) In subsection (5)—

- (a) for “harbour authority” there is substituted “person”,
- (b) after “(1)” there is inserted “or (1A)”, and
- (c) after “harbour area” there is inserted “or, as the case may be, of the operating area”.

(6) In subsection (6), after “harbour area” there is inserted “or, as the case may be, of an operating area”.

(7) In subsection (7) for “harbour authority” there is substituted “person who made, or was requested to make, the application”.

(8) In subsection (8) after “harbour area” there is inserted “or, as the case may be, of an operating area”.

(9) After subsection (8) there is inserted—

“(9) In this Part of this Act “harbour operator” means a person who—

- (a) carries on harbour operations in a harbour area, and
- (b) is designated for the purposes of this Part by an order made by the Secretary of State;

and “operating area” means, in relation to that person, so much of the harbour area as is under his control.

(10) An order under subsection (9) above may be revoked by a subsequent order.”

Power to promote searches

4 (1) Section 22 (power to require harbour authorities to promote searches) is amended as follows.

(2) In subsection (1), for “to a harbour authority requiring it to use its best endeavours” there is substituted “to—

- (a) a harbour authority, or
- (b) a harbour operator,

requiring that person to use his best endeavours”.

(3) After subsection (2) there is inserted—

“(2A) The searches to which this section applies, in relation to an operating area, are searches—

- (a) of the operating area or any part of it,

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

- (b) of any ship which at the time when the direction is given or at any subsequent time is in the operating area, and
- (c) of persons and property (other than ships) which may at any time be in the operating area.”

(4) After subsection (3) there is inserted—

“(3A) Subsection (3) above applies in relation to a direction under this section to a harbour operator as it applies in relation to a direction to a harbour authority, but as if the references to the harbour area (or to any part of the harbour area) were references to the operating area (or any part of the operating area).”

5 In section 23 (power to require other persons to promote searches), in subsection (1), “(other than a harbour authority)” is omitted and after that subsection there is inserted—

“(1A) A direction may not be given under this section to—

- (a) a harbour authority, or
- (b) a harbour operator.”

Removal of firearms

6 In section 26(1) (direction not to require or authorise any person to carry a firearm), at the end of subsection (1) there is inserted “except to the extent necessary for the purpose of removing any firearm found pursuant to a search under section 22 of this Act from the restricted zone and delivering the firearm to a person authorised to carry it”.

Inspection of ships and harbour areas

7 In section 36(2) (powers of authorised person on inspection of ships or harbour areas), in paragraph (c), for “or the occupier of the land” there is substituted “the occupier of the land or any harbour operator”.

False statements

8 In section 37 (false statements relating to baggage, cargo etc.), in subsection (2) (persons to whom false statements must not be made) after paragraph (a) there is inserted—

“(aa) a harbour operator.”.

9 In section 38 (false statements in connection with identity documents), in subsection (3) (persons to whom false statements must not be made) after paragraph (a) there is inserted—

“(aa) a harbour operator.”.

Unauthorised presence in restricted zone

10 (1) Section 39 (unauthorised presence in restricted zone) is amended as follows.

(2) In subsection (1)(a) and (b) for “the harbour authority or a person acting on behalf of the harbour authority” there is substituted “the competent authority, or a person acting on behalf of that authority”.

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

(3) After subsection (2) there is inserted—

“(2A) A constable or any person acting on behalf of the competent authority may use such force as is reasonable in the circumstances to remove from a restricted zone a person remaining in it in contravention of subsection (1) (b) above.

(2B) For the purposes of this section the competent authority in relation to a restricted zone is—

- (a) if the zone was designated on the application of a harbour authority, that authority; and
- (b) if the zone was designated on the application of a harbour operator, that operator.”

Meaning of “harbour”, “harbour authority” etc.

11 (1) Section 46 (interpretation of Part III) is amended as follows.

(2) In subsection (1)—

(a) for the definition of “harbour” there is substituted—

““harbour” has the same meaning as in the Merchant Shipping Act 1995;”,

(b) for the definition of “harbour authority” there is substituted—

““harbour authority” means—

- (a) a harbour authority within the meaning of the Merchant Shipping Act 1995, or
- (b) the manager of any hoverport which does not form part of an area mentioned in section 18(3)(a)(i) or (ii) of this Act;”,

(c) for the definition of “harbour operations” there is substituted—

““harbour operations” means—

- (a) the marking or lighting of a harbour or any part of it,
- (b) the berthing or dry docking of a ship or the towing or moving of a ship into or out of or within the harbour area,
- (c) the transportation, handling or warehousing of goods within the harbour area, or
- (d) the embarking, disembarking or movement of passengers within the harbour area;

“harbour operator” has the meaning given by section 20(9) of this Act;”,

(d) after the definition of “naval services” there is inserted—

““operating area” has the meaning given by section 20(9) of this Act;”, and

(e) the definition of “restricted zone” is omitted.

