

SCHEDULE

SCHEDULE 7 TO THE MERCHANT SHIPPING ACT 1995 AS AMENDED

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.

Right to limit liability

2. Subject to paragraph 6 below, the right to limit liability under the Convention shall apply in relation to any ship whether seagoing or not, and the definition of “shipowner” in paragraph 2 of article 1 shall be construed accordingly.

Claims subject to limitation

2A. Paragraph 1(a) of article 2 shall have effect as if the reference to “loss of life or personal injury” did not include a reference to loss of life or personal injury to passengers of seagoing ships.

3.—(1) Paragraph 1(d) of article 2 shall not apply unless provision has been made by an order of the Secretary of State for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said paragraph 1(d), of amounts recoverable by them in claims of the kind there mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.

(2) Any order under sub-paragraph (1) above may contain such incidental and supplemental provisions as appear to the Secretary of State to be necessary or expedient.

Claims excluded from limitation

4.—(1) Claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, or any amendment of or Protocol to that Convention, which arise from occurrences which take place after the coming into force of the first Order in Council made by Her Majesty under section 182B of this Act shall be excluded from the Convention.

(2) The claims excluded from the Convention by paragraph (b) of article 3 are claims in respect of any liability incurred under section 153 of this Act.

(3) The claims excluded from the Convention by paragraph (c) of article 3 are claims made by virtue of any of sections 7 to 11 of the Nuclear Installations Act 1965.

The general limits

5.—(1) In the application of article 6 to a ship with a tonnage less than 300 tons that article shall have effect as if—

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- (a) paragraph 1 (a)(i) referred to 1,000,000 Units of Account; and
 - (b) paragraph 1 (b)(i) referred to 500,000 Units of Account.
- (2) for the purposes of article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Secretary of State.
- (3) Any order under this paragraph shall, so far as appears to the Secretary of State to be practicable, give effect to the regulations in Annex I of the International Convention on Tonnage Measurement of Ships 1969.

Limit for passenger claims

- 6.—(1) Article 7 shall not apply in respect of any seagoing ship; and shall have effect in respect of any ship which is not seagoing as if in paragraph 1 of that article—
- (a) after “thereof” there were inserted “in respect of each passenger”, and
 - (b) the words from “multiplied” onwards were omitted.
- (2) In paragraph 2 of article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the Fatal Accidents Act 1976, the Fatal Accidents (Northern Ireland) Order 1977 or the Damages (Scotland) Act 1976.

Units of Account

- 7.—(1) For the purpose of converting the amounts mentioned in Articles 6 and 7 from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
- (a) the relevant date under paragraph 1 of article 8; or
 - (b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.
- (2) A certificate given by or on behalf of the Treasury stating—
- (a) that a particular sum in sterling has been fixed as mentioned in sub-paragraph (1) above for a particular date; or
 - (b) that no sum has been so fixed for that date and that a particular sum in sterling has been so fixed for a date which is the last preceding date for which a sum has been so fixed,
- shall be conclusive evidence of those matters for the purposes of those articles; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Constitution of fund

- 8.—(1) The Secretary of State may, with the concurrence of the Treasury, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of article 11.
- (2) Any statutory instrument containing an order under sub-paragraph (1) above shall be laid before Parliament after being made.
- (3) Where a fund is constituted with the court in accordance with article 11 for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

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Distribution of fund

9. No lien or other right in respect of any ship or property shall affect the proportions in which under article 12 the fund is distributed among several claimants.

Bar to other actions

10. Where the release of a ship or other property is ordered under paragraph 2 of article 13 the person on whose application it is ordered to be released shall be deemed to have submitted to (or, in Scotland, prorogated) the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

Meaning of “court”

11. References in the Convention and the preceding provisions of this Part of this Schedule to the court are references to the High Court or, in relation to Scotland, the Court of Session.

Meaning of “ship”

12. References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.

Meaning of “State Party”

13. 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 as amended by the 1996 Protocol 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 as amended by the 1996 Protocol.