

1979 No. 305

HOVERCRAFT**The Hovercraft (Civil Liability) Order 1979***Laid before Parliament in draft**Made - - - - 14th March 1979**Coming into Operation 1st April 1979*

ARRANGEMENT OF ORDER

Article

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At the Court at Buckingham Palace, the 14th day of March 1979

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament and has been approved by a resolution of each House of Parliament in accordance with section 1(4) of the Hovercraft Act 1968(a).

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 1(1)(h) and (i) as amended(b), and section 1(3)(f) and (g) of the Hovercraft Act 1968, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and Operation

1. This Order may be cited as the Hovercraft (Civil Liability) Order 1979 and shall come into operation on 1st April 1979.

Interpretation and revocation

2.—(1) In this Order, unless the context otherwise requires, “navigable water” means any water which is in fact navigable by ships or vessels, whether or not the tide ebbs and flows there, and whether or not there is a public right of navigation in that water.

(2) The Hovercraft (Civil Liability) Order 1971(c) is hereby revoked.

Liability for carriage of passengers and baggage

3. The Carriage by Air Act 1961(d), as amended(e) and the Carriage by Air (Supplementary Provisions) Act 1962(f) shall apply subject to the modifications set out in Schedule 1 to this Order in relation to the carriage of passengers and their baggage by hovercraft as they apply in relation to the carriage of passengers and their baggage by air.

Liability for goods on board hovercraft

4. Subject to Article 6, the Carriage of Goods by Sea Act 1971 shall apply, subject to the modifications set out in Schedule 2 to this Order, in relation to the carriage of goods by hovercraft (other than passengers' baggage) as it applies in relation to goods on board or carried by ship.

(a) 1968 c. 59.

(b) 1968 c. 59. s. 1(1)(i) was amended by the Carriage of Goods by Sea Act 1971 (c. 19), s. 6(3).

(c) S.I. 1971/720.

(d) 1961 c. 27.

(e) See 1963 c. 47; 1964 c. 1 (N.I.); 1978 c. 47.

(f) 1962 c. 43.

Vehicles not to be treated as baggage

5. The enactments applied by this Order shall apply with the further modifications that—

- (a) a vehicle and its contents shall not be treated as baggage; and
- (b) subject to the foregoing, any property of which the passenger takes charge himself shall be treated as baggage.

Overall Limitation of Liability

6. Part VIII of the Merchant Shipping Act 1894(a) and the Merchant Shipping (Liability of Shipowners and Others) Act 1958(b) shall apply, subject to the modifications set out in Schedule 3 to this Order, in relation to—

- (a) personal injury (including loss of life);
- (b) loss of or damage to property,

caused to a person or to property (except passengers or baggage carried by the hovercraft) by an act or omission of any person (whether on board the hovercraft or not) in the navigation or management of a hovercraft, in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the hovercraft, as they apply in relation to injury, loss, damage and infringement of rights caused in the navigation or management of a ship:

Provided that the aforesaid provisions shall not apply unless at the time of the incident causing the damage the hovercraft was on or over navigable water, or on or over the foreshore, or place where the tide normally ebbs and flows, or was proceeding between navigable water and a hoverport, or was on or over a hoverport either preparing for or after such transit.

Application of the Maritime Conventions Act 1911

7. Sections 1, 2, 3, 8 and 9(4) of the Maritime Conventions Act 1911(c) shall apply as if references therein to vessels included references to hovercraft.

Application of the Crown Proceedings Act 1947

8.—(1) Section 5(1) of the Crown Proceedings Act 1947(d) shall apply in relation to hovercraft in the circumstances described in Article 6 of this Order subject to the following modifications:—

- (i) for “ships” wherever it appears, there shall be substituted “hovercraft”;
- (ii) For “1940” there shall be substituted “1970”;
- (iii) After the word “Acts” where it secondly appears there shall be inserted the words “as applied to hovercraft”.

(2) Sections 6 and 30 of the said Act of 1947 shall apply in the case of hovercraft as they apply in the case of vessels.

(3) The said sections 5(1), 6 and 30 as extended to Northern Ireland by virtue of the Northern Ireland (Crown Proceedings) Order 1949(e) shall also apply in relation to hovercraft in the circumstances described, and subject to the same modifications as in paragraphs (1) and (2) above.

(a) 1894 c. 60.
(d) 1947 c. 44.

(b) 1958 c. 62.
(e) S.I. 1949/1836.

(c) 1911 c. 57.

Previous Occurrences

9. This Order shall not apply so as to affect rights or liabilities arising out of an occurrence before it comes into operation.

Schedule for convenience of reference

10. For convenience of reference the enactments applied by Articles 3, 4 and 6 of this Order are set out in Schedule 4 to this Order with the modifications made in them by this Order.

N. E. Leigh,
Clerk of the Privy Council.

SCHEDULE 1

Article 3

LIABILITY FOR CARRIAGE OF PASSENGERS AND BAGGAGE

PART I

MODIFICATIONS OF THE CARRIAGE BY AIR ACT 1961

The following are the modifications of the Carriage by Air Act 1961 referred to in Article 3 of this Order.

