



Merchant Shipping (Salvage and Pollution) Act 1994

CHAPTER 28

ARRANGEMENT OF SECTIONS

Salvage

Section

1. Salvage Convention, 1989 to have force of law.

Marine Pollution

2. Power to implement 1990 OPRC Convention.
3. Amendments as to powers of implementation.
4. Prevention of pollution from ships: further power to implement international agreements.
5. Liability and compensation for oil pollution damage: 1992 Protocols.
6. Extension of strict liability for oil pollution by ships.
7. Extension of rights of Fund by subrogation.
8. Functions of Secretary of State in relation to marine pollution.

General

9. Expenses.
10. Short title, citation, construction, repeals, commencement and extent.

SCHEDULES:

Schedule 1—International Convention on Salvage, 1989.

Part I—Text of Convention.

Part II—Provisions having effect in connection with Convention.

Schedule 2—Salvage: Consequential and Related Amendments.

Schedule 3—Extension of strict liability for oil pollution by ships.

Schedule 4—Repeals.

Merchant Shipping (Salvage and Pollution) Act 1994

1994 c. 28

ISBN 0 10 542894 9

CORRECTION

Schedule 3

Page 20, paragraph 4, at end insert “; and
(c) in subsection (3), after the words “section 1” there shall be inserted the
words “or 1A”.”

PRINTED IN THE UNITED KINGDOM BY PAUL FREEMAN

Controller and Chief Executive of HMSO and
Queen's Printer of Acts of Parliament.

LONDON: PUBLISHED BY HMSO

July 1994.

(168825)



Merchant Shipping (Salvage and Pollution) Act 1994

1994 CHAPTER 28

An Act to make further provision in relation to marine salvage and marine pollution and the discharge of functions of the Secretary of State in connection therewith; and for purposes connected with those purposes. [21st July 1994]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Salvage

1.—(1) The provisions of the International Convention on Salvage, 1989 as set out in Part I of Schedule 1 to this Act (in this section and in Part II of that Schedule referred to as “the Convention”) shall have the force of law in the United Kingdom.

Salvage Convention, 1989 to have force of law.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention, and subsection (1) above shall have effect subject to the provisions of that Part.

(3) If it appears to Her Majesty in Council that the government of the United Kingdom has agreed to any revision of the Convention She may by Order in Council make such modifications of Parts I and II of Schedule 1 to this Act as She considers appropriate in consequence of the revision.

(4) Nothing in subsection (1) or (2) above or in any modification made by virtue of subsection (3) above shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the day on which this section or, as the case may be, the modification comes into force.

(5) This section may be brought into force before the entry into force of the Convention and as respects any such period any reference in the Convention to a State Party to the Convention shall be read as a reference to the United Kingdom.

(6) The provisions of Schedule 2 to this Act (which make amendments consequential on subsections (1) and (2) above) shall have effect; but nothing in any such amendment shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the day on which the amendment comes into force.

(7) A draft of an Order in Council proposed to be made by virtue of subsection (3) above shall not be submitted to Her Majesty in Council unless the draft has been approved by a resolution of each House of Parliament.

Marine Pollution

Power to
implement 1990
OPRC
Convention.
1979 c. 39.

2.—(1) Section 20 of the Merchant Shipping Act 1979 (power by Order in Council to implement international conventions relating to pollution from ships, etc) shall have effect with the insertion in subsection (1), after paragraph (c), of the following paragraph—

“(cc) the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (including the Final Act of the Conference and the attached resolutions) signed in London on 30th November 1990;”.

(2) In consequence of the amendment made by subsection (1) above, in subsection (6) of that section for the words “(a) to (c)” there shall be substituted the words “(a) to (cc)”.

Amendments as to
powers of
implementation.

3.—(1) Section 20 of the Merchant Shipping Act 1979 (power by Order in Council to implement international conventions relating to pollution from ships, etc) shall be amended as follows.

1970 c. 36.

(2) In subsection (3)(a), in the list of enactments there specified, after the entry for the Merchant Shipping Act 1970, there shall be inserted the following entry—

“section 33 of the Merchant Shipping Act 1988 (which relates to investigations of marine accidents);”.

(3) In subsection (4), after paragraph (a), there shall be inserted the following paragraph—

“(aa) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time;”.