(3) After subsection (2) there is inserted—

“(2A) In this Part of this Act “restricted zone” means an area designated under section 20 of this Act; and references to a restricted zone of a harbour area

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

include references to a restricted zone which is or is part of an operating area.”

SCHEDULE 5

Section 26(1).

PROVISIONS OF UNITED NATIONS CONVENTION ON THE LAW OF THE SEA TO BE TREATED AS PART OF THE LAW OF NATIONS

ARTICLE 101

Definition of piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed—
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

ARTICLE 102

Piracy by a warship, government ship or government aircraft whose crew has mutinied

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

ARTICLE 103

Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

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

SCHEDULE 6

Section 29(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

The Hovercraft Act 1968 (c. 59)

- 1 In section 1(1)(i)(ii) of the Hovercraft Act 1968 (power to apply sections 185 and 186 of the 1995 Act in relation to the carriage of property by hovercraft), before “sections 185 and 186” there is inserted “and”.

The Supreme Court Act 1981 (c. 54)

- 2 In section 20 of the Supreme Court Act 1981 (Admiralty jurisdiction of High Court), in subsection (5)(b) for “International Oil Compensation Fund 1984” there is substituted “International Oil Pollution Compensation Fund 1992”.

The Merchant Shipping Act 1995 (c. 21)

- 3 (1) Section 128 of the 1995 Act (prevention of pollution from ships) is amended as follows.
- (2) In subsection (3)(h) for “section 143(6), 144” there is substituted “sections 143(6), 144”.
- (3) In subsection (4)(f) (instruments made under Orders in Council under section 128(1)) the words “and apply the Statutory Instruments Act 1946 to instruments made under the Order” are omitted.
- 4 (1) With respect to applications made after the commencement of this paragraph, section 158 of the 1995 Act (limitation actions), including that section as set out in Schedule 4 to that Act, is amended as follows.
- (2) In subsection (2)—
- (a) for the words “and is entitled to limit it” there is substituted “but has not found that he is not entitled to limit it”, and
- (b) for “the limit of the liability” there is substituted “the limit which would apply to the applicant’s liability if he were entitled to limit it”.
- (3) After subsection (2) there is inserted—
- “(2A) Where—
- (a) a distribution is made under subsection (2)(b) above without the court having found that the applicant is entitled to limit his liability, and
- (b) the court subsequently finds that the applicant is not so entitled, the making of the distribution is not to be regarded as affecting the applicant’s liability in excess of the amount distributed.”

- 5 In section 170 of the 1995 Act (interpretation of provisions implementing the International Convention on Civil Liability for Oil Pollution Damage 1992), in subsection (4)(a) (territory of United Kingdom to include any area within the British fishery limits) for “within the British fishery limits set by or under the Fishery Limits Act 1976;” there is substituted “specified by virtue of section 129(2)(b)”.

- 6 In section 193 of the 1995 Act (general and local lighthouse authorities)—

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

- (a) in subsection (2)(a), for “harbour authority” there is substituted “statutory harbour authority”, and
 - (b) in subsection (4)(b), for the words “harbour authority”, where they first occur, there is substituted “statutory harbour authority”.
- 7 In section 197 of the 1995 Act (general powers of general lighthouse authority), in subsection (2), for “harbour authority” there is substituted “statutory harbour authority”.
- 8 In section 201 of the 1995 Act (powers of harbour authorities), in subsection (1), for “harbour authority” there is substituted “statutory harbour authority”.
- 9 Section 202 of and Schedule 9 to the 1995 Act (transfer of local lighthouses from general lighthouse authorities to harbour authorities) (which are spent) are omitted.
- 10 In section 203 of the 1995 Act (individual transfers of local lighthouses to harbour authorities), for the words “harbour authority”, where they first occur, there is substituted “statutory harbour authority”.
- 11 In section 204 of the 1995 Act (surrender of local lighthouses), in subsection (2), for “harbour authority” there is substituted “statutory harbour authority”.
- 12 In section 205 of the 1995 Act (light dues leviable by general lighthouse authorities), in subsection (9), for the words from “to Her Majesty’s Paymaster-General” to the end there is substituted “to the Secretary of State or as he directs, and in such manner as he directs.”
- 13 In section 210 of the 1995 Act (light dues leviable by local lighthouse authorities), in subsections (1) and (2) for the words “harbour authority” there is substituted “statutory harbour authority”.
- 14 In section 232 (duty of receiver where vessel in distress), in subsection (2), for “(4)” there is substituted “(3)”.
- 15 In section 256 (appointment of inspectors and surveyors), in subsection (7), for “section ” there is substituted “subsection”.
- 16 In section 261 (improvement notices), in subsection (4)(a), after “130” there is inserted “130A”.
- 17 In section 293 (functions of Secretary of State in relation to marine pollution), in subsection (2), before sub-paragraph (a), there is inserted—
 “(za) the preparation, review and implementation of a national plan setting out arrangements for responding to incidents which cause or may cause marine pollution with a view to preventing such pollution or reducing or minimising its effects;”.
- 18 (1) Section 306 of the 1995 Act (regulations, rules and orders, etc.) is amended as follows.
- (2) For subsection (1) (powers which are exercisable by statutory instrument) there is substituted—
 “(1) Subject to subsection (1A) below, any power of the Secretary of State to make regulations, orders or rules under this Act shall be exercisable by statutory instrument.
- (1A) Subsection (1) above does not apply to—
 (a) rules made under section 91; or

