



# Merchant Shipping (Oil Pollution) Act 1971

## 1971 CHAPTER 59

An Act to make provision with respect to civil liability for oil pollution by merchant ships; and for connected purposes. [27th July 1971]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

### **1 Liability for oil pollution.**

- (1) Where, as a result of any occurrence taking place Liability for while a ship is carrying a cargo of persistent oil in bulk, any oil pollution. persistent oil carried by the ship (whether as part of the cargo or otherwise) is discharged or escapes from the ship, the owner of the ship shall be liable, except as otherwise provided by this Act,—
  - (a) for any damage caused 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 reducing any such damage in the area of the United Kingdom ; and
  - (c) for any damage caused in the area of the United Kingdom by any measures so taken.
- (2) Where a person incurs a liability under subsection (1) of this section he shall also be liable for any damage or cost for which he would be liable under that subsection if the references therein to the area of the United Kingdom included the area of any other Convention country.
- (3) Where persistent oil is discharged or escapes from two or more ships and—
  - (a) a liability is incurred under this section by the owner of each of them ; 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) For the purposes of this Act, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one ; but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape.
- (5) 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.

## **2 Exceptions from liability under s. 1.**

The owner of a ship from which persistent oil has been discharged or has escaped shall not incur any liability under section 1 of this Act if he proves that the discharge or escape—

- (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 left undone 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 Restriction of liability for oil pollution.**

Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by the ship is discharged or escapes then, whether or not the owner incurs a liability under section 1 of this Act,—

- (a) he shall not be liable otherwise than under that section for any such damage or, cost as is mentioned therein ; and
- (b) no servant or agent of the owner nor any person performing salvage operations with the agreement of the owner shall be liable for any such damage or cost.

## **4 Limitation of liability under s. 1.**

- (1) Where the owner of a ship incurs a liability under section 1 of this Act by reason of a discharge or escape which occurred without his actual fault or privity—
  - (a) section 503 of the Merchant Shipping Act 1894 (limitation of liability) shall not apply in relation to that liability ; but
  - (b) he may limit that liability in accordance with the provisions of this Act, and if he does so his liability (that is to say, the aggregate of his liabilities under section 1 resulting from the discharge or escape) shall not exceed 2,000 gold francs for each ton of the ship's tonnage nor (where that tonnage would result in a greater amount) 210 million gold francs.

- (2) For the purposes of this section the tonnage of a ship shall be ascertained as follows :—
- (a) if the ship is a British ship (whether registered in the United Kingdom or elsewhere) or a ship to which an Order under section 84 of the Merchant Shipping Act 1894 applies, its tonnage shall be taken to be its registered tonnage increased, where a deduction has been made for engine room space in arriving at that tonnage, by the amount of that deduction ;
  - (b) if the ship is not such a ship as is mentioned in the preceding paragraph and it is possible to ascertain what would be its registered tonnage if it were registered in the United Kingdom, that paragraph shall apply (with the necessary modifications) as if the ship were so registered ;
  - (c) if the ship is not such a ship as is mentioned in paragraph (a) of this subsection and is of a description with respect to which no provision is for the time being made by regulations under section 1 of the Merchant Shipping Act 1965 (tonnage regulations) its tonnage shall be taken to be 40 per cent. of the weight (expressed in tons of 2,240 lbs.) of oil which the ship is capable of carrying ;
  - (d) if the tonnage of the ship cannot be ascertained in accordance with the preceding paragraphs the Chief Ship Surveyor of the Department of Trade and Indus. try shall, if so directed by the court, certify what, on the evidence specified in the direction, would in his opinion be the tonnage of the ship if ascertained in accordance with those paragraphs, and the tonnage stated in his certificate shall be taken to be the tonnage of the ship.
- (3) For the purposes of this section a gold franc shall be taken to be a unit of sixty-five and a half milligrams of gold of millesimal fineness nine hundred.
- (4) The Secretary of State may from time to time by order made by statutory instrument specify the amounts which for the purposes of this section are to be taken as equivalent to 2,000 gold francs and 210 million gold francs respectively.
- (5) Where the amounts specified by an order under the preceding subsection are varied by a subsequent order the variation shall not affect the limit of any liability under section 1 of this Act if, before the variation comes into force, an amount not less than that limit (ascertained in accordance with the order then in force) has been paid into court (or, in Scotland, consigned in court) in proceedings for the limitation of that liability in accordance with this Act.

## **5 Limitation actions.**

- (1) Where the owner of a ship has or is alleged to have incurred a liability under section 1 of this Act he may apply to the court for the limitation of that liability to an amount determined in accordance with section 4 of this Act.
- (2) If on such an application the court finds that the applicant has incurred such a liability and is entitled to limit it, the court shall, after determining the limit of the liability and directing payment into court of the amount of that limit,—
- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings ; and
  - (b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.
- (3) No claim shall be admitted in proceedings under this section unless it is made within such time as the court may direct or such further time as the court may allow.