(4) After subsection (4), there shall be inserted the following subsections—

“(4A) Where an Order in Council under subsection (1) of this section authorises the making of regulations for the purpose of giving effect to an agreement mentioned in paragraphs (a) to (cc) or falling within paragraph (d) of that subsection the Order also authorises the making of regulations for the purpose of giving effect to an agreement which provides for the modification of such an agreement.

This subsection applies in relation to Orders in Council and international agreements whenever made.

(4B) Regulations made by virtue of paragraph (e) of subsection (4) of this section—

- (a) may make provision corresponding to the provision authorised for an Order by paragraphs (a) to (d) of subsection (4) of this section; and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

4. After section 20 of the Merchant Shipping Act 1979 there shall be inserted the following section—

“Further provision for prevention of pollution from ships.

20A.—(1) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) for the protection and preservation of the marine environment from pollution by matter from ships.

Prevention of pollution from ships: further power to implement international agreements. 1979 c. 39.

(2) Without prejudice to the generality of subsection (1) of this section, an Order under that subsection may in particular include provision—

- (a) corresponding to any provision that is authorised for the purposes of section 20 of this Act by subsections (3) and (4) of that section; and
- (b) specifying areas of sea above any of the areas for the time being designated under section 1(7) of the Continental Shelf Act 1964 as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of that Convention for the protection and preservation of the marine environment;

and provision authorising the making of regulations authorises the amendment or revocation of regulations made by virtue of paragraph (e) of the said subsection (4).

(3) A draft of an Order in Council proposed to be made by virtue of subsection (1) of this section shall not be submitted to Her Majesty in Council unless the draft has been approved by a resolution of each House of Parliament.”

5.—(1) For the purpose of enabling effect to be given to the 1992 Protocols, the Merchant Shipping (Oil Pollution) Act 1971 and the Merchant Shipping Act 1974 shall have effect subject to the amendments contained in Parts I and II respectively of Schedule 4 to the Merchant Shipping Act 1988 with the substitution, in the definition in section 19(1) of the 1971 Act of “the Convention” and in the definitions in section 1(1) of the 1974 Act of “the Liability Convention” and “the Fund Convention”, of “1992” for “1984”.

Liability and compensation for oil pollution damage: 1992 Protocols. 1971 c. 59. 1974 c. 43. 1988 c. 12.

(2) Accordingly—

- 1993 c. 22.
- (a) the word “1984” shall be omitted from the section 4A(1) of the 1974 Act and the paragraph 4(a) and (d) constituting Schedule I to the 1974 Act as respectively inserted and substituted by Part II of Schedule 4 to the 1988 Act; and
 - (b) paragraph 18 of Schedule 4 to the Merchant Shipping (Registration, etc.) Act 1993 (which provides that section 34 of and Schedule 4 to the 1988 Act shall not have effect) is hereby repealed and the entry for Schedule 4 to the 1988 Act shall be deemed not to have been included in Part II of Schedule 5 to the 1993 Act (pre-consolidation repeals).

(3) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate in connection with the implementation of any transitional provisions contained in the 1992 Protocols or the Conventions which they amend; and any such Order may in particular provide, in relation to occurrences of any description specified in the Order—

- (a) for provisions of the 1971 Act or the 1974 Act to have effect—
 - (i) to such extent as is so specified, as if Schedule 4 to the 1988 Act were not in force, and
 - (ii) to such extent as is so specified, as if that Schedule were in force;
- (b) for any such provisions to have effect (whether as amended by that Schedule or not) subject to such modifications as are so specified.

(4) In this section “the 1992 Protocols” means—

- (a) the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage 1969 signed in London on 27th November 1992; and
- (b) the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 signed in London on 27th November 1992.

Extension of strict liability for oil pollution by ships. 1971 c. 59.

6.—(1) The Merchant Shipping (Oil Pollution) Act 1971 shall be amended as provided in Schedule 3 (amendments imposing on other ships liability for oil pollution corresponding to that imposed on tankers).

1988 c. 12.

(2) In Part I of that Schedule “the 1971 Act” means the Merchant Shipping (Oil Pollution) Act 1971 without the amendments made by Part I of Schedule 4 to the Merchant Shipping Act 1988.

