
STATUTORY INSTRUMENTS

1996 No. 1143

MERCHANT SHIPPING

The Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996

<i>Made</i>	- - - -	<i>24th April 1996</i>
<i>Laid before Parliament</i>		<i>7th May 1996</i>
<i>Coming into force</i>	- -	<i>30th May 1996</i>

At the Court at Windsor Castle, the 24th day of April 1996

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred by sections 171(2) and 182(2) of the Merchant Shipping Act 1995⁽¹⁾, 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:—

1. This Order may be cited as the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996, and shall come into force on 30th May 1996.

2. In this Order, unless the context otherwise requires:—

“the Act” means the Merchant Shipping Act 1995;

“the 1969 Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels in 1969, as amended by the Protocol signed in London in 1976;

“the 1992 Liability Convention” means the 1969 Liability Convention as amended by the 1992 Liability Protocol;

“the 1992 Liability Protocol” means the Protocol of 1992 to amend the 1969 Liability Convention signed in London in 1992;

“the 1971 Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18th December 1971, as amended by the Protocol signed in London in 1976;

“the 1992 Fund Convention” means the 1971 Fund Convention as amended by the 1992 Fund Protocol; and

(1) 1995 c. 21.

“the 1992 Fund Protocol” means the Protocol of 1992 to amend the 1971 Fund Convention signed in London in 1992.

3.—(1) Notwithstanding the coming into force of Chapters III and IV of Part VI of the Act (and the consequent ceasing to have effect of Schedule 4 and Part II of Schedule 5 to that Act), the provisions mentioned in paragraph (2) below and set out in Schedule 1 to this Order (being transitional provisions) shall have the force of law in the United Kingdom, subject to the modifications in Schedule 2 to this Order, and for this purpose the provisions of Schedule 4 and Part II of Schedule 5 to the Act shall continue to have effect.

(2) The provisions are:

- (i) Article XII bis of the 1969 Liability Convention, inserted by Article 9 of the 1992 Liability Protocol;
- (ii) Article 36 bis of the 1971 Fund Convention, inserted by Article 26 of the 1992 Fund Protocol.

4. During the period while the United Kingdom remains a Party to the 1969 Liability Convention, references in sections 163 and 164 of the Act to the “Liability Convention” shall, in respect of ships registered in a State Party to the 1969 Liability Convention but not the 1992 Liability Convention, be references to the 1969 Liability Convention.

5. In section 173(7) of the Act the reference to “Article 12 of the Fund Convention” shall have effect as a reference to Article 12 subject to Article 36 ter of that Convention.

6. For convenience of reference Article XII bis of the 1992 Liability Convention, and Article 36 bis of the 1992 Fund Convention, as modified by Schedule 2 to this Order, are set out in Schedule 3.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE 1

Article 3

ARTICLE XII BIS OF THE 1992 LIABILITY CONVENTION AND ARTICLE 36 BIS OF THE 1992 FUND CONVENTION

Article XII bis of the 1992 Liability Convention

transitional provisions

The following transitional provisions shall apply in the case of a State which at the time of an incident is a Party both to this Convention and to the 1969 Liability Convention:

- (a) where an incident has caused pollution damage within the scope of this Convention, liability under this Convention shall be deemed to be discharged if, and to the extent that, it also arises under the 1969 Liability Convention;
- (b) where an incident has caused pollution damage within the scope of this Convention, and the State is a Party both to this Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of sub-paragraph (a) of this Article shall arise under this Convention only to the extent that pollution damage remains uncompensated after application of the said 1971 Convention;
- (c) in the application of Article III, paragraph 4, of this Convention the expression “this Convention” shall be interpreted as referring to this Convention or the 1969 Liability Convention, as appropriate;
- (d) in the application of Article V, paragraph 3, of this Convention the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with sub-paragraph (a) of this Article.

Article 36 bis of the 1992 Fund Convention

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention take effect:

- (a) In this application of paragraph 1(a) of Article 2 of this Convention, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as “the 1969 Liability Convention”), and also the 1971 Fund Convention.
- (b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been Party to each of the above-mentioned Conventions.
- (c) In the application of Article 4 of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1969 Liability Convention, if any, and

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the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.

