

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

Supplementary

166.—(1) . . .

(2) Where—

- (a) any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of the Falkland Islands and no measures are reasonably taken to prevent or minimise such damage in that territory, or
- (b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the Falkland Islands,

no court in the Falkland Islands shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost—

- (i) against the owner of the ship, or
- (ii) against any person to whom section 156(1)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(3) In subsection (2) above, “relevant damage or cost” means—

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Liability Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country;
- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b) above;

and section 156(2)(e) shall have effect for the purposes of subsection (2)(ii) above as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b) above.

(4) The Foreign Judgments (Reciprocal Enforcement) Ordinance 1959(1) shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 153; and in its application to such a judgment that Ordinance shall have effect with the omission of subsections (2) and (3) of section 6.

Government ships.

167.—(1) Nothing in the preceding provisions of this Chapter applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

(1) Laws of the Falklands Islands, No 4 of 1959.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with section 163(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Convention.

(3) Every Liability Convention State shall, for the purposes of any proceedings brought in a court in the Falkland Islands to enforce a claim in respect of a liability incurred under section 153, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution against the property of any State.

Limitation of liability under section 154.

168. For the purposes of section 185 as applied in the Falkland Islands any liability incurred under section 154 shall be deemed to be a liability to damages in respect of such damage to property as is mentioned in paragraph l(a) of Article 2 of the Convention on Limitation of Liability for Maritime Claims 1976.

Saving for recourse actions.

169. Nothing in this Chapter shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Chapter may have against another person in respect of that liability.

Interpretation.

170.—(1) In this Chapter—

“the court” means the Supreme Court of the Falkland Islands;

“damage” includes loss;

“oil” means persistent hydrocarbon mineral oil;

“owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as its operator;

“relevant threat of contamination” shall be construed in accordance with section 153(2) or 154(2); and

“ship” (subject to section 154(5)) means any sea-going vessel or seaborne craft of any type whatsoever.

(2) In relation to any damage or cost resulting from the discharge or escape of any oil from a ship, or from a relevant threat of contamination, references in this Chapter to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape or (as the case may be) in the threat of contamination.

(3) . . .

(4) References in this Chapter to the territory of any country include the territorial sea of that country and

(a) in the case of the Falkland Islands, any area within the Falkland Islands Pollution Control Zone; and

(b) in the case of any other Liability Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending

not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by that State in question in accordance with international law.

(5) In subsection (4) above, “Falkland Islands Pollution Control Zone” means an area co-extensive with the fishing waters of the Falkland Islands as defined in section 3 of the Fishing (Conservation and Management) Ordinance 1986⁽²⁾ so far as those fishing waters lie beyond the territorial sea.

171. — . . .

(2) No.11 of 1986.