(3) In Part II of that Schedule “the 1971 Act” means the Merchant Shipping (Oil Pollution) Act 1971 as amended by Part I of Schedule 4 to the Merchant Shipping Act 1988 (“the 1988 Act”) and section 5 of this Act.

(4) Where the amendments of the 1971 Act made by Part II of Schedule 3 to this Act come into force after the 1971 Act has been amended by Part I of the said Schedule 3, Parts I and II of that Schedule shall have effect with the modifications specified in Part III of that Schedule.

7.—(1) In section 8 of the Merchant Shipping Act 1974 (Acquisition by International Fund of rights of recipients of payments made by the Fund in cases of oil pollution damage)—

Extension of rights of Fund by subrogation. 1974 c. 43.

(a) for subsection (1), there shall be inserted the following subsection—

“(1) In respect of any sum paid by the Fund as compensation for pollution damage the Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person,”; and

(b) subsection (3) shall be omitted.

(2) The amendments made by subsection (1) above apply in relation to payments made by the Fund after this section comes into force.

8.—(1) The Secretary of State shall continue to have the functions of taking, or co-ordinating, measures to prevent, reduce and minimise the effects of, marine pollution.

Functions of Secretary of State in relation to marine pollution.

(2) Without prejudice to the generality of subsection (1) above, the functions of the Secretary of State under that subsection include—

- (a) the acquisition, maintenance, use and disposal of ships, aircraft, equipment and other property;
- (b) the provision of services, including research, training and advice;
- (c) the giving of assistance to any other State or international institution under any international agreement relating to the prevention, reduction or control of marine pollution; and
- (d) any other functions exercisable on his behalf at the commencement of this section by the Marine Pollution Control Unit.

(3) Assistance under subsection (2)(c) above shall be given on such terms as will secure reimbursement of the cost of giving the assistance if and to the extent that reimbursement will be practicable in the circumstances.

(4) The Secretary of State may make reasonable charges for the supply of goods or services.

(5) In this section—

“marine pollution” means pollution caused by ships, offshore installations or submarine pipelines affecting or likely to affect the United Kingdom or United Kingdom waters or controlled waters;

“offshore installation” means any installation which is maintained for underwater exploitation or exploration to which the Mineral Working (Offshore Installations) Act 1971 applies;

1971 c. 61.

“pipeline” has the same meaning as in Part III of the Petroleum and Submarine Pipelines Act 1975 and “submarine” means in, under or over United Kingdom waters or controlled waters;

1975 c. 74.

“United Kingdom waters” means any part of the sea within the seaward limits of United Kingdom territorial waters and “United Kingdom controlled waters” means any part of the sea within the limits of any area designated under section 1(7) of the Continental Shelf Act 1964;

1964 c. 29.

but no restriction as to the seas to which functions under this section extend is implied as regards the functions mentioned in subsection (2)(c) above.

1971 c. 60.

(6) In section 12 of the Prevention of Oil Pollution Act 1971 (powers of Secretary of State to prevent or reduce oil pollution in the event of a shipping accident), in subsection (9), after the definition of “accident” there shall be inserted the following—

““owner”, in relation to the ship to or in which an accident has occurred, includes its owner at the time of the accident; and”.

General

Expenses.

9. There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State under this Act; and
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

Short title,
citation,
construction,
repeals,
commencement
and extent.

10.—(1) This Act may be cited as the Merchant Shipping (Salvage and Pollution) Act 1994 and the Merchant Shipping Acts 1894 to 1993 and this Act may be cited as the Merchant Shipping Acts 1894 to 1994.

(2) This Act shall be construed as one with the Merchant Shipping Acts 1894 to 1993.

(3) The enactments mentioned in Schedule 4 to this Act are repealed to the extent specified in the third column of that Schedule.

(4) This Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different provisions.

(5) This Act extends to England and Wales, Scotland and Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 1(1).

INTERNATIONAL CONVENTION ON SALVAGE, 1989

PART I

TEXT OF CONVENTION

CHAPTER I - GENERAL PROVISIONS

ARTICLE 1

Definitions

For the purpose of this Convention—

- (a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) Vessel means any ship or craft, or any structure capable of navigation.
- (c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) Payment means any reward, remuneration or compensation due under this Convention.
- (f) Organisation means the International Maritime Organisation.
- (g) Secretary-General means the Secretary-General of the Organisation.