A. The Act, other than the Schedules

- (1) The following shall be substituted for section 1(1):
“The First Schedule to this Act shall, subject to the provisions of this Act, have effect in respect of the carriage of passengers and their baggage by hovercraft.”
- (2) Section 1, sub-sections (2), (3) and (4) shall not apply.
- (3) Section 2 shall not apply.
- (4) The following shall be substituted for section 3:—
“3. References in section 1 of the Fatal Accidents Act 1976(a), as it applies in England and Wales, and in Article 3(1) of the Fatal Accidents (Northern Ireland) Order 1977(b), to a wrongful act, neglect or default shall include references to any occurrence which gives rise to a liability under Article 17 in the First Schedule to this Act.”
- (5) Section 4(1)(a) (which applies only to Scotland(c)) shall not apply.
- (6) Section 4(4) shall not apply.
- (7) In section 5(1) for “the Convention” there shall be substituted “the First Schedule to this Act”, and for “aircraft” there shall be substituted “hovercraft”.
- (8) Section 5(2) in its application to Scotland shall have effect in the same form as it applies in England and Wales and Northern Ireland(d).
- (9) Sections 7 to 10 shall not apply.
- (10) Section 11(a)(ii) (which applies only to Scotland) shall not apply.
- (11) Section 14(1) shall not apply.
- (12) In section 14(2) the words in brackets shall be omitted.
- (13) Section 14(3) shall not apply.

(a) 1976 c. 30 (which repeals and re-enacts section 1 of the Fatal Accidents Act 1846 c. 93).

(b) See S.I. 1977/1251, Schedule 1 paragraph 5.

(c) See 1978 c. 47, Schedule 1, paragraph 5(1).

(d) See 1978 c. 47, Schedule 1, paragraph 5(2).

B. The Schedules to the Act

(1) For "this Convention", wherever it appears, there shall be substituted "this Schedule".

(2) For "air" and "aircraft", wherever they appear, there shall be substituted "hovercraft".

(3) For "aerodrome", wherever it appears, there shall be substituted "hoverport".

(4) For "passengers, baggage or cargo", wherever it appears, there shall be substituted "passengers or baggage"; and from the expression "baggage or cargo", wherever it appears, "or cargo" shall be omitted.

(5) In Article 1(1), "international" shall be omitted.

(6) Article 1(2) and (3) shall not apply.

(7) In Article 2(1) for "by the State or by legally constituted public bodies" there shall be substituted "by the Crown".

(8) Article 2(2) shall not apply.

(9) Chapter II shall not apply.

(10) In Article 18(1) for "any registered baggage or any cargo" there shall be substituted "any baggage, other than that which the passenger takes charge of himself,".

(11) Article 18(2) shall not apply.

(12) In Article 18(3), after "carriage" where it secondly appears, for "by land, by sea or by river", there shall be substituted "not by hovercraft".

(13) In Article 20 for "necessary" there shall be substituted "reasonable".

(14) In Article 22(1), for "two hundred and fifty thousand francs", wherever they appear, there shall be substituted "£30,000" and the second sentence shall be omitted.

(15) In Article 22(2)(a) for "In the carriage of registered baggage and of cargo," there shall be substituted "In the carriage of baggage, other than that which the passenger takes charge of himself,,"; and for "two hundred and fifty francs per kilogramme" there shall be substituted "£216".

(16) Article 22(2)(b) shall be omitted.

(17) In Article 22(3) for "five thousand francs" there shall be substituted "£216".

(18) Article 22(4) and (5) shall not apply.

(19) Article 23(2) shall not apply.

(20) In Article 24(1) "17," shall be inserted before "18".

(21) Article 24(2) shall not apply.

(22) In Article 26(2) "and fourteen days from the date of receipt in the case of cargo" shall be omitted; and for "have" there shall be substituted "had".

(23) In Article 26(3) from "upon" to "writing" shall be omitted.

(24) Article 27 shall not apply.

- (25) Article 28 shall not apply.
- (26) Article 29(2) shall not apply.
- (27) In Article 30(1) from “and”, where it first occurs, to “Article 1” shall be omitted.
- (28) In Article 30(3) “or consignor”, “or consignee” and “or to the consignor or consignee” shall be omitted.
- (29) In Article 32 the last sentence shall be omitted.
- (30) Articles 34, 36 and 40A shall not apply.
- (31) The additional Protocol shall not apply.
- (32) Part II shall not apply.
- (33) The Second Schedule shall not apply.

PART II

MODIFICATIONS OF THE CARRIAGE BY AIR (SUPPLEMENTARY PROVISIONS) ACT 1962

The following are the modifications of the Carriage by Air (Supplementary Provisions) Act 1962 referred to in Article 3 of this Order.

A. *The Act, other than the Schedule*

- (1) The following shall be substituted for section 1(1):
“The Schedule to this Act shall, subject to the provisions of this Act, have effect in respect of the carriage of passengers and their baggage by hovercraft.”
- (2) Section 1(2) shall not apply.
- (3) Section 2 shall not apply.
- (4) In section 3(1) the words “paragraph (a) of subsection (1) and in” (which apply only in Scotland^(a)) shall not apply.
- (5) In section 3(1) and (2) for “the said Act of 1961”, wherever it appears, there shall be substituted “the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979”.
- (6) Sections 3(3) shall not apply.
- (7) Sections 4, 5, 6(2) and 7 shall not apply.