- (4) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends,—
- (a) by the owner or the person referred to in section 12 of this Act as " the insurer " ; or
  - (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 1 of this Act, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of the Merchant Shipping (Liability of Shipowners and Others) Act 1958 ;
- the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made as in proceedings under this section as the person to whom it paid would have been.
- (5) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.
- (6) The court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the United Kingdom.

## **6 Restriction on enforcement of claims after establishment of limitation fund.**

- (1) Where the court has found that a person who has incurred a liability under section 1 of this Act is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount—
- (a) the court shall order the release of any ship or other fund. property arrested in connection with a claim in respect of that liability or any security given to prevent obtain release from such an arrest ; and
  - (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs (or, in Scotland, expenses) ;
- if the sum paid into court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 5 of this Act had been taken.
- (2) In the application of this section to Scotland, any reference (however expressed) to release from arrest shall be construed as a reference to the recall of an arrestment.

## **7 Concurrent liabilities of owners and others.**

Where, as a result of any discharge or escape of persistent oil from a ship, the owner of the ship incurs a liability under section 1 of this Act and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) of that section, then, if—

- (a) the owner has been found, in proceedings under section 5 of this Act, to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount ; and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of the Merchant Shipping (Liability of Shipowners and Others) Act 1958 ;

no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the owner paid the sum into court, no further steps shall be taken in the proceedings except in relation to costs.

## **8 Establishment of limitation fund outside United Kingdom.**

Where the events resulting in the liability of any person under section 1 of this Act also resulted in a corresponding liability under the law of another Convention country sections 6 and 7 of this Act shall apply as if the references to sections 1 and 5 of this Act included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability.

## **9 Extinguishment of claims.**

No action to enforce a claim in respect of a liability incurred under section 1 of this Act shall be entertained by any court in the United Kingdom unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape by reason of which the liability was incurred.

## **10 Compulsory insurance against liability for pollution.**

- (1) Subject to the provisions of this Act relating to Government ships, subsection (2) of this section shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of persistent oil of a description specified in regulations made by the Secretary of State.
- (2) The ship shall not enter or leave a port in the United Kingdom or arrive at or leave a terminal in the territorial sea of the United Kingdom nor, if the ship is registered in the United Kingdom, 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) of this section 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 Convention (cover for owner's liability).
- (3) The certificate must be—
  - (a) if the ship is registered in the United Kingdom, a certificate issued by the Secretary of State ;
  - (b) if the ship is registered in a Convention country other than the United Kingdom, a certificate issued by or under the authority of the government of the other Convention country; and
  - (c) if the ship is registered in a country which is not a Convention country, a certificate issued by the Secretary of State or a certificate recognised for the purposes of this paragraph by regulations made under this section.
- (4) The Secretary of State may by regulations provide that certificates in respect of ships registered in any, or any specified, country which is not a Convention country shall, in such circumstances as may be specified in the regulations, be recognised for the purposes of subsection (3)(c) of this section if issued by or under the authority of the government of the country designated in the regulations in that behalf ; and the country that may be so designated may be either or both of the following, that is to say—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the country in which the ship is registered ; and
  - (b) any country specified in the regulations for the pur-poses of this paragraph.
- (5) 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 officer of customs or of the Department of Trade and Industry and, if the ship is registered in the United Kingdom, to any proper officer within the meaning of section 97(1) of the Merchant Shipping Act 1970.
- (6) 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) of this section, the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding £35,000.
- (7) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (5) of this section the master shall be liable on summary conviction to a fine not exceeding £400.
- (8) If a ship attempts to leave a port in the United Kingdom in contravention of this section the ship may be detained.
- (9) Regulations under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **11 Issue of certificate by Secretary of State.**

- (1) Subject to subsection (2) of this section, if the Secretary of State is satisfied, on an application for such a certificate as is mentioned in section 10 of this Act in respect of a ship registered in the United Kingdom or any country which is not a Convention country, that there will be in force in respect of 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 Convention, the Secretary of State shall issue such a certificate to the owner.
- (2) If the Secretary of State 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 1 of this Act in all circumstances, he may refuse the certificate.
- (3) The Secretary of State may make regulations—
- (a) prescribing the fee to be paid on an application for a certificate to be issued by him under this section ; and
  - (b) providing for the cancellation and delivery up of such a certificate in such circumstances as may be prescribed by the regulations.
- (4) If a person required by regulations under subsection (3)(b) of this section to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding £200.
- (5) The Secretary of State shall send a copy of any certificate issued by him under this section in respect of a ship registered in the United Kingdom to the Registrar General of Shipping and Seamen, and the Registrar shall make the copy available for public inspection.