ARTICLE 2

Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

ARTICLE 3

Platforms and drilling units

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

ARTICLE 4

State-owned vessels

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law unless that State decides otherwise.

2. Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

SCH. 1

ARTICLE 5

Salvage operations controlled by public authorities

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

ARTICLE 6

Salvage contracts

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.

2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

3. Nothing in this article shall affect the application of article 7 nor duties to prevent or minimise damage to the environment.

ARTICLE 7

Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if—

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

CHAPTER II - PERFORMANCE OF SALVAGE OPERATIONS

ARTICLE 8

Duties of the salvor and of the owner and master

1. The salvor shall owe a duty to the owner of the vessel or other property in danger—

- (a) to carry out the salvage operations with due care;
- (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimise damage to the environment;
- (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor—

- (a) to co-operate fully with him during the course of the salvage operations;
- (b) in so doing, to exercise due care to prevent or minimise damage to the environment; and
- (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

ARTICLE 9

Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognised principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

ARTICLE 10

Duty to render assistance

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.

2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.

3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

ARTICLE 11

Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

CHAPTER III - RIGHTS OF SALVORS

ARTICLE 12

Conditions for reward

1. Salvage operations which have had a useful result give right to a reward.

2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.

3. This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

ARTICLE 13

Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below—

- (a) the salvaged value of the vessel and other property;
- (b) the skill and efforts of the salvors in preventing or minimising damage to the environment;
- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) the time used and expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

ARTICLE 14

Special compensation

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30 per cent. of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100 per cent. of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

5. If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

ARTICLE 15

Apportionment between salvors

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.

2. The apportionment between the owner, master and other persons in the service of each salvaging vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

ARTICLE 16

Salvage of persons

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.

2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salvaging the vessel or other property or preventing or minimising damage to the environment.

ARTICLE 17

Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

ARTICLE 18

The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

ARTICLE 19

Prohibition of salvage operations

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

SCH. 1

CHAPTER IV - CLAIMS AND ACTIONS

ARTICLE 20

Maritime lien

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

ARTICLE 21

Duty to provide security

1. Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2. Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
3. The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

ARTICLE 22

Interim payment

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.
2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

ARTICLE 23

Limitation of actions

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.
2. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.
3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

ARTICLE 24

Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

ARTICLE 25

State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings *in rem* against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognised principles of international law.

ARTICLE 26

Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

ARTICLE 27

Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered.

Claims excluded from Convention

2.—(1) The provisions of the Convention do not apply—

- (a) to a salvage operation which takes place in inland waters of the United Kingdom and in which all the vessels involved are of inland navigation; and
- (b) to a salvage operation which takes place in inland waters of the United Kingdom and in which no vessel is involved.

(2) In this paragraph “inland waters” does not include any waters within the ebb and flow of the tide at ordinary spring tides or the waters of any dock which is directly or (by means of one or more other docks) indirectly, connected with such waters.

Assistance to persons in danger at sea

3.—(1) The master of a vessel who fails to comply with the duty imposed on him by article 10 paragraph 1 commits an offence and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

SCH. 1

(2) Compliance by the master of a vessel with that duty shall not affect his right or the right of any other person to a payment under the Convention or under any contract.

The reward and special compensation: the common understanding

4. In fixing a reward under article 13 and assessing special compensation under article 14 the court or arbitrator (or, in Scotland, arbiter) is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

Recourse for life salvage payment

5.—(1) This paragraph applies where—

- (a) services are rendered wholly or in part in United Kingdom waters in saving life from a vessel of any nationality or elsewhere in saving life from any United Kingdom ship; and
- (b) either—
 - (i) the vessel and other property are destroyed, or
 - (ii) the sum to which the salvor is entitled under article 16, paragraph 2 is less than a reasonable amount for the services rendered in saving life.

(2) Where this paragraph applies, the Secretary of State may, if he thinks fit, pay to the salvor such sum or, as the case may be, such additional sum as he thinks fit in respect of the services rendered in saving life.

(3) In this paragraph “United Kingdom ship” means a ship registered in the United Kingdom.