B. *The Schedule to the Act*

- (1) For “this Convention”, wherever it appears, there shall be substituted “this Schedule”, and for “the Warsaw Convention”, wherever it appears, there shall be substituted “the First Schedule to the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979”.
- (2) In Article I(b) “or consignor”, wherever it appears, shall be omitted.
- (3) In Article II, from “according” to “paragraph (b)” shall be omitted.

(a) See 1978 c. 47, Schedule 2.

- (4) In Article III, 2 for "by that Convention" there shall be substituted "thereby" and for "of the said Convention" there shall be substituted "thereof".
- (5) In Article IV, the second sentence shall not apply.
- (6) In Article VII, the second sentence shall not apply.
- (7) Article VIII shall not apply.
- (8) Article IX, 2 shall not apply.
- (9) In Article IX, 3 the last sentence shall be omitted.
- (10) Part II shall not apply.

SCHEDULE 2

Article 4

LIABILITY FOR GOODS ON BOARD HOVERCRAFT

APPLICATION OF THE CARRIAGE OF GOODS BY SEA ACT 1971

The following are the modifications of the Carriage of Goods by Sea Act 1971 referred to in Article 4 of this Order.

A. *The Act, other than the Schedule*

- (1) The words "by sea" shall be omitted, wherever they appear.
- (2) For "ship" or "ships" wherever they appear, there shall be substituted "hovercraft".
- (3) For "port" wherever it appears, there shall be substituted "hoverport".
- (4) Section 1(5) shall not apply.
- (5) Section 2 shall not apply.
- (6) In section 3 for "seaworthy ship" there shall be substituted "hovercraft fit for the voyage".
- (7) Sections 4 and 5 shall not apply.
- (8) In section 6:
 - (a) sub-sections (1), (4) and (5) shall not apply;
 - (b) in sub-section (3):
 - (i) the following words shall not apply:

"The following enactments shall be repealed, that is—

 - (a) The Carriage of Goods by Sea Act 1924,
 - (b) section 12(4)(a) of the Nuclear Installations Act 1965

and";
 - (ii) for "the said Act of 1924" there shall be substituted "the Carriage of Goods by Sea Act 1924"; and
 - (iii) for "section 38(1) of the Interpretation Act 1889" there shall be substituted "section 16 of the Interpretation Act 1978".

B. *The Schedule to the Act*

- (1) The words "by sea" shall be omitted, wherever they appear.
- (2) For "ship" or "ships" wherever they appear, there shall be substituted "hovercraft".

- (3) For “seaworthy” wherever it appears, there shall be substituted “fit for the voyage” and “seaworthiness” and “unseaworthiness” shall be construed accordingly.
- (4) For “master” wherever it appears, there shall be substituted “captain”.
- (5) For “port” wherever it appears, there shall be substituted “hoverport”.
- (6) Article I(d) shall not apply.
- (7) In Article III.7 for “ship or ships” there shall be substituted “hovercraft”.
- (8) In Article IV.2(a) for “mariner” there shall be substituted “member of the crew”.
- (9) In Article IV.5:
- (a) in sub-paragraph (a) for “the equivalent of 10,000 francs” there shall be substituted “£434.14” and for “30 francs” there shall be substituted “£1.30”; and
- (b) sub-paragraph (d) shall not apply.
- (10) Article VIII shall not apply.
- (11) In Article X:
- (a) in sub-paragraph (a) for “a contracting State” there shall be substituted “the United Kingdom”;
- (b) in sub-paragraph (b) for “is from a port in a contracting State” there shall be substituted “is to or from a hoverport in the United Kingdom.”.

SCHEDULE 3

Article 6

OVERALL LIMITATION OF LIABILITY

MODIFICATIONS OF PART VIII OF THE MERCHANT SHIPPING ACT 1894 AS
 AMENDED BY THE MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS)
 ACT 1958

The following are the modifications of Part VIII of the Merchant Shipping Act 1894 as amended by the Merchant Shipping (Liability of Shipowners and Others) Act 1958, referred to in Article 6 of this Order:—

A. *Part VIII as amended by sections 1, 2(1) and 8(1) to (3) of the 1958 Act*

- (1) For “ship”, wherever it appears, there shall be substituted “hovercraft” and for “master”, “captain”.
- (2) The words “Subject to the provisions of sub-section (2) below” shall be inserted at the beginning of sub-section (1) of section 503.
- (3) In section 503(1), paragraph (a) shall not apply.
- (4) In section 503(1)(i) for “an amount equivalent to three thousand one hundred gold francs for each ton of their ship’s tonnage” there shall be substituted “£5.50 per kg. of the hovercraft’s maximum authorised weight”
- (5) In section 503(1)(ii) for “an amount equivalent to one thousand gold francs for each ton of their ship’s tonnage” there shall be substituted “£1.57 per kg. of the hovercraft’s maximum authorised weight”.

