

SCHEDULES

SCHEDULE 4

AMENDMENTS RELATING TO LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE

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;
 - “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

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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.”

- “(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.
- (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

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- 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
- (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

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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 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 sub-paragraphs (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

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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.”