Meaning of “judicial proceedings”

6. References in the Convention to judicial proceedings are references to proceedings—

- (a) in England and Wales, in the High Court or the county court;
- (b) in Scotland, in the Court of Session or in the sheriff court;
- (c) in Northern Ireland, in the High Court;

and any reference to the tribunal having jurisdiction (so far as it refers to judicial proceedings) shall be construed accordingly.

Meaning of “State Party”

7.—(1) An Order in Council made for the purposes of this paragraph and declaring that any State specified in the Order is a party to the Convention in respect of a specified country shall, subject to the provisions of any subsequent Order made for those purposes, be conclusive evidence that the State is a party to the Convention in respect of that country.

(2) In this paragraph “country” includes “territory”.

Section 1(6).

SCHEDULE 2

SALVAGE: CONSEQUENTIAL AND RELATED AMENDMENTS

Merchant Shipping Act 1894

1894 c. 60.

1.—(1) The Merchant Shipping Act 1894 shall be amended as follows.

(2) Sections 544, 545 and 546 shall cease to have effect.

(3) In section 552(4), for “two hundred pounds” there shall be substituted “£5,000”.

(4) In section 555, after subsection (2), there shall be inserted the following subsection—

“(2A) Any decision by the receiver under subsection (2) above shall be made on the basis of the criteria contained in article 13 of the International Convention on Salvage, 1989 as set out in Part I of Schedule 1 to the Merchant Shipping (Salvage and Pollution) Act 1994.”

(5) In section 556, at the end, there shall be inserted the following paragraph—

“Any decision by the court under the foregoing provisions of this section shall be made on the basis of the criteria contained in article 13 of the International Convention on Salvage, 1989 as set out in Part I of Schedule 1 to the Merchant Shipping (Salvage and Pollution) Act 1994.”

Maritime Conventions Act 1911

2.—(1) The Maritime Conventions Act 1911 shall be amended as follows. 1911 c. 57.

(2) Sections 6 and 7 shall cease to have effect.

(3) In section 8 the words “or in respect of any salvage services” and “or the salvage services were rendered” shall be omitted.

Crown Proceedings Act 1947

3. In section 8(1) of the Crown Proceedings Act 1947, for the words “the provisions of this Act” there shall be substituted the words “section 29 (so far as consistent with the International Convention on Salvage, 1989 as set out in Schedule 1 to the Merchant Shipping (Salvage and Pollution) Act 1994)” and for the words “five hundred and fifty-four” there shall be substituted the words “five hundred and fifty-three”. 1947 c. 44.

Administration of Justice Act 1956

4.—(1) The Administration of Justice Act 1956 shall be amended as follows. 1956 c. 46.

(2) In section 47—

(a) in subsection (2) for paragraph (c) there shall be substituted the following paragraphs—

“(c) the Salvage Convention, 1989;

(ca) any contract for or in relation to salvage services;”;

(b) after subsection (7) there shall be added the following subsection—

“(8) In—

(a) paragraph (c) of subsection (2) above, the “Salvage Convention, 1989” means the International Convention on Salvage 1989 as it has effect under section 1 of the Merchant Shipping (Salvage and Pollution) Act 1994;

(b) paragraph (ca) of that subsection, the reference to salvage services includes services rendered in saving life from a ship and the reference to any claim arising out of any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of such services,

and the claims mentioned in subsections (2)(c) and (ca) shall be construed as including claims available by virtue of section 87 of the Civil Aviation Act 1982.”

(3) In section 48, paragraph (e) shall be omitted.

SCH. 2

Merchant Shipping Act 1979

1979 c. 39.

5. In Schedule 4 to the Merchant Shipping Act 1979, in Part II, in paragraph 4, there shall be inserted the following as sub-paragraph (1)—

“(1) The claims excluded from the Convention by paragraph (a) of article 3 include claims under article 14 of the International Convention on Salvage, 1989 as set out in Part I of Schedule 1 to the Merchant Shipping (Salvage and Pollution) Act 1994 and corresponding claims under a contract.”;

and sub-paragraphs (1) and (2) shall become sub-paragraphs (2) and (3) of that paragraph.

Supreme Court Act 1981

1981 c. 54.

6.—(1) Section 20 of the Supreme Court Act 1981 shall be amended as follows.

