

SCHEDULES

SCHEDULE 4

Section 34.

AMENDMENTS RELATING TO LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE

PART I

AMENDMENTS OF MERCHANT SHIPPING (OIL POLLUTION) ACT 1971

1 For section 1 substitute—

“1 Liability for oil pollution

- (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by this Act) the owner of the ship shall be liable—
 - (a) for any damage caused outside the ship in the area of the United Kingdom by contamination resulting from the discharge or escape; and
 - (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the area of the United Kingdom by contamination resulting from the discharge or escape; and
 - (c) for any damage so caused in the area of the United Kingdom by any measures so taken.
- (2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by contamination resulting from a discharge or escape of oil from the ship, then (except as otherwise provided by this Act) the owner of the ship shall be liable—
 - (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the area of the United Kingdom; and
 - (b) for any damage caused outside the ship in the area of the United Kingdom by any measures so taken;and in this Act any such threat is referred to as a relevant threat of contamination.
- (3) Subject to subsection (4) of this section, this section applies to any ship constructed or adapted for carrying oil in bulk as cargo.
- (4) Where any ship so constructed or adapted is capable of carrying other cargoes besides oil, this section shall apply to any such ship—
 - (a) while it is carrying oil in bulk as cargo; and

- (b) unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil,
but not otherwise.
- (5) Where a person incurs a liability under subsection (1) or (2) of this section he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the area of the United Kingdom included the area of any other Convention country.
- (6) Where—
- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
 - (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,
- each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.
- (7) For the purposes of this Act—
- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank;
 - (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
 - (c) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.
- (8) The Law Reform (Contributory Negligence) Act 1945 and, in Northern Ireland, the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.”

2

For section 2 substitute—

“2 Exceptions from liability under s.1

No liability shall be incurred by the owner of a ship under section 1 of this Act by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or (as the case may be) the threat of contamination—

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or

- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.”

3 For section 3 substitute—

“3 Restriction of liability for oil pollution

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

- (a) any oil is discharged or escapes from a ship to which section 1 of this Act applies, or
- (b) there arises a relevant threat of contamination,

then, whether or not the owner of the ship in question incurs a liability under section 1 of this Act—

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it, and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2) Subsection (1)(ii) of this section applies to—

- (a) any servant or agent of the owner of the ship;
- (b) any person not falling within paragraph (a) above but employed or engaged in any capacity on board the ship or to perform any service for the ship;
- (c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
- (e) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 1 of this Act;
- (f) any servant or agent of a person falling within paragraph (c), (d) or (e) above.

(3) The liability of the owner of a ship under section 1 of this Act for any impairment of the environment shall be taken to be a liability only in respect of—

- (a) any resulting loss of profits, and
- (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.”

4 For section 4 substitute—

“4 Limitation of liability under s.1

(1) Where, as a result of any occurrence, the owner of a ship incurs a liability under section 1 of this Act by reason of a discharge or escape or by reason

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of any relevant threat of contamination, then (subject to subsection (3) of this section)—

- (a) he may limit that liability in accordance with the provisions of this Act, and
- (b) if he does so, his liability (that is to say, the aggregate of his liabilities under section 1 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subsection (1) of this section “the relevant amount” means—

- (a) in relation to a ship not exceeding 5,000 tons, 3 million special drawing rights;
- (b) in relation to a ship exceeding 5,000 tons, 3 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 made by statutory instrument 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 Convention.

(3) Subsection (1) of this section 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 1 of this Act or recklessly and in the knowledge that any such damage or cost would probably result.

(4) For the purposes of this section a ship’s tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Any such order shall, so far as it appears to the Secretary of State to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.”

5 In section 5 (limitation actions), after subsection (6) add—

“(7) 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) of this section.”

6 In section 7 (concurrent liabilities of owners and others), for the words from the beginning to “of that section,” substitute “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 a ship incurs a liability under section 1 of this Act 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,”.

7 In section 9 (extinguishment of claims), after “escape” insert “, or (as the case may be) in the relevant threat of contamination,”.

8 In section 10 (compulsory insurance against liability for pollution)—

- (a) in subsection (1), omit “persistent”;

