

Status: Point in time view as at 01/10/1994.

Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping (Salvage and Pollution) Act 1994 (repealed 1.1.1996), SCHEDULE 3. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Section 6.

EXTENSION OF STRICT LIABILITY FOR OIL POLLUTION BY SHIPS

Commencement Information

- II** Sch. 3 not in force at Royal Assent see s. 10(4); Sch. 3 Pt. I in force at 1.10.1994 by S.I. 1994/1988, art. 3, Sch. 2

PART I

AMENDMENTS OF THE 1971 ACT

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

“1A Liability for oil pollution in case of other ships.

- (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;

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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.”

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

“2A Exceptions from liability under section 1A.

o 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—

“3A Restriction of liability for oil pollution.

(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—

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- (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 ”.

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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—

“1A Liability for oil pollution in case of other ships.

(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.

(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)

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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 ”; and
 - (c) in subsection (3), 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)) ”.

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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.

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