(2) In subsection (2), for paragraph (j) there shall be substituted the following paragraph—

“(j) any claim—

(i) under the Salvage Convention 1989;

(ii) under any contract for or in relation to salvage services;

or

(iii) in the nature of salvage not falling within (i) or (ii) above;

or any corresponding claim in connection with an aircraft;”.

(3) For subsection (6), there shall be substituted the following subsection—

“(6) In subsection (2)(j)—

(a) the “Salvage Convention 1989” means the International Convention on Salvage, 1989 as it has effect under section 1 of the Merchant Shipping (Salvage and Pollution) Act 1994;

(b) the reference to salvage services includes services rendered in saving life from a ship and the reference to any claim under any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of the services;

(c) the reference to a corresponding claim in connection with an aircraft is a reference to any claim corresponding to any claim mentioned in sub-paragraph (i) or (ii) of paragraph (j) which is available under section 87 of the Civil Aviation Act 1982.”

County Courts Act 1984

1984 c. 28.

7.—(1) Section 27 of the County Courts Act 1984 shall be amended as follows.

(2) In subsection (1), for paragraph (f) there shall be substituted the following paragraph—

“(f) any claim—

(i) under the Salvage Convention 1989;

(ii) under any contract for or in relation to salvage services;

or

(iii) in the nature of salvage not falling within (i) or (ii) above;

or any corresponding claim in connection with an aircraft;”.

(3) In subsection (2), for the words “in the nature of salvage” there shall be substituted the words “falling within paragraph (f) of that subsection”.

(4) For subsection (3), there shall be substituted the following subsection—

“(3) In subsection (1)(f)—

- (a) the “Salvage Convention 1989” means the International Convention on Salvage, 1989 as it has effect under section 1 of the Merchant Shipping (Salvage and Pollution) Act 1994;
- (b) the reference to salvage services includes services rendered in saving life from a ship and the reference to any claim under any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of the services;
- (c) the reference to a corresponding claim in connection with an aircraft is a reference to any claim corresponding to any claim mentioned in sub-paragraph (i) or (ii) of paragraph (f) which is available under section 87 of the Civil Aviation Act 1982.”

SCHEDULE 3

Section 6.

EXTENSION OF STRICT LIABILITY FOR OIL POLLUTION BY SHIPS

PART I

AMENDMENTS OF THE 1971 ACT

1. After section 1 of the 1971 Act there shall be inserted the following section—

“Liability for oil pollution in case of other ships.

1A.—(1) Where, as a result of any occurrence, any persistent oil is discharged or escapes from a ship other than a ship to which section 1 of this Act applies (that is to say a ship carrying a cargo of persistent oil in bulk), 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 other than a ship to which section 1 of this Act applies by the contamination which might result if there were a discharge or escape of persistent 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 the subsequent provisions of this Act any such threat is referred to as a relevant threat of contamination.

(3) 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

SCH. 3

- (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.

(4) 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.

(5) In this section "ship" includes a vessel which is not sea-going."

2. After section 2 of the 1971 Act there shall be inserted the following section—

"Exceptions from liability under section 1A.

2A. No liability shall be incurred by the owner of a ship under section 1A of this Act by reason of any discharge or escape of persistent 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. After section 3 of the 1971 Act there shall be inserted the following section—

"Restriction of liability for oil pollution.

3A.—(1) Where, as a result of any occurrence—

- (a) any persistent oil is discharged or escapes from a ship to which section 1A 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 1A 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 by him 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 1A 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 1A 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. In section 9 (extinguishment of claims), after the words “section 1” there shall be inserted the words “or 1A”.

5. In section 15 (liability for cost of preventive measures where section 1 does not apply)—

- (a) subsection (1) shall be omitted; and
- (b) in subsection (2), for the words “this section” there shall be substituted the words “section 1A of this Act”.

6. In section 20(2) (interpretation of references to the owner of a ship)—

- (a) after the words “in a ship” there shall be inserted the words “, or from a relevant threat of contamination,”; and
- (b) at the end, there shall be inserted the words “or (as the case may be) in the threat of contamination”.

PART II

AMENDMENTS OF THE 1971 ACT AS AMENDED BY THE 1988 ACT

1. In section 1(2) of the 1971 Act (liability for threat of oil pollution), for the words “contamination resulting from” there shall be substituted the words “the contamination which might result if there were”.

