

SCHEDULE TO THE ORDER
THE MERCHANT SHIPPING ACT 1995
PREVENTION OF POLLUTION PART VI
CHAPTER III
LIABILITY FOR OIL POLLUTION

Compulsory insurance

Compulsory insurance against liability for pollution.

163.—(1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) below shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of oil of a description specified in regulations made by the Governor.

(2) The ship shall not enter or leave a port in the Falkland Islands or arrive at or leave a terminal in the territorial sea of the Falkland Islands nor, if the ship is registered in the Falkland Islands, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) below and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention (cover for owner's liability).

(3) The certificate must be—

- (a) if the ship is registered in the Falkland Islands, a certificate issued by the Governor;
- (b) if the ship is registered in a Liability Convention country other than the Falkland Islands, a certificate issued by or under the authority of the government of the other Liability Convention country; and
- (c) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Governor or by or under the authority of the government of any Liability Convention country other than the Falkland Islands.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any customs officer and, if the ship is registered in the Falkland Islands, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2) above, the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding £50,000.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4) above, the master shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) If a ship attempts to leave a port in the Falkland Islands in contravention of this section the ship may be detained.

Issue of certificate by Governor.

164.—(1) Subject to subsection (2) below, if the Governor is satisfied, on the application for such a certificate as is mentioned in section 163 in respect of a ship registered in the Falkland Islands or in any country which is not a Liability Convention country, that there will be in force in respect of

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the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Governor shall issue such a certificate to the owner.

(2) If the Governor is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 153 in all circumstances, he may refuse the certificate.

(3) The Governor may make regulations providing for the cancellation and delivery up of a certificate under this section in such circumstances as may be prescribed by the regulations.

(4) If a person required by regulations under subsection (3) above to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) The Governor shall send a copy of any certificate issued by him under this section in respect of a ship registered in the Falkland Islands to the Registrar of Shipping and the Registrar shall make the copy available for public inspection.

Rights of third party against insurers.

165.—(1) Where it is alleged that the owner of a ship has incurred a liability under section 153 as a result of any discharge or escape of oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 163 related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as "the insurer").

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence (in addition to any defence affecting the owner's liability), to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from anything done or omitted to be done by the owner as mentioned in section 157(3).

(4) Where the owner and the insurer each apply to the court for the limitation of his liability any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.