
STATUTORY INSTRUMENTS

1997 No. 2578

MERCHANT SHIPPING

**The Merchant Shipping (Liability and Compensation
for Oil Pollution Damage) (Transitional
Provisions) (Overseas Territories) Order 1997**

Made - - - - *30th October 1997*
Coming into force - - *30th November 1997*

At the Court at Buckingham Palace, the 30th day of October 1997

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 315 (2) of the Merchant Shipping Act 1995⁽¹⁾ and 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) (Overseas Territories) Order 1997, and shall come into force on 30th November 1997.

2. The Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996⁽²⁾, shall extend to each of the following territories subject to the exceptions, adaptations and modifications specified out in the Schedule to this Order:

Anguilla
Bermuda
British Indian Ocean Territory
Falkland Islands
Pitcairn, Henderson, Ducie and Oeno Islands
South Georgia and the South Sandwich Islands
Sovereign Base Areas of Akrotiri and Dhekelia
Turks and Caicos Islands

(1) 1995 c. 21.

(2) S.I.1996/1143.

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Virgin Islands

3. In this Order, “the Territory” means each of the territories listed in Article 2.

N. H. Nicholls
Clerk to the Privy Council

SCHEDULE

Article 2

The Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 as modified and extended to the Territories listed in Article 2

...

2.—(1) 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;

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

(2) In this Order, references to “the 1975 Order” shall be construed as follows:

(a) in the case of Anguilla, as references to the Merchant Shipping (Oil Pollution) (Anguilla) Order 1983(3);

(b) in the case of Bermuda, as references to the Merchant Shipping (Oil Pollution) (Bermuda) Order 1975(4);

(c) in the case of the British Indian Ocean Territory, as references to the Merchant Shipping (Oil Pollution) (Overseas Territories) Order 1975(5), as that Order applies to the British Indian Ocean Territory;

(d) in the case of the Falkland Islands, as references to the Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1975(6), as that Order applies to the Falkland Islands;

(e) in the case of Pitcairn, Henderson, Ducie and Oeno Islands, as references to the Merchant Shipping (Oil Pollution) (Overseas Territories) Order 1975, as that Order applies to these Islands;

(f) in the case of South Georgia and the South Sandwich Islands, as references to the Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1975, as that Order applies to South Georgia and the South Sandwich Islands;

(g) in the case of the Sovereign Base Areas of Akrotiri and Dhekelia, as references to the Merchant Shipping (Oil Pollution) (Overseas Territories) Order 1975, as that Order applies to the Sovereign Base Areas;

(3) S.I. 1983/1519.

(4) S.I. 1975/2165, amended by S.I. 1981/215.

(5) S.I. 1975/2171, amended by S.I. 1981/222, 1981/431 and 1984/543.

(6) S.I. 1975/2167, amended by S.I. 1976/2143 and 1981/218.

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- (h) in the case of the Turks and Caicos Islands, as references to the Merchant Shipping (Oil Pollution) (Turks and Caicos Islands) Order 1976(7); and
 - (i) in the case of the Virgin Islands, as references to the Merchant Shipping (Oil Pollution) (British Virgin Islands) Order 1975(8).
- (3) In this Order, references to the “1997 Order” shall be construed as follows:
- (a) in the case of Anguilla, as references to the Merchant Shipping (Oil Pollution) (Anguilla) Order 1997(9);
 - (b) in the case of Bermuda, as references to the Merchant Shipping (Oil Pollution) (Bermuda) Order 1997(10);
 - (c) in the case of the British Indian Ocean Territory, as references to the Merchant Shipping (Oil Pollution) (British Indian Ocean Territory) Order 1997(11);
 - (d) in the case of the Falkland Islands, as references to the Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997(12);
 - (e) in the case of Pitcairn, Henderson, Ducie and Oeno Islands, as references to the Merchant Shipping (Oil Pollution) (Pitcairn) Order 1997(13);
 - (f) in the case of South Georgia and the South Sandwich Islands, as references to the Merchant Shipping (Oil Pollution) (South Georgia and the South Sandwich Islands) Order 1997(14);
 - (g) in the case of the Sovereign Base Areas of Akrotiri and Dhekelia, as references to the Merchant Shipping (Oil Pollution) (Sovereign Base Areas) Order 1997(15);
 - (h) in the case of the Turks and Caicos Islands, as references to the Merchant Shipping (Oil Pollution) (Turks and Caicos Islands) Order 1997(16); and
 - (i) in the case of the Virgin Islands, as references to the Merchant Shipping (Oil Pollution) (Virgin Islands) Order 1997(17).