- (6) Regulations under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **12 Rights of third parties against insurers.**

- (1) Where it is alleged that the owner of a ship has incurred a liability under section 1 of this Act as a result of any discharge or escape of oil occurring while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 10 of this Act 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 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 occurred without the owner's actual fault or privity.
- (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.
- (5) The Third Parties (Rights against Insurers) Act 1930 and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 shall not apply in relation to any contract of insurance to which such a certificate as is mentioned in section 10 of this Act relates.

## **13 Jurisdiction of United Kingdom courts and registration of foreign judgments.**

- (1) Paragraph (d) of section 1(1) of the Administration of Justice Act 1956 and paragraph 1(1)(d) of Schedule 1 to that Act (Admiralty jurisdiction in claims for damage done by ships) shall be construed as extending to any claim in respect of a liability incurred under this Act, and the Admiralty jurisdiction of the Court of Session shall extend to any case arising out of any such claim.
- (2) Where any persistent oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the area of the United Kingdom and no measures are reasonably taken to prevent or reduce such damage in that area, no court in the United Kingdom shall entertain an action (whether in rem or in personam) to enforce a claim arising from—
- (a) any damage caused in the area of another Convention country by contamination resulting from the discharge or escape ;
  - (b) any cost incurred in taking measures to prevent or reduce such damage in the area of another Convention country ; or
  - (c) any damage caused by any measures so taken.
- (3) Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 1 of this Act ; and in its application to

such a judgment that Part shall have effect with the omission of subsections (2) and (3) of section 4 of that Act.

#### **14 Government ships.**

- (1) Nothing in the preceding provisions of this Act 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.
- (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 subsection (2) of section 10 of this Act 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 Convention will be met up to the limit prescribed by Article V thereof.
- (3) Every Convention State shall, for the purposes of any proceedings brought in a court in the United Kingdom to enforce a claim in respect of a liability incurred under section 1 of this Act, 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, or in Scotland the execution of diligence, against the property of any State.

#### **15 Liability for cost of preventive measures where s. 1 does not apply.**

- (1) Where,—
  - (a) after an escape or discharge of persistent oil from a ship, measures are reasonably taken for the purpose of preventing or reducing damage in the area of the United Kingdom which may be caused by contamination resulting from the discharge or escape ; and
  - (b) any person incurs, or might but for the measures have incurred, a liability, otherwise than under section 1 of this Act, for any such damage ;
 then, notwithstanding that subsection (1) (b) of that section does not apply, he shall be liable for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty.
- (2) For the purposes of section 503 of the Merchant Shipping Act 1894 (limitation of liability) any liability incurred under this section shall be deemed to be a liability to damages in respect of such loss, damage or infringement as is mentioned in subsection (1)(d) of that section.

#### **16 Saving for recourse actions.**

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

#### **17 Application to hovercraft.**

The enactments and instruments with respect to which provision may be made by an Order in Council under section 1(1)(h) of the Hovercraft Act 1968 shall include this Act and any instrument made under it.



## **18 Extension to British possessions, etc.**

- (1) Her Majesty may by Order in Council direct that this Act shall extend, subject to such exemptions, modifications or adaptations as may be specified in the Order, to any of the following countries, that is to say—
  - (a) the Isle of Man ;
  - (b) any of the Channel Islands ;
  - (c) any colony other than one for whose external relations a country other than the United Kingdom is responsible ;
  - (d) any country outside Her Majesty's dominions in which Her Majesty has jurisdiction in right of Her Majesty's Government of the United Kingdom.
- (2) Her Majesty may by Order in Council provide that this Act shall have effect as if any reference therein to the United Kingdom included a reference to any of the countries mentioned in the preceding subsection.
- (3) Any statutory instrument made by virtue of subsection (2) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **19 Meaning of “ the Convention, ” “ Convention country ” and “ Convention State. ”**

- (1) In this Act—
  - “ the Convention ” means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels in 1969;
  - “ Convention country ” means a country in respect of which the Convention is in force; and
  - “ Convention State ” means a State which is a party to the Convention.
- (2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Convention in respect of any country so specified the Order shall, while in force, be conclusive evidence that that State is a party to the Convention in respect of that country.

## **20 Interpretation of other expressions.**

- (1) In this Act—
  - “ damage ” includes loss;
  - “ owner ”, in relation to a registered ship, means the person registered as its owner, 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;
  - “ the court ” means the High Court in England and Wales, the Court of Session or the High Court in Northern Ireland or a judge thereof.
- (2) In relation to any damage or cost resulting from the discharge or escape of any oil carried in a ship references in this Act 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.
- (3) References in this Act to the area of any country include the territorial sea of that country.

**21 Citation, construction, commencement and extent.**

- (1) This Act may be cited as the Merchant Shipping (Oil Pollution) Act 1971, and this Act and the Merchant Shipping Acts 1894 to 1970 may be cited together as the Merchant Shipping Acts 1894 to 1971.
- (2) This Act shall be construed as one with the Merchant Shipping Acts 1894 to 1970.
- (3) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions of this Act.
- (4) This Act extends to Northern Ireland.