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- (b) in subsection (3)(c), for the words from “a certificate recognised” onwards substitute “by or under the authority of the government of any Convention country other than the United Kingdom”; and
 - (c) omit subsection (4).
- 9 In section 12 (rights of third parties against insurers)—
- (a) in subsection (1), after “occurring” insert “, or as a result of any relevant threat of contamination arising,”;
 - (b) in subsection (2), after “escape” insert “, or (as the case may be) the threat of contamination,”; and
 - (c) in subsection (3), for “occurred without the owner’s actual fault or privity” substitute “, 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 4(3) of this Act.”
- 10 In section 13 (jurisdiction of United Kingdom courts, etc.), for subsection (2) substitute—
- “(2) Where—
- (a) any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the area of the United Kingdom and no measures are reasonably taken to prevent or minimise such damage in that area, or
 - (b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise damage caused by contamination in the area of the United Kingdom resulting from a discharge or escape of oil from the ship,
- no court in the United Kingdom shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost—
- (i) against the owner of the ship, or
 - (ii) against any person to whom section 3(1)(ii) of this Act applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.
- (2A) In subsection (2) of this section “relevant damage or cost” means—
- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the area of another Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the area of another Convention country;
 - (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise damage caused by contamination in the area of another Convention country resulting from a discharge or escape of oil from the ship; or
 - (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b) above;
- and section 3(2)(e) of this Act shall have effect for the purposes of subsection (2)(ii) of this section as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b) above.”

- 11 In section 14(2) (Government ships), for the words from “Article V” onwards substitute “Article V of the Convention”.
- 12 In section 15 (liability for cost of preventive measures where section 1 does not apply)—
- (a) for subsection (1)(a) substitute—
- “(a) after a discharge or escape of oil from a ship, measures are reasonably taken for the purpose of preventing or minimising damage in the area of the United Kingdom which may be caused outside the ship by contamination resulting from the discharge or escape; and”;
- (b) after subsection (1) insert—
- “(1A) Where—
- (a) after there has arisen a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship, measures are reasonably taken for the purpose of preventing or minimising any such damage in the area of the United Kingdom, but
- (b) section 1(2) of this Act does not apply,
- the owner of the ship shall be liable for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty.
- (1B) Where a person is, by virtue of subsection (1) or (1A) of this section, liable for the cost of any measures, he shall also be liable for any damage caused in the area of the United Kingdom by those measures.”
- 13 In section 19(1) (meaning of “the Convention” etc.), for the definition of “the Convention” substitute—
- ““the Convention” means the International Convention on Civil Liability for Oil Pollution Damage 1984;”.
- 14 For section 20 substitute—

“20 General interpretation

(1) In this Act—

“the court” means the High Court in England and Wales, the Court of Session, or the High Court in Northern Ireland;

“damage” includes loss;

“oil” means persistent hydrocarbon mineral oil;

“owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as its operator;

“relevant threat of contamination” shall be construed in accordance with section 1(2) of this Act;

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“ship” means any sea-going vessel or sea-borne craft of any type whatsoever.

- (2) In relation to any damage or cost resulting from the discharge or escape of any oil from a ship, or from a relevant threat of contamination, references in this Act to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape or (as the case may be) in the threat of contamination.
- (3) References in this Act to the area of any country include the territorial sea of that country and—
 - (a) in the case of the United Kingdom, any area within the British fishery limits set by or under the Fishery Limits Act 1976; and
 - (b) in the case of any other Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by the Convention State in question in accordance with international law.”

PART II

AMENDMENTS OF THE MERCHANT SHIPPING ACT 1974

15 For section 1 substitute—

“1 Interpretation of Part I

- (1) In this Part of this Act—
 - (a) “the Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage 1984;
 - (b) “the Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1984;
 - (c) “the Fund” means the International Fund established by the Fund Convention; and
 - (d) “Fund Convention country” means a country in respect of which the Fund Convention is in force.
- (2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Fund Convention in respect of any country so specified, the Order shall, while in force, be conclusive evidence that that State is a party to the Convention in respect of that country.
- (3) In this Part of this Act, unless the context otherwise requires—
 - “the Act of 1971” means the Merchant Shipping (Oil Pollution) Act 1971;
 - “damage” includes loss;
 - “discharge or escape”, in relation to pollution damage, means the discharge or escape of oil from the ship;

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“guarantor” means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 10 of the Act of 1971;

“incident” means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination;

“oil”, except in sections 2 and 3, means persistent hydrocarbon mineral oil;

“owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as its operator;

“pollution damage” means (subject to subsection (4) below)—

- (a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship,
- (b) the cost of preventive measures, and
- (c) further damage caused by preventive measures;

“preventive measures” means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken—

- (a) after an incident has occurred, or
- (b) in the case of an incident consisting of a series of occurrences, after the first of those occurrences;

“relevant threat of contamination” means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship;

“ship” means any ship (within the meaning of the Act of 1971) to which section 1 of that Act applies.

