

**SCHEDULE TO
THE ORDER**

THE MERCHANT SHIPPING ACT 1995

PART VI

PREVENTION OF POLLUTION

CHAPTER III

LIABILITY FOR OIL POLLUTION.

Limitation of liability

Limitation of liability under section 153.

157.—(1) Where, as a result of any occurrence, the owner of a ship incurs liability under section 153 by reason of a discharge or escape or by reason of any relevant threat of contamination, then (subject to subsection (3) below) –

- (a) he may limit that liability in accordance with the provisions of this Chapter, and
- (b) if he does so, his liability (being the aggregate of his liabilities under section 153 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subsection (1) above, “the relevant amount” means –

- (a) in relation to a ship not exceeding 5,000 tons, three million special drawing rights;
- (b) in relation to a ship exceeding 5,000 tons, three million special drawing rights together with an additional 420 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 59.7 million special drawing rights;

but the Secretary of State may by order make such amendments of paragraphs (a) and (b) above as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in paragraph 1 of Article V of the Liability Convention.

(3) Subsection (1) above shall not apply in a case where it is proved that the discharge or escape, or (as the case may be) the relevant threat of contamination, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in section 153 or recklessly and in the knowledge that any such damage or cost would probably result.

(4) For the purpose of this section a ship’s tonnage shall be its gross tonnage calculated in such a manner as may be prescribed by an order made by the Secretary of State.

(5) . . .

Limitation actions.

158.—(1) Where the owner of a ship has or is alleged to have incurred a liability under section 153 he may apply to the court for the limitation of that liability to an amount determined in accordance with section 157.

(2) If on such an application the court finds that the applicant has incurred such a liability but has not found that he is entitled to limit it, the court shall, after determining the limit which would apply to the applicant’s liability if he were entitled to limit it and directing payment into court of the amount of that limit –

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- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
- (b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

(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.

(3) A payment into court of the amount of a limit determined in pursuance of this section shall be made in dollars; and

- (a) for the purpose of converting such an amount from special drawing rights into dollars one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for –
 - (i) the day on which the determination is made; or
 - (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
- (b) a certificate given by or on behalf of the Ministry of Finance stating –
 - (i) that a particular sum in dollars has been so fixed for the day on which the determination was made, or
 - (ii) that no sum has been so fixed for that day and that a particular sum in dollars has been so Fixed for a day which is the last day for which a sum has been so Fixed before the day on which the determination was made,

shall be conclusive evidence of those matters for the purposes of this Chapter;

- (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(4) No claim shall be admitted in proceedings under this section unless it is made within such time as the court may direct or such further time as the court may allow.

(5) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends –

- (a) by the owner or the persons referred to in section 165 “the insurer” or
- (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 153, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of section 17 or 18 of the Merchant Shipping Act 1979 as extended to the Virgin Islands (1)

the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

(6) Where the person who incurred the liability has voluntarily made any reasonable sacrifices or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended he shall be in the same position with respect to any distribution made in

(1) Sections 17 and 18 of the Merchant Shipping Act 1979 were extended to the Virgin Islands by The Merchant Shipping Act 1979 (British Virgin Islands) Order 1980 (S.I.1980/1511).

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

(7) The court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the Virgin Islands.

(8) No lien or other right in respect of any ship or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2)(b) above.

Restriction on enforcement after establishment of limitation fund.

159.—(1) Where the court has found that a person who has incurred a liability under section 153 is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount –

- (a) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and
- (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs....;

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

Concurrent liabilities of owners and others.

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

- (a) the owner has been found, in proceedings under section 158 to be entitled to limit his liability to any amount and has paid into court a sum not less than the amount; and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of section 17 or 18 of the Merchant Shipping Act 1979 as extended to the Virgin Islands

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

Establishment of limitation fund outside Virgin Islands.

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

Extinguishment of claims.

162. No action to enforce a claim in respect of a liability incurred under section 153 or 154 shall be entertained by any court in the Virgin Islands unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the liability was incurred.

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Compulsory insurance against liability for pollution.

163.—(1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) below shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of oil of a description specified in regulations made by the Governor.

(2) The ship shall not enter or leave a port in the Virgin Islands or arrive at or leave a terminal in the territorial sea of the Virgin Islands nor, if the ship is registered in the Virgin Islands, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) below and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VIII of the Liability Convention (cover for owner's liability).

(3) The certificate must be –

- (a) if the ship is registered in the Virgin Islands, a certificate issued by the Governor;
- (b) if the ship is registered in a Liability Convention country other than the Virgin Islands, a certificate issued by or under the authority of the government of the other Liability Convention country; and
- (c) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Governor or by or under the authority of the government of any Liability Convention country other than the Virgin Islands.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any customs officer or officer of the Governor and, if the ship is registered in the Virgin Islands, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2) above, the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding \$75,000.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4) above, the master shall be liable on summary conviction to a fine not exceeding \$50,000.

(7) If a ship attempts to leave a port in the Virgin Islands in contravention of this section the ship may be detained.

(8) In this section, “proper officer” in relation to a port in a country or territory outside the Virgin Islands means any officer exercising in that port functions similar to those of the Registrar of Shipping.

Issue certificate by Governor.

164.—(1) Subject to subsection (2) below, if the Governor is satisfied, on the application for such a certificate as is mentioned in section 163 in respect of a ship registered in the Virgin Islands or in any country which is not a Liability Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Governor shall issue such a certificate to the owner.

(2) If the Governor is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 153 in all circumstances, he may refuse the certificate.

(3) The Governor may make regulations providing for the cancellation and delivery up of a certificate under this section in such circumstances as may be prescribed by the regulations.

(4) If a person required by regulations under subsection (3) above to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding \$20,000.

(5) The Governor shall send a copy of any certificate issued by him under this section in respect of a ship registered in the Virgin Islands to the Registrar of Shipping and the Registrar shall make the copy available for public inspection.

Rights of third parties against insurers.

165.—(1) Where it is alleged that the owner of a ship has incurred a liability under section 153 as a result of any discharge or escape of oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 163 related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as “the owner”).

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence (in addition to any defence affecting the owner’s liability), to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from anything done or omitted to be done by the owner as mentioned in section 157(3).

(4) Where the owner and the insurer each apply to the court for the limitation of his liability any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.