2. After section 1 of the 1971 Act there shall be inserted the following section—

“Liability for oil pollution in case of other ships.

1A.—(1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship other than a ship to which section 1 of this Act 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.

SCH. 3

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a ship to which section 1 of this Act applies by the contamination which might result if there were 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 the subsequent provisions of this Act any such threat is referred to as a relevant threat of contamination.

(3) 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.

(4) 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.

(5) In this section “ship” includes a vessel which is not sea-going.”

3. In section 2 (exceptions from liability), after the words “section 1” there shall be inserted the words “or 1A”.

4. In section 3 (restriction of liability)—

(a) in subsection (1)—

(i) for the words “to which section 1 of this Act applies” there shall be substituted the words “(whether one to which section 1 of this Act applies or one to which section 1A of this Act applies)”; and

(ii) after the words “under section 1” there shall be inserted the words “or 1A”; and

(b) in subsection (2)(e), after the words “section 1” there shall be inserted the words “or 1A”.

5. In section 9 (extinguishment of claims), after the words “section 1” there shall be inserted the words “or 1A”.

6. In section 13 (jurisdiction of United Kingdom courts, etc.)—

(a) in subsection (2)(b), for the words from “damage” to the end there shall be substituted the words “such damage in the area of the United Kingdom”; and

(b) in subsection (2A)(b), for the words from “damage” to the end there shall be substituted the words “such damage in the area of another Convention country”.

7. In section 15 (liability for cost of preventive measures where section 1 does not apply)—

- (a) subsections (1), (1A) and (1B) shall be omitted; and
- (b) in subsection (2), for the words “this section” there shall be substituted the words “section 1A of this Act”.

8. In section 20(1) (definitions), in the definition of “ship”, after the word “ship” there shall be inserted the words “(subject to section 1A(5))”.

PART III

MODIFICATIONS OF PARTS I AND II

1. The section 1A inserted by Part II shall be substituted for the section 1A inserted by Part I.
2. The section 2A inserted by Part I shall cease to have effect.
3. The section 3A inserted by Part I shall cease to have effect.
4. The reference to section 1A inserted in section 9 and in section 15 shall be construed as referring to the section 1A substituted by Part II for the section 1A inserted by Part I, and the omission in section 15 of subsection (1) by Part II shall be treated as effected by the corresponding omission by Part I.

SCHEDULE 4

Section 10.

REPEALS

Chapter	Short title	Extent of repeal
1894 c. 60.	Merchant Shipping Act 1894.	Sections 544, 545 and 546.
1911 c. 57.	Maritime Conventions Act 1911.	Sections 6 and 7. In section 8 the words “or in respect of any salvage services” and “or the salvage services were rendered”.
1947 c. 44.	Crown Proceedings Act 1947.	In section 30(1), the words “and the limitation of actions in respect of salvage services”.
1949 c. 43.	Merchant Shipping (Safety Convention) Act 1949.	In section 22(8), the words from the beginning to “; and”.
1956 c. 46.	Administration of Justice Act 1956.	In section 48, paragraph (e).
1971 c. 59.	Merchant Shipping (Oil Pollution) Act 1971.	Section 15(1).
1971 c. 60.	Prevention of Oil Pollution Act 1971.	In section 12(9), the word “and” at the end of the definition of “accident”.
1974 c. 43.	Merchant Shipping Act 1974.	Section 8(3).
1988 c. 12.	Merchant Shipping Act 1988.	In Schedule 4, paragraph 12. In Schedule 4, paragraph 21(b).

SCH. 4

Chapter	Short title	Extent of repeal
1993 c. 22.	Merchant Shipping (Registration, etc.) Act 1993.	In Schedule 5, the amendment of section 546 of the Merchant Shipping Act 1894. In Schedule 4— in paragraph 2(3) the words from “and in section 544” to the end; in paragraph 6(1)(a), the words from “section 544” to “waters”; in paragraph 6(2) the words from “section 6” to “1911; and”; and paragraph 18.

PRINTED IN THE UNITED KINGDOM BY PAUL FREEMAN
Controller and Chief Executive of Her Majesty's Stationery Office
and Queen's Printer of Acts of Parliament