- (4) In this Part of this Act “pollution damage” does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of—
 - (a) any loss of profits, or
 - (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.
- (5) For the purposes of this Part of this Act—
 - (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and
 - (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.
- (6) References in this Part of this Act to the area of any country include (in addition to its territorial sea)—
 - (a) in the case of the United Kingdom, any area within the British fishery limits set by or under the Fishery Limits Act 1976; and

- (b) in the case of any other Fund Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by the State in question in accordance with international law;
and references to pollution damage in the United Kingdom shall be construed accordingly.”
- 16 In section 2 (contributions by importers of oil and others), in subsection (7), for paragraph (a) substitute—
“(a) be of such amount as may be determined by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund;”.
- 17 (1) Section 4 (liability of the Fund) shall be amended as follows.
- (2) In subsection (1)—
(a) for “causing the damage” substitute “, or the relevant threat of contamination, by reason of which the damage was caused”; and
(b) for “left undone” substitute “omitted to be done”.
- (3) For subsections (8) and (9) substitute—
“(8) If the Fund proves that the pollution damage resulted wholly or partly—
(a) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage, or
(b) from the negligence of that person,
the Fund may (subject to subsection (9A) below) be exonerated wholly or partly from its obligation to pay compensation to that person.
(9) Where the liability under section 1 of the Act of 1971 in respect of the pollution damage is limited to any extent by subsection (8) of that section (contributory negligence), the Fund shall (subject to subsection (9A) below) be exonerated to the same extent.
(9A) Subsections (8) and (9) above shall not apply where the pollution damage consists of the cost of preventive measures or any damage caused by such measures.”
- (4) Omit subsections (10) to (13).
- (5) After section 4 insert—

“4A Limitation of Fund’s liability under s. 4

- (1) The Fund’s liability under section 4 of this Act shall be subject to the limits imposed by paragraphs 4 and 5 of Article 4 of the Fund Convention (which impose an overall limit on the liabilities of the Fund and the text of which is set out in Schedule 1 to this Act); and in those provisions references to the 1984 Liability Convention are references to the Liability Convention within the meaning of this Part of this Act.

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- (2) A certificate given by the Director of the Fund stating that sub-paragraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 4 of this Act shall be conclusive evidence for the purposes of this Part of this Act that it is so applicable.
- (3) For the purpose of giving effect to paragraphs 4 and 5 of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under section 4 of this Act shall notify the Fund, and—
- (a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it,
 - (b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount, and
 - (c) in the latter case the judgment shall be enforceable only for the reduced amount.
- (4) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (3) above shall be steps to obtain payment in sterling; and—
- (a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
 - (i) the relevant day, namely the day on which the Assembly of the Fund decide the date for the first payment of compensation in respect of the incident, or
 - (ii) if no sum has been so fixed for the relevant day, the last day before that day for which a sum has been so fixed; and
 - (b) a certificate given by or on behalf of the Treasury stating—
 - (i) that a particular sum in sterling has been so fixed for the relevant day, or
 - (ii) that no sum has been so fixed for the relevant day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,

shall be conclusive evidence of those matters for the purposes of this Part of this Act.
- (5) The Secretary of State may by order made by statutory instrument make such amendments of this section and of Schedule 1 to this Act as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the provisions set out in that Schedule.
- (6) Any document purporting to be such a certificate as is mentioned in subsection (2) or (4)(b) above shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.”

18 Omit section 5 (indemnification of shipowners).

19 In section 6 (jurisdiction and effect of judgments)—

- (a) in subsection (4), omit “or 5”; and

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- (b) in subsection (5)(a), omit “as amended”.
- 20 In section 7 (extinguishment of claims)—
- (a) in subsection (2), after “escape” insert “, or (as the case may be) in therelevant threat of contamination,”; and
- (b) omit subsection (3).
- 21 In section 8 (subrogation and rights of recourse)—
- (a) omit subsection (2); and
- (b) for subsection (3) substitute—
- “(3) In respect of any sum paid under section 4(1)(a) or (c) of this Act (exclusion or limitation of liability for pollution damage) the Fund shall acquire by subrogation any rights of recourse in respect of the damage in question which the recipient has against any person other than the owner or guarantor.”
- 22 After section 8 insert—

“8A Supplementary provisions as to proceedings involving the Fund

- (1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund’s representative.
- (2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.”
- 23 In section 23(2) (construction etc.), omit the words from “, and references” onwards.
- 24 For Schedule 1 substitute—

“SCHEDULE 1

OVERALL LIMIT ON LIABILITY OF FUND

Article 4 — paragraphs 4 and 5

- 4 (a) Except as otherwise provided in sub-paragraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1984 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of account.
- (b) Except as otherwise provided in sub-paragraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural

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phenomenon of an exceptional, inevitable and irresistible character shall not exceed 135 million units of account.

- (c) The maximum amount of compensation referred to in subparagraphs (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.
- (d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the 1984 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.
- (e) The amounts mentioned in this Article 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 decision of the Assembly of the Fund as to the first date of payment of compensation.

- 5 Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, 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.”