- (6) The following shall be substituted for section 503(2):
 “The number by which the figure referred to in sub-section (1)(i) and (ii) above is to be multiplied shall be 8,000 in any case where the weight concerned is less than 8,000 kg.”
- (7) In section 504 there shall be added “(or in Scotland sist)” after “stay”, and “(or in Scotland expenses)” after “costs”.
- (8) In section 505 there shall be added “and expenses” after “costs”.
- (9) Section 509 shall not apply.
- B. *The 1958 Act, other than sections 1, 2(1) and 8(1) to (3)*
- (1) For “ship”, wherever it appears, there shall be substituted “hovercraft”
- (2) For “master”, wherever it appears, there shall be substituted “captain”.
- (3) To “the said section five hundred and three” and “the Merchant Shipping Act 1894” wherever it appears, there shall be added “as applied by the Hovercraft (Civil Liability) Order 1979”.
- (4) For section 2(2) there shall be substituted:
 “For the purposes of sub-section (1) of section 503 of the Merchant Shipping Act 1894 as applied by the Hovercraft (Civil Liability) Order 1979, where any obligation or liability arises in respect of any damage (however caused) to harbour works, basins or navigable waterways, the occurrence giving rise to the obligation or liability shall be treated as one of the occurrences mentioned in paragraphs (b) and (d) of that sub-section, and the obligation or liability as a liability to damages.”
- (5) Section 2(4)–(7) shall not apply.
- (6) Section 4 shall not apply.
- (7) In section 5(1) “and in the circumstances mentioned in sub-section (3) of this section shall” shall be omitted.
- (8) Section 5(3), (5) and (6) shall not apply.
- (9) In section 7(2), after “four” there shall be added “as so applied”.
- (10) Section 8(5) and (6) shall not apply.
- (11) Sections 9–12 shall not apply.

SCHEDULE 4

Article 10

For convenience of reference the statutes modified in Schedules 1 to 3 are hereinafter set out, as so modified.

(1) THE STATUTES MODIFIED IN SCHEDULE 1, RELATING TO LIABILITY FOR CARRIAGE OF PASSENGERS AND BAGGAGE:

PART I: THE CARRIAGE BY AIR ACT 1961.

A. *The Carriage by Air Act 1961, other than the Schedule*

1.—(1) The First Schedule to this Act shall, subject to the provisions of this Act, have effect in respect of the carriage of passengers and their baggage by hovercraft.

3. References in section one of the Fatal Accidents Act 1976, as it applies in England and Wales, and in Article 3(1) of the Fatal Accidents (Northern Ireland)

Order 1977, to a wrongful act, neglect or default shall include references to any occurrence which gives rise to a liability under Article 17 in the First Schedule to this Act.

4.—(1) It is hereby declared that the limitations on liability in Article 22 in the First Schedule to this Act apply whatever the nature of the proceedings by which liability may be enforced and that, in particular the limitation for each passenger in paragraph (1) of the said Article 22 applies to the aggregate liability of the carrier in all proceedings which may be brought against him under the law of any part of the United Kingdom, together with any proceedings brought against him outside the United Kingdom.

(2) A court before which proceedings are brought to enforce a liability which is limited by the said Article 22 may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of the provisions of the said Article 22, and of any other proceedings which have been, or are likely to be, commenced in the United Kingdom or elsewhere to enforce the liability in whole or in part.

(3) Without prejudice to the last foregoing subsection, a court before which proceedings are brought to enforce a liability which is limited by the said Article 22 shall, where the liability is, or may be, partly enforceable in other proceedings in the United Kingdom or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court, or to make any part of its award conditional on the result of any other proceedings.

(5) References in this section to the said Article 22 include, subject to any necessary modifications, references to that Article as applied by Article 25A.

5.—(1) No action against a carrier's servant or agent which arises out of damage to which the first Schedule to this Act relates shall, if he was acting within the scope of his employment, be brought after more than two years, reckoned from the date of arrival at the destination or from the date on which the hovercraft ought to have arrived, or from the date on which the carriage stopped.

(2) Article 29 in the First Schedule to this Act shall not be read as applying to any proceedings for contribution between persons liable for any damage to which the Convention relates.

(3) The foregoing provisions of this section and the provisions of the said Article 29 shall have effect as if references in those provisions to an action included references to an arbitration; and subsections (3) and (4) of section twenty-seven of the Limitation Act 1939(a), or, in Northern Ireland, subsections (2) and (3) of section seventy-two of the Statute of Limitations (Northern Ireland) 1958(b) (which determine the time at which an arbitration is deemed to be commenced), shall apply for the purposes of this subsection.

6. It is hereby declared that for the purposes of Article 21 in the First Schedule to this Act the Law Reform (Contributory Negligence) Act 1945(c) (including that Act as applied to Scotland), and section two of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948(d) are provisions of the law of the United Kingdom under which a court may exonerate the carrier wholly or partly from his liability.

(a) 1939 c. 21.

(b) 1958 c. 10 (N.I.).

(c) 1945 c. 28.

(d) 1948 c. 23 (N.I.)

11. In the application of this Act to Scotland—

(a) there shall be substituted—

- (iv) for any reference to the issuing of execution, a reference to the execution of diligence;
- (v) for any reference to an arbitrator, a reference to an arbiter; and
- (vi) for any reference to a plaintiff, a reference to a pursuer:

(b) for section three there shall be substituted the following section—

“3. The reference in Article 17 in the First Schedule to this Act to the liability of a carrier for damage sustained in the event of the death of a passenger shall be construed as including liability to such persons as are entitled, apart from this Act to sue the carrier (whether for patrimonial damage or solatium or both) in respect of the death”;

(c) in section five, subsection (1) shall have effect notwithstanding anything in section 17 of the Prescription and Limitation (Scotland) Act 1973; and in subsection (3), for the words from “and subsections (3) and (4)” to the end of the subsection there shall be substituted the words “and for the purpose of this subsection an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbiter or to agree to the appointment of an arbiter, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.”