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

- (b) any instrument made under section 128(4)(f) other than an instrument containing regulations.”
- (3) For subsection (2) (statutory instruments containing regulations, orders or rules to be subject to negative resolution procedure, except in specified cases) there is substituted—
- “(2) Subject to subsection (2A) below—
- (a) any statutory instrument containing regulations under this Act (including such an instrument made by virtue of section 128(4)(f) or 182B(4)(e)), and
- (b) any statutory instrument containing an order or rules made under this Act,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2A) Subsection (2) above does not apply to—
- (a) regulations made under section 130A, 259(8) or 260(3) or Schedule 11A;
- (b) commencement orders;
- (c) any order made under section 216(2), 223(3), paragraph 8 of Part II of Schedule 7, or any provision of Schedule 14.”
- (4) In subsection (3) (which provides that all Orders in Council apart from those specified are to be subject to negative resolution procedure)—
- (a) after “172(2)” there is inserted “182B(1)”, and
- (b) after “184” there is inserted “185(2A) or (2B)”.
- (5) In subsection (4)(a) (duty to consult before making certain regulations), for “under section 108” there is substituted “section 108 or 130A”.
- 19 (1) Section 313 of the 1995 Act (interpretation) is amended as follows.
- (2) In subsection (1) (definitions)—
- (a) for the definition of “harbour authority” there is substituted—
- ““harbour authority” means, in relation to a harbour—
- (a) the person who is the statutory harbour authority for the harbour, or
- (b) if there is no statutory harbour authority for the harbour, the person (if any) who is the proprietor of the harbour or who is entrusted with the function of managing, maintaining or improving the harbour;”
- (b) after the definition of “master” there is inserted—
- ““Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;”
- (c) after the definition of “proper officer” there is inserted—
- ““qualifying foreign ship” has the meaning given in section 313A;”, and
- (d) after the definition of “ship” there is inserted—
- ““statutory harbour authority” means—

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

- (a) in relation to Great Britain, a harbour authority within the meaning of the Harbours Act 1964; and
- (b) in relation to Northern Ireland, a harbour authority within the meaning of the Harbours Act (Northern Ireland) 1970.”

(3) After subsection (2) there is inserted—

“(2A) In this Act “right of innocent passage”, “right of transit passage” and “straits used for international navigation” shall be construed in accordance with the United Nations Convention on the Law of the Sea 1982.”

20 After section 313 of the 1995 Act there is inserted—

“313A Meaning of “qualifying foreign ship”

(1) In this Act “qualifying foreign ship” means any ship other than—

- (a) a British ship, or
- (b) a ship which is not registered under Part II and which (although not by virtue of section 1(1)(d) a British ship)—
 - (i) is wholly owned by persons falling within subsection (2) below, and
 - (ii) is not registered under the law of a country outside the United Kingdom.

(2) The following persons fall within this subsection, namely—

- (a) British citizens,
- (b) British Dependent Territories citizens,
- (c) British Overseas citizens,
- (d) persons who under the British Nationality Act 1981 are British subjects,
- (e) British Nationals (Overseas) (within the meaning of that Act),
- (f) British protected persons (within the meaning of that Act), or
- (g) bodies corporate incorporated in the United Kingdom or in any relevant British possession and having their principal place of business in the United Kingdom or in any relevant British possession.”

SCHEDULE 7

Section 29(2).

REPEALS AND REVOCATIONS

PART I

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1967 c. 52.	The Tokyo Convention Act 1967.	The whole Act so far as unrepealed.

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

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1982 c. 36.	The Aviation Security Act 1982.	In section 39(4), “(2)”.
1990 c. 31.	The Aviation and Maritime Security Act 1990.	In section 23(1), the words “(other than a harbour authority)”. In section 46(1), the definition of “restricted zone”.
1995 c. 21.	The Merchant Shipping Act 1995.	In section 85(3) the words from “and regulations” to “relates to safety”. Section 86(5) and (6). In section 128(4)(f) the words “and apply the Statutory Instruments Act 1946 to instruments made under the Order”. Section 202. In section 258(1), the words “other than Chapter II of Part VI”, where secondly occurring, and the words “(other than that Chapter)”, where secondly occurring. Schedule 9.

PART II

REVOCATIONS

<i>Number</i>	<i>Title</i>	<i>Extent of revocation</i>
S.I. 1980/1093.	The Merchant Shipping (Prevention of Pollution) (Intervention) Order 1980.	Articles 1(2)(b), 3, 4 and 6.