3.—(1) Notwithstanding the coming into force of the 1997 Order (and the consequent ceasing to have effect of the 1975 Order), the provisions mentioned paragraph (2) below and set out in Schedule 1 to this Order being transitional provisions shall have the force of law in the Territory, subject to the modifications in Schedule 2 to this Order, and for this purpose the provisions of the 1975 Order 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.

(7) S.I. 1976/223, amended by S.I. 1981/223.
(8) S.I. 1975/2175, amended by S.I. 1981/216.
(9) S.I. 1997/2580.
(10) S.I. 1997/2581.
(11) S.I. 1997/2583.
(12) S.I. 1997/2584.
(13) S.I. 1997/2585.
(14) S.I. 1997/2588.
(15) S.I. 1997/2587.
(16) S.I. 1997/2589.
(17) S.I. 1997/2590.

5. In section 173(7) of the Act the reference to “Article XII of the Fund Convention” shall have effect as a reference to Article XII 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.

SCHEDULE 1 TO
THE 1996 ORDER

Article 3

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

Article XII bis of 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 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 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 the 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

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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 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 TO
THE 1996 ORDER

Article 3

PART A

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

1. References to State being a party to a Convention shall be construed as references to the United Kingdom being Party to such a Convention in respect of the Territory.
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 a reference to Schedule 1 to the 1975 Order.
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 shall be a reference to the 1992 Liability Convention; and the reference to “the said 1971 Convention” shall be a reference to Schedule 2 to the 1975 Order.
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 1 of the Merchant Shipping (Oil Pollution) Act 1971 as set out in Schedule 1 to the 1975 Order, 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 3 (b) of the Merchant Shipping (Oil Pollution) Act 1971 as set out in Schedule 1 to the 1975 Order, 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 entry into force of the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) (Overseas Territories) Order 1997 to the date on which the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 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 Schedule 2 to the 1975 Order.
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 Schedule 1 to the 1975 Order.
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 TO THE 1996 ORDER

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 to 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 in respect of the Territory 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 Schedule 1 to the 1975 Order;
- (b) where an incident has caused pollution damage within the scope of sections 152 to 170 of the Act and the United Kingdom in respect of the Territory is Party both to the 1992

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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 Schedule 2 to the 1975 Order;

- (c) subsection (1)(i) of section 156 of the Act refers to liability under section 153 of the Act or under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 as set out in Schedule 1 to the 1975 Order as appropriate and subsection (1)(ii) of section 156 applies to the persons referred to in section 156(2) of the Act or in section 3(b) of the Merchant Shipping (Oil Pollution) Act 1971 as set out in Schedule 1 to the 1975 Order, 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) (Overseas Territories) Order 1997 to the date on which the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 ceases to have effect;

- (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 Schedule 1 to the 1975 Order, Schedule 2 to the 1975 Order, and sections 152 to 170 of the Act, provided that, in respect of pollution damage within the scope of sections 172 to 181 of the Act 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 Schedule 1 to the 1975 Order if any, and the amount of compensation actually paid or deemed to have been paid under Schedule 2 to the 1975 Order.
- (d) Section 179(1) of the Act shall also apply to the rights enjoyed under Schedule 1 to the 1975 Order.

EXPLANATORY NOTE

(This note is not part of the Order)

The International Convention on Civil Liability for Oil Pollution Damage 1969 (the CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (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.

Protocols were negotiated in 1992 which created a new 1992 CLC and a new 1992 Fund Convention. These Conventions provide for higher levels of compensation and more extensive liability, but they do not immediately replace the 1969 and 1971 Conventions: the latter will co-exist with the former for a transitional period. If an incident occurs during this period, compensation could in principle be available under both the original Conventions and the 1992 Conventions. The 1992 Protocols set out specific rules on the payment of compensation in these circumstances. This Order gives effect to these rules in the Territories listed in Article 2 of the Order by extending to these Territories (with the necessary exceptions, adaptations and modifications) the provisions of the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996.