12. In the application of this Act to Northern Ireland any reference to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act, and to any enactment of that Parliament passed after this Act, and re-enacting the said enactment with or without modification.

13. This Act shall bind the Crown.

14.—(2) In this Act the expression “court” includes an arbitrator.

B. *The Schedules to the Carriage by Air Act 1961*

FIRST SCHEDULE

CHAPTER 1

SCOPE—DEFINITIONS

Article 1

(1) This Schedule applies to all carriage of persons or baggage performed by hovercraft for reward. It applies equally to gratuitous carriage by hovercraft performed by a hovercraft transport undertaking.

Article 2

(1) This Schedule applies to carriage performed by the Crown provided it falls within the conditions laid down in Article 1.

CHAPTER III
LIABILITY OF THE CARRIER

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the hovercraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any baggage, other than that which the passenger takes charge of himself, if the occurrence which caused the damage so sustained took place during the carriage by hovercraft.

(3) The period of the carriage by hovercraft does not extend to any carriage not by hovercraft performed outside a hoverport. If, however, such a carriage takes place in the performance of a contract for carriage by hovercraft, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by hovercraft.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by hovercraft of passengers or baggage.

Article 20

The carrier is not liable if he proves that he and his servants or agents have taken all reasonable measures to avoid the damage or that it was impossible for him or them to take such measures.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of £30,000. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) (a) In the carriage of baggage other than that which the passenger takes charge of himself, the liability of the carrier is limited to a sum of £216, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to £216 per passenger.

Article 23

(1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Schedule shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Schedule.

Article 24

(1) In the cases covered by Articles 17, 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.

Article 25

The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

Article 25A

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Schedule relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 26

(1) Receipt by the person entitled to delivery of baggage without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage had been placed at his disposal.

(3) Every complaint must be made in writing despatched within the time aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the hovercraft ought to have arrived, or from the date on which the carriage stopped.

Article 30

(1) In the case of carriage to be performed by various successive carriers each carrier who accepts passengers or baggage is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the

accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage, the passenger will have a right of action against the first carrier, and the passenger who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger.

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

(1) In the case of combined carriage performed partly by hovercraft and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by hovercraft, provided that the carriage by hovercraft falls within the terms of Article 1.

(2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from inserting in the document of hovercraft carriage conditions relating to other modes of carriage, provided that the provisions of this Schedule are observed as regards the carriage by hovercraft.

CHAPTER V

GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied or by altering the rules as to jurisdiction, shall be null and void.

Article 33

Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

Article 35

The expression "days" when used in this Schedule means current days not working days.

PART II

THE CARRIAGE BY AIR (SUPPLEMENTARY PROVISIONS) ACT 1962

A. *The Carriage by Air (Supplementary Provisions) Act 1962, other than the Schedule*

1. The Schedule to this Act shall, subject to the provisions of this Act, have effect in respect of the carriage of passengers and their baggage by hovercraft.

3.—(1) In subsections (2) and (3) of section four of the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979 (which explain the limitations on liability in Article 22 in the First Schedule to that Act and enable a

court to make appropriate orders and awards to give effect to those limitations) references to the said Article 22 shall include, subject to any necessary modifications, references to Article VI in the Schedule to this Act.

(2) In section five of the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979 (which limits the time for bringing proceedings against a carrier's servant or agent and to obtain contribution from a carrier) references to a carrier include references to an actual carrier as defined in paragraph (c) of Article 1 in the Schedule to this Act as well as to a contracting carrier as defined in paragraph (b) of that Article.

6.—(1) This Act shall bind the Crown.

B. *The Schedule to the Carriage by Air (Supplementary Provisions) Act 1962*

Article I

In this Schedule:

- (b) "contracting carrier" means a person who as a principal makes an agreement for carriage governed by the First Schedule to the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979 with a passenger or with a person acting on behalf of the passenger:
- (c) "actual carrier" means a person, other than the contracting carrier, who by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the First Schedule to the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979. Such authority is presumed in the absence of proof to the contrary.

Article II

If an actual carrier performs the whole or part of carriage which is governed by the First Schedule to the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Schedule, be subject to the rules of the First Schedule to the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

Article III

1. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the First Schedule to the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979. Any special agreement under which the contracting carrier assumes obligations not imposed by the First Schedule to the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979 or any waiver of rights conferred thereby or any special declaration of interest in delivery at destination contemplated in Article 22 thereof, shall not affect the actual carrier unless agreed to by him.

Article IV

Any complaint to be made or order to be given under the First Schedule to the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979

to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier.

Article V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Schedule to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the First Schedule to the Carriage by Air Act 1961 as applied by the Hovercraft (Civil Liability) Order 1979 prevents the limits of liability from being invoked.

Article VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Schedule, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

Article VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately.

Article IX

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Schedule or to fix a lower limit than that which is applicable according to this Schedule shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Schedule.

3. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article X

Except as provided in Article VII, nothing in this Schedule shall affect the rights and obligations of the two carriers between themselves.