- (d) Paragraph 1 of Article 9 of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

SCHEDULE 2

Article 3

PART A

The following are the modifications to Article XII bis of the 1992 Liability Convention:

1. References to a State shall be references to the United Kingdom.
2. In the chapeau, the reference to “this Convention” shall be a reference to the 1992 Liability Convention.
3. In sub-paragraph (a) of Article XII bis references to “this Convention” shall be references to sections 152 to 170 of the Act, and the reference to “the 1969 Liability Convention” shall be as a reference to sections 152 to 170 in Schedule 4 to the Act.
4. In sub-paragraph (b) of Article XII bis the first and third references to “this Convention” shall be references to sections 152 to 170 of the Act, and the second to the 1992 Liability Convention; and the reference to “the said 1971 Convention” shall be a reference to sections 172 to 181 in Schedule 4 to the Act.
5. For sub-paragraph (c) of Article XII bis there shall be substituted “subsection (1)(i) of section 156 of the Act refers to liability under section 153 of the Act or under section 153 in Schedule 4 to the Act, as appropriate, and subsection (1)(ii) of section 156 of the Act applies to the persons referred to in section 156(2) of the Act or section 156(b) in Schedule 4 to the Act, as appropriate”.
6. In sub-paragraph (d) of Article XII bis, the reference to “Article V, paragraph 3, of this Convention” shall be a reference to section 158 of the Act.

PART B

The following are the modifications to Article 36 bis of the 1992 Fund Convention:

1. The “transitional period” means the period from the date of entry into force of this Order to the date on which the Order ceases to have effect.
2. “The Fund” shall have the same meaning as in section 172 of the Act.
3. Except for the second reference in sub-paragraph (b), references to the “1971 Fund Convention” shall be references to sections 172 to 181 of the Act as set out in Schedule 4 to the Act.
4. Except for the third reference in sub-paragraph (b) references to “this Convention” shall be references to sections 172 to 181 of the Act.
5. References to “the 1969 Liability Convention” shall be references to sections 152 to 170 of the Act as set out in Schedule 4 to the Act.

6. References to “the 1992 Liability Convention” shall be references to sections 152 to 170 of the Act.

7. Sub-paragraph (a) of Article 36 bis shall be omitted.

8. In sub-paragraph (b) of Article 36 bis for “the above-mentioned Conventions” there shall be substituted “the 1969 Liability Convention, the 1992 Liability Convention and the 1971 Fund Convention”.

9. In sub-paragraph (c) of Article 36 bis, the reference to “Article 4 of this Convention” shall be a reference to Part I of Schedule 5 to the Act.

10. In sub-paragraph (d) of Article 36 bis, the reference to “paragraph 1 of Article 9 of this Convention” shall be a reference to section 179(1) of the Act.

SCHEDULE 3

Article 5

The text of Article XII bis of the 1992 Liability Convention and Article 36 bis of the 1992 Fund Convention, as modified by Schedule 2 of this Order:

Article XII bis

transitional provisions

The following transitional provisions shall apply when at the time of an incident the United Kingdom is Party both to the 1992 Liability Convention and to the 1969 Liability Convention:

- (a) where an incident has caused pollution damage within the scope of sections 152 to 170 of the Act, liability under sections 152 to 170 of the Act shall be deemed to be discharged if, and to the extent that, it also arises under sections 152 to 170 in Schedule 4 to the Act;
- (b) where an incident has caused pollution damage within the scope of sections 152 to 170 of the Act and the United Kingdom is a Party both to the 1992 Liability Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of sub-paragraph (a) of this Article shall arise under sections 152 to 170 of the Act only to the extent that pollution damage remains uncompensated after application of sections 172 to 181 in Schedule 4 to the Act;
- (c) subsection (1)(i) of section 156 of the Act refers to liability under section 153 of the Act or under section 153 in Schedule 4 to the Act, as appropriate and subsection (1)(ii) of section 156 applies to the persons referred to in section 156(2) of the Act or section 156(b) in Schedule 4 to the Act, as appropriate;
- (d) in the application of section 158 of the Act the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with sub-paragraph (a) of this Article.

