



# Merchant Shipping and Maritime Security Act 1997

## 1997 CHAPTER 28

### *Liability and compensation*

#### **14 Carriage of hazardous and noxious substances.**

- (1) In Part VI of the 1995 Act (prevention of pollution), after Chapter IV there is inserted—

#### **“CHAPTER V**

#### **CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES**

##### **182A Introductory.**

- (1) In this Chapter, unless the context otherwise requires, “the Convention” means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996.
- (2) The text of the Convention, excluding the annexes, is set out in Schedule 5A.
- (3) In interpreting the definition of “hazardous and noxious substances” in Article 1, paragraph 5 of the Convention, any reference in that paragraph to a particular convention or code as amended shall be taken to be a reference to that convention or code as amended from time to time (whether before or after the commencement of this Chapter).

##### **182B Power to give effect to Convention.**

- (1) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to—

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- (a) the Convention on or after its ratification by the United Kingdom; or
  - (b) any revision of the Convention which appears to Her Majesty in Council to have been agreed to by the Government of the United Kingdom.
- (2) The power conferred by subsection (1) above to make provision for the purpose of giving effect to the Convention or an agreement revising the Convention includes power to provide for the provision to come into force even though the Convention or the agreement has not come into force.
- (3) Without prejudice to the generality of subsection (1) above, an Order under that subsection may include provision—
- (a) requiring contributions to be paid in accordance with the Convention to the International Hazardous and Noxious Substances Fund established under the Convention;
  - (b) for applying for the purpose mentioned in subsection (1) above any enactment or instrument relating to the pollution of the sea or other waters (including provisions creating offences) with such modifications, if any, as may be prescribed by the Order;
  - (c) making such modifications of any enactment or instrument (including, where the Order is made under paragraph (b) of that subsection, modifications of Schedule 5A and section 182C) as appear to Her Majesty to be appropriate for the purpose specified in that subsection;
  - (d) with respect to the application of the Order to the Crown;
  - (e) for detaining any ship in respect of which a contravention of a provision made by or under the Order is suspected to have occurred and, in relation to such a ship, for applying section 284 with such modifications, if any, as are prescribed by the Order;
  - (f) for a certificate issued by or on behalf of the Secretary of State and stating that at a particular time a particular substance was, or was not, a hazardous or noxious substance for the purposes of the Convention to be conclusive evidence of that matter.
- (4) An Order under subsection (1) above may—
- (a) make different provision for different circumstances;
  - (b) make provision for references in the Order to any specified document to operate as references to that document as revised or re-issued from time to time;
  - (c) provide for the delegation of functions exercisable by virtue of the Order;
  - (d) include such incidental, supplemental and transitional provisions as appear to Her Majesty to be expedient for the purposes of the Order; and
  - (e) authorise the making of regulations for the purposes of this section (except the purposes of subsection (3)(a), (b) and (c) above).
- (5) A draft of an Order in Council proposed to be made by virtue of this section shall not be submitted to Her Majesty in Council unless it has been approved by a resolution of each House of Parliament.

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### **182C Power of Secretary of State to make orders.**

- (1) The Secretary of State may by order make such amendments of Schedule 5A and any Order in Council under section 182B(1) as appear to him to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 48 of the Convention.
- (2) In subsection (1) above, “a relevant limit” means any of the limits for the time being specified in article 9, paragraph 1 and article 14, paragraph 5 of the Convention.”
- (2) After Schedule 5 to the 1995 Act there is inserted, as Schedule 5A to that Act, the provision set out in Schedule 3.

### **15 Limitation of liability.**

- (1) In section 185 of the 1995 Act (limitation of liability for maritime claims), after subsection (2) there is inserted—
  - “(2A) Her Majesty may by Order in Council make such modifications of Parts I and II of Schedule 7 as She considers appropriate in consequence of the revision of the Convention by the Protocol of 1996 amending the Convention (in this section referred to as “the 1996 Protocol”).
  - (2B) If it appears to Her Majesty in Council that the Government of the United Kingdom has agreed to any further revision of the Convention or to any revision of article 8 of the 1996 Protocol, She may by Order in Council make such modifications of Parts I and II of Schedule 7 and subsections (2C) and (2D) below as She considers appropriate in consequence of the revision.
  - (2C) The Secretary of State may by order make such amendments of Parts I and II of Schedule 7 as appear to him to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 8 of the 1996 Protocol.
  - (2D) In subsection (2C) above “a relevant limit” means any of the limits for the time being specified in either of the following provisions of the Convention—
    - (a) article 6, paragraph 1, and
    - (b) article 7, paragraph 1.
  - (2E) No modification made by virtue of subsection (2A), (2B) or (2C) above shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the modification comes into force.”
- (2) After subsection (4) of that section there is inserted—
  - “(5) A draft of an Order in Council proposed to be made by virtue of subsection (2A) or (2B) above shall not be submitted to Her Majesty in Council unless it has been approved by a resolution of each House of Parliament.”

### **16 Compulsory insurance.**

- In Part VII of the 1995 Act, after section 192 there is inserted—

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*“Regulations requiring insurance or security*

**192A Compulsory insurance or security**

- (1) Subject to subsections (2) and (3) below, the Secretary of State may make regulations requiring that, in such cases as may be prescribed by the regulations, while a ship is in United Kingdom waters, there must be in force in respect of the ship—
  - (a) a contract of insurance insuring such person or persons as may be specified by the regulations against such liabilities as may be so specified and satisfying such other requirements as may be so specified, or
  - (b) such other security relating to those liabilities as satisfies requirements specified by or under the regulations.
- (2) Regulations under this section shall not apply in relation to—
  - (a) a qualifying foreign ship while it is exercising—
    - (i) the right of innocent passage, or
    - (ii) the right of transit passage through straits used for international navigation,
  - (b) any warship, or
  - (c) any ship for the time being used by the government of any State for other than commercial purposes.
- (3) Regulations under this section may not require insurance or security to be maintained in respect of a ship in relation to any liability in any case where an obligation to maintain insurance or security in respect of that ship in relation to that liability is imposed by section 163 or by or under an Order in Council under section 182B.
- (4) Regulations under this section may require that, where a person is obliged to have in force in respect of a ship a contract of insurance or other security, such documentary evidence as may be specified by or under the regulations of the existence of the contract of insurance or other security must be carried in the ship and produced on demand, by such persons as may be specified in the regulations, to such persons as may be so specified.
- (5) Regulations under this section may provide—
  - (a) that in such cases as are prescribed a ship which contravenes the regulations shall be liable to be detained and that section 284 shall have effect, with such modifications (if any) as are prescribed by the regulations, in relation to the ship,
  - (b) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine of an amount not exceeding £50,000, or such less amount as is prescribed by the regulations, and on conviction on indictment by a fine, and
  - (c) that any such contravention shall be an offence punishable only on summary conviction by a fine of an amount not exceeding £50,000, or such less amount as is prescribed by the regulations.
- (6) Regulations under this section may—

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- (a) make different provision for different cases,
- (b) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time, and
- (c) include such incidental, supplemental and transitional provision as appears to the Secretary of State to be expedient for the purposes of the regulations.”

**Changes to legislation:**

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