(2) THE STATUTES MODIFIED IN SCHEDULE 2, RELATING TO LIABILITY FOR GOODS ON BOARD HOVERCRAFT

A. *The Carriage of Goods by Sea Act 1971, other than the Schedule*

1.—(1) In this Act, “the Rules” means the International Convention for the unification of certain rules of law relating to bills of lading signed at Brussels on 25th August 1924, as amended by the Protocol signed at Brussels on 23rd February 1968.

(2) The provisions of the Rules, as set out in the Schedule to this Act, shall have the force of law.

(3) Without prejudice to subsection (2) above, the said provisions shall have effect (and have the force of law) in relation to and in connection with the carriage of goods in hovercraft where the hoverport of shipment is a hoverport in the United Kingdom, whether or not the carriage is between hoverports in two different States within the meaning of Article X of the Rules.

(4) Subject to subsection (6) below, nothing in this section shall be taken as applying anything in the Rules to any contract for the carriage of goods, unless the contract expressly or by implication provides for the issue of a bill of lading or any similar document of title.

(6) Without prejudice to Article X(c) of the Rules, the Rules shall have the force of law in relation to—

- (a) any bill of lading if the contract contained in or evidenced by it expressly provides that the Rules shall govern the contract, and
- (b) any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of goods which expressly provides that the Rules are to govern the contract as if the receipt were a bill of lading,

but subject, where paragraph (b) applies, to any necessary modifications and in particular with the omission in Article III of the Rules of the second sentence of paragraph 4 and of paragraph 7.

(7) If and so far as the contract contained in or evidenced by a bill of lading or receipt within paragraph (a) or (b) of subsection (6) above applies to deck cargo or live animals, the Rules as given the force of law by that subsection shall have effect as if Article I(c) did not exclude deck cargo and live animals.

In this subsection “deck cargo” means cargo which by the contract of carriage is stated as being carried on deck and is so carried.

3. There shall not be implied in any contract for the carriage of goods to which the Rules apply by virtue of this Act any absolute undertaking by the carrier of the goods to provide a hovercraft fit for the voyage.

6.—(2) It is hereby declared that this Act extends to Northern Ireland.

(3) Without prejudice to section 16 of the Interpretation Act 1978(a), the reference to the Carriage of Goods by Sea Act 1924 in section 1(1)(i)(ii) of the Hovercraft Act 1968 shall include a reference to this Act.

THE SCHEDULE TO THE CARRIAGE OF GOODS BY SEA ACT 1971

Article I

In these Rules the following words are employed, with the meanings set out below:—

- (a) “Carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) “Contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) “Goods” includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (e) “Carriage of goods” covers the period from the time when the goods are loaded on to the time they are discharged from the hovercraft.

Article II

Subject to the provisions of Article VI, under every contract of carriage of goods the carrier, in relation to the loading, handling, stowage, carriage, custody,

care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Article III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—

- (a) Make the hovercraft fit for the voyage.
- (b) Properly man, equip and supply the hovercraft.
- (c) Make the holds, refrigerating and cool chambers, and all other parts of the hovercraft in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the captain or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
- (c) The apparent order and condition of the goods.

Provided that no carrier, captain or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the hoverport of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 6*bis* the carrier and the hovercraft shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is

brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the bill of lading to be issued by the carrier, captain, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the hoverport of shipment by the carrier, captain, or agent with the name or names of the hovercraft upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the hovercraft from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV

1. Neither the carrier nor the hovercraft shall be liable for loss or damage arising or resulting from unfitness for the voyage unless caused by want of due diligence on the part of the carrier to make the hovercraft fit for the voyage and to secure that the hovercraft is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the hovercraft in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unfitness for the voyage the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the hovercraft shall be responsible for loss or damage arising or resulting from—

- (a) Act, neglect, or default of the captain, member of the crew, pilot, or the servants of the carrier in the navigation or in the management of the hovercraft.
- (b) Fire, unless caused by the actual fault or privity of the carrier.
- (c) Perils, dangers and accidents of the sea or other navigable waters.
- (d) Act of God.
- (e) Act of war.
- (f) Act of public enemies.
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
- (h) Quarantine restrictions.

- (i) Act or omission of the shipper or owner of the goods, his agent or representative.
- (j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
- (k) Riots and civil commotions.
- (l) Saving or attempting to save life or property at sea.
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
- (n) Insufficiency of packing.
- (o) Insufficiency or inadequacy of marks.
- (p) Latent defects not discoverable by due diligence.
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the hovercraft arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the hovercraft shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding £434.14 per package or unit or £1.30 per kilo of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the hovercraft in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(e) Neither the carrier nor the hovercraft shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, captain or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(h) Neither the carrier nor the hovercraft shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, captain, or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the hovercraft or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article IVbis

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.

3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.

4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article V

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under these Rules, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these Rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a hovercraft under a charter party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article VI

Notwithstanding the provisions of the preceding articles, a carrier, captain or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to fitness for the voyage, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article VII

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the hovercraft for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the hovercraft on which the goods are carried.