Article 36 bis

The following transitional provisions shall apply from the date of entry into force of the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 to the date on which the Order ceases to have effect:

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- (b) Where an incident has caused pollution damage within the scope of sections 172 to 181 of the Act, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of sections 152 to 170 of the Act as set out in Schedule 4 to the Act, sections 172 to 181 of the Act as set out in the said Schedule 4 and sections 152 to 170 of the Act, provided that, in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been Party to each of the 1969 Liability Convention, the 1992 Liability Convention and the 1971 Fund Convention.
- (c) In the application of Part I of Schedule 5 to the Act the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the sections 152 to 170 of the Act as set out in Schedule 4 to the Act, if any, and the amount of compensation actually paid or deemed to have been paid under sections 172 to 181 of the Act as set out in Schedule 4.
- (d) Section 179(1) of the Act shall also apply to the rights enjoyed under sections 152 to 170 of the Act as set out in Schedule 4 to the Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional provision for the period following entry into force of the 1992 Protocols to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC), and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. This is one of two orders made to implement the 1992 Protocols in the UK. The Merchant Shipping Act 1995 (Appointed Day No.1) Order 1996 brings into force the provisions of the 1995 Act which implement the 1992 CLC and the 1992 Fund Convention (Chapters III and IV of Part VI of the Act respectively) on 30 May 1996. This Order provides that the equivalent Chapters in Schedule 4 to the 1995 Act (which otherwise cease to have effect following that Appointed Day Order) continue to have effect for transitional purposes.

The CLC and the Fund Convention ensure that compensation is available to victims of oil pollution from tankers and provide for the sharing of the costs of compensation between shipowners and cargo interests. Compensation is initially paid by the shipowner, whom the CLC makes strictly liable for oil pollution damage. Since the CLC also generally provides for limitation of the shipowner's liability, additional compensation is available, if needed, from the International Oil Pollution Compensation (IOPC) Fund, established under the Fund Convention. The IOPC Fund is financed by contributions from receivers of oil.

The 1992 Protocols create a new 1992 CLC and a new 1992 Fund Convention providing for increased limitation amounts and more extensive liability. The new 1992 Conventions do not immediately replace the original Conventions. The Conventions of 1969 and 1971 (as amended by Protocols of 1976) and the 1992 Conventions co-exist for a transitional period. This transitional period begins on the date of entry into force of the 1992 Protocols (30 May 1996) and ends some 18 months after the date on which total reported receipts during the preceding calendar year of contributing oil in the states which have agreed to be bound by the 1992 Conventions exceed 750 million tonnes.

The effect of the Order is that if an incident occurs during the transitional period, compensation may, in principle, be available under both the original Conventions and the 1992 Conventions. Compensation could be paid successively from four distinct “tiers”:

- (1) The shipowner would initially meet the costs of compensation payments up to the limit on liability determined by the 1969 CLC.
- (2) If this is not sufficient, additional compensation would then be paid by the 1971 IOPC Fund up to a total amount of 60 million special drawing rights (equivalent at 17th April 1996 to approximately £57,000,000).
- (3) If this is still not sufficient, the shipowner would (unless the flag State is a Party to the 1969 CLC only) be liable for the balance under the 1992 CLC. The total compensation paid by the shipowner would not, however, exceed the limit on liability set by the 1992 CLC, since any compensation paid under the 1969 CLC would be considered to have also been paid under the 1992 CLC.
- (4) Finally, the 1992 IOPC Fund would pay additional compensation if, and only if, the shipowner had paid compensation up to the limit on liability set by the 1992 CLC and the 1971 IOPC Fund had also paid the maximum amount of compensation it was able to under the terms of the 1971 Fund Convention.

The Order also provides that ships registered in States Party to the 1969 CLC but not the 1992 CLC need only have insurance up to the 1969 CLC limits, so long as the United Kingdom remains a Party also to the 1969 CLC.

The Conventions and Protocols referred to in the Order are available from the International Oil Pollution Compensation Fund, 4 Albert Embankment, London SE1 7SR.