

Status: Point in time view as at 29/07/2022.

Changes to legislation: Merchant Shipping Act 1995, Paragraph 175 is up to date with all changes known to be in force on or before 30 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 4

PREVENTION OF OIL POLLUTION: TRANSITORY PROVISIONS

COMPENSATION FUND

Compensation for persons suffering pollution damage

Liability of the Fund.

- 175 (1) The Fund shall be liable for pollution damage in the territory of the United Kingdom if the person suffering the damage has been unable to obtain full compensation under section 153—
- (a) because the discharge or escape causing the damage—
 - (i) resulted from an exceptional, inevitable and irresistible phenomenon, or
 - (ii) was due wholly to anything done or left undone by another person (not being a servant or agent of the owner) with intent to do damage, or
 - (iii) 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,(and because liability is accordingly wholly displaced by section 155), or
 - (b) because the owner or guarantor liable for the damage cannot meet his obligations in full, or
 - (c) because the damage exceeds the liability under section 153 as limited by section 157.
- (2) Subsection (1) above shall apply with the substitution for the words “ United Kingdom ” of the words “ a Fund Convention country ” where—
- (a) the headquarters of the Fund is for the time being in the United Kingdom, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country, or
 - (b) the incident has caused pollution damage in the territory of the United Kingdom and of another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the United Kingdom.

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- (3) Where the incident has caused pollution damage in the territory of the United Kingdom and of another country in respect of which the Liability Convention is in force, references in this section to the provisions of Chapter III of this Part shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.
- (4) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country and the Fund is liable for that pollution damage by virtue of subsection (2)(a) above, references in this section to the provisions of Chapter III of this Part shall be treated as references to the corresponding provisions of the law of the country in which those proceedings were brought.
- (5) For the purposes of this section an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.
- (6) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 153.
- (7) The Fund shall incur no obligation under this section if—
 - (a) it proves that the pollution damage—
 - (i) resulted from an act of war, hostilities, civil war or insurrection, or
 - (ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on Government non-commercial service, or
 - (b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.
- (8) Subject to subsection (9) below, if the Fund proves that the pollution damage resulted wholly or partly—
 - (a) from an act or omission done with intent to cause damage by the person who suffered the damage, or
 - (b) from the negligence of that person,the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person.
- (9) Subsection (8) above does not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimise pollution damage.
- (10) Where the liability under section 153 is limited to any extent by subsection (5) of that section, the Fund shall be exonerated to the same extent.

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