Article IX

These Rules shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

Article X

The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between hoverports in two different States if:

- (a) the bill of lading is issued in the United Kingdom;
- or
- (b) the carriage is to or from a hoverport in the United Kingdom;
- or
- (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract,

whatever may be the nationality of the hovercraft, the carrier, the shipper, the consignee, or any other interested person.

(3) THE STATUTES MODIFIED IN SCHEDULE 3 RELATING TO OVERALL LIMITATION OF LIABILITY

A. *Part VIII of the Merchant Shipping Act 1894 as amended by sections 1, 2(1) and 8(1) to (3) of the Merchant Shipping (Liability of Shipowners and Others) Act 1958*

502. The owner of a British hovercraft, or any share therein, shall not be liable to make good to any extent whatever any loss or damage happening without his actual fault or privity in the following cases, namely:—

- (i) where any goods, merchandise or other things whatsoever taken in or put on board his hovercraft are lost or damaged by reason of fire on board the hovercraft; or
- (ii) where any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board his hovercraft, the true nature and value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or captain of the hovercraft in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with, or secreting thereof.

503.—(1) Subject to the provisions of sub-section (2) below the owners of a hovercraft, British or foreign, shall not, where all or any of the following occurrences take place without their actual fault or privity; (that is to say,)

- (b) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the hovercraft;

- (c) Where any loss of life or personal injury is caused to any person not carried in the hovercraft through the act or omission of any person (whether on board the hovercraft or not) in the navigation or management of the hovercraft or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the hovercraft;
- (d) Where any loss or damage is caused to any property (other than any property mentioned in paragraph (b) of this sub-section) or any rights are infringed through the act or omission of any person (whether on board the hovercraft or not) in the navigation or management of the hovercraft, or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the hovercraft;

be liable to damages beyond the following amounts; (that is to say,)

- (i) in respect of loss of life or personal injury, either alone or together with such loss, damage or infringement as is mentioned in paragraphs (b) and (d) of this sub-section, an aggregate amount not exceeding £5.50 per kg. of the hovercraft's maximum authorised weight; and
- (ii) in respect of such loss, damage or infringement as is mentioned in paragraphs (b) and (d) of this sub-section, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding £1.57 per kg. of the hovercraft's maximum authorised weight.

(2) The number by which the figure referred to in sub-section (1)(i) and (ii) above is to be multiplied shall be 8,000 in any case where the weight concerned is less than 8,000 kg.

(3) The limits set by this section to the liabilities mentioned therein shall apply to the aggregate of such liabilities which are incurred on any distinct occasion, and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.

504. Where any liability is alleged to have been incurred by the owner of a British or foreign hovercraft in respect of any occurrence in respect of which his liability is limited under section five hundred and three of this Act and several claims are made or apprehended in respect of that liability, then the owner may apply in England and Ireland to the High Court, or in Scotland to the Court of Session, or in a British possession to any competent court, and that court may determine the amount of the owner's liability and may distribute that amount rateably among the several claimants, and may stay (or in Scotland sist) any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the court thinks just.

505. All sums paid for or on account of any loss or damage in respect whereof the liability of owners is limited under the provisions of this Part of this Act and all costs incurred in relation thereto, may be brought into account among part owners of the same hovercraft in the same manner as money disbursed for the use thereof.

506. An insurance effected against the happening, without the owner's actual fault or privity, of any or all of the events in respect of which the liability of owners is limited under this Part of this Act shall not be invalid by reason of the nature of the risk.

B. *The Merchant Shipping (Liability of Shipowners and Others) Act 1958, other than sections 1, 2(1) and 8(1) to (3)*

2.—(2) For the purposes of sub-section (1) of section 503 of the Merchant

Shipping Act 1894, as applied by the Hovercraft (Civil Liability) Order 1979, where any obligation or liability arises in respect of any damage (however caused) to harbour works, basins or navigable waterways, the occurrence giving rise to the obligation or liability shall be treated as one of the occurrences mentioned in paragraphs (b) and (d) of that sub-section, and the obligation or liability as a liability to damages.

(3) The application of the said section five hundred and three, as applied by the Hovercraft (Civil Liability) Order 1979, to any liability shall not be excluded by reason only that the occurrence giving rise to the liability was not due to the negligence of any person.

3.—(1) The persons whose liability in connection with a hovercraft is excluded or limited by Part VIII of the Merchant Shipping Act 1894, as applied by the Hovercraft (Civil Liability) Order 1979, shall include any charterer and any person interested in or in possession of the hovercraft and, in particular, any manager or operator of the hovercraft.

(2) In relation to a claim arising from the act or omission of any person in his capacity as captain or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owners or of any such person as is mentioned in sub-section (1) of this section,—

- (a) the persons whose liability is excluded or limited as aforesaid shall also include the captain, member of the crew or servant, and, in a case where the captain, or member of the crew is the servant of a person whose liability would not be excluded or limited apart from this paragraph, the person whose servant he is; and
- (b) the liability of the captain, member of the crew or servant himself shall be excluded or limited as aforesaid notwithstanding his actual fault or privity in that capacity, except in the case mentioned in paragraph (ii) of section five hundred and two of the said Act of 1894, as applied by the Hovercraft (Civil Liability) Order 1979.

5.—(1) Where a hovercraft or other property is arrested in connection with a claim which appears to the court to be founded on a liability to which a limit is set by section five hundred and three of the Merchant Shipping Act 1894, as applied by the Hovercraft (Civil Liability) Order 1979, or security is given to prevent or obtain release from such an arrest, the court may order the release of the hovercraft, property or security, if the conditions specified in subsection (2) of this section are satisfied; but where the release is ordered the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim (or, in Scotland, to have prorogated that jurisdiction).

(2) The said conditions are—

- (a) that security which in the opinion of the court is satisfactory (in this section referred to as “guarantee”) has previously been given, whether in the United Kingdom or elsewhere, in respect of the said liability or any other liability incurred on the same occasion and the court is satisfied that, if the claim is established, the amount for which the guarantee was given or such part thereof as corresponds to the claim will be actually available to the claimant; and
- (b) that either the guarantee is for an amount not less than the said limit or further security is given which, together with the guarantee, is for an amount not less than the limit.

(4) For the purposes of this section—

- (a) a guarantee given by the giving of security in more than one country shall be deemed to have been given in the country in which security was last given;

- (b) any question whether the amount of any security is (either by itself or together with any other amount) not less than any limit set by section five hundred and three of the Merchant Shipping Act 1894, as applied by the Hovercraft (Civil Liability) Order 1979, shall be decided as at the time at which the security is given;
- (c) where part only of the amount for which a guarantee was given will be available to a claimant that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in sub-section (1) of this section.

(7) In the application of this section to Scotland the references to arrest shall be construed as referring to arrestment on the dependence of an action or in rem and for the references to release from arrest or to the ordering of such a release there shall be substituted references to the recall of an arrestment.

6.—(1) No judgment or decree for a claim founded on a liability to which a limit is set by section five hundred and three of the Merchant Shipping Act 1894, as applied by the Hovercraft (Civil Liability) Order 1979, shall be enforced, except so far as it is for costs (or, in Scotland, expenses), if security for an amount not less than the said limit has been given, whether in the United Kingdom or elsewhere, in respect of the liability or any other liability incurred on the same occasion and the court is of opinion that the security is satisfactory and is satisfied that the amount for which it was given or such part thereof as corresponds to the claim will be actually available to the person in whose favour the judgment or decree was given or made.

(2) For the purposes of this section—

- (a) any question whether the amount of any security is not less than any limit set by section five hundred and three of the Merchant Shipping Act 1894, as applied by the Hovercraft (Civil Liability) Order 1979, shall be decided as at the time at which the security is given;
- (b) where part only of the amount for which security has been given will be available to the person in whose favour the judgment or decree was given or made that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in sub-section (1) of this section.

7.—(1) In making any distribution in accordance with section five hundred and four of the Merchant Shipping Act 1894, as applied by the Hovercraft (Civil Liability) Order 1979, the court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the United Kingdom.

(2) No lien or other right in respect of any hovercraft or property shall affect the proportions in which under the said section five hundred and four as so applied any amount is distributed amongst several claimants.

8.—(4) In Part VIII of the Merchant Shipping Act 1894, as applied by the Hovercraft (Civil Liability) Order 1979, the expression “owner” shall be construed as including, where it occurs in section five hundred and two, every person whose liability is excluded by section three of this Act, and elsewhere, except in the second place where it occurs in section five hundred and five, every person whose liability is limited by that section.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order revokes and re-enacts the provisions of the Hovercraft (Civil Liability) Order 1971 except in the following respects: —

- (1) The Carriage of Goods by Sea Act 1924 (c. 22) has been superseded by the Carriage of Goods by Sea Act 1971. This Act is applied with modifications to the carriage of cargo by hovercraft. The limit of the carrier's liability is prescribed (under the Merchant Shipping (Sterling Equivalents) (Various Enactments) (No. 2) Order 1978 (S.I. 1978/1468)) as £434.14 per package or unit or £1.30 per kilo of gross weight of the goods lost or damaged, whichever is the higher (Article 4, Schedule 2, Schedule 4(2)).
- (2) Under the Carriage by Air Act 1961 as modified in respect of hovercraft: —
 - (a) the carrier's liability for injury or death caused to passengers is limited, in the absence of wilful misconduct. The limit in respect of each passenger is increased from £12,000 to £30,000 (Schedule 1 Part IB, Schedule 4(1) Part IB);
 - (b) the reference to registered baggage is not relevant to hovercraft. The carrier's limit of liability for baggage not in the charge of the passenger is now £216 (Schedule 1 Part IB, Schedule 4(1) Part IB);
 - (c) the carrier is liable for loss of or damage to passengers' baggage unless he proves he (the carrier) took due care. The carrier's limit in respect of baggage in the charge of the passenger is increased from £138 to £216 (Schedule 1 Part IB, Schedule 4(1) Part IB).
- (3) Under Part VIII of the Merchant Shipping Act 1894 as amended by the Merchant Shipping (Liability of Shipowners and Others) Act 1958 as modified in respect of hovercraft, the total liability of hovercraft owners in respect of any incident resulting in damage caused by hovercraft (other than damage to passengers and their baggage) is limited to a figure calculated in accordance with the weight of the hovercraft. That figure is now increased to £5.50 per kg. in respect of property and of injury or death caused to persons not on board the hovercraft, and to £1.57 per kg. in respect of damage solely to property (Schedule 3 Part A, Schedule 4(3) Part A).

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