



# Merchant Shipping Act 1995

## 1995 CHAPTER 21

### PART VI

#### PREVENTION OF POLLUTION

#### CHAPTER IV

#### INTERNATIONAL OIL POLLUTION

#### COMPENSATION FUND

#### *Supplemental*

#### *Extinguishment of claims.*

#### 177 Jurisdiction and effect of judgments.

- (1) Paragraph 1(1)(d) of Schedule 1 to the <sup>M1</sup>Administration of Justice Act 1956 (Admiralty jurisdiction in claims for damage done by ships) shall be construed as extending to any claim in respect of a liability falling on the Fund [<sup>F1</sup>or the Supplementary Fund] under this Chapter; and the Admiralty jurisdiction of the Court of Session shall extend to any case arising out of any such claim.
- (2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 153<sup>F2</sup>...
  - (a) [<sup>F2</sup>the notice shall be deemed to have been given to the Supplementary Fund as well; and
  - (b) any judgment given in the proceedings shall, after it has become final and enforceable, become binding on the Fund and the Supplementary Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund or the Supplementary Fund even if it has not intervened in the proceedings]

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- (3) Where a person incurs a liability under the law of a Fund Convention country corresponding to Chapter III of this Part for damage which is partly in the territory of the United Kingdom, subsection (2) above shall, for the purpose of proceedings under this Chapter, apply with any necessary modifications to a judgment in proceedings under that law of the said country.
- [<sup>F3</sup>(4) Subject to subsections (5) and (6), Part 1 of the Foreign Judgments (Reciprocal Enforcement) Act 1933 shall apply, whether or not it would so apply apart from this subsection, to—
- (a) any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 175; and
  - (b) any judgment given by a court in a Supplementary Fund Protocol country to enforce a claim in respect of liability incurred under any provision corresponding to section 176A,
- and in its application to such a judgment the said Part 1 shall have effect with the omission of sections 4(2) and (3).
- (5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part 1 of the Act of 1933 gives leave to enforce it; and that leave shall not be given unless and until—
- (a) in the case of a judgment within subsection (4)(a), the Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 4 and 5 of Article 4 of the Fund Convention (as set out in Part 1 of Schedule 5 to this Act) or that it is to be reduced to a specified amount; or
  - (b) in the case of a judgment within subsection (4)(b), the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (as set out in Schedule 5ZA to this Act) or that it is to be reduced to a specified amount.
- [<sup>F3</sup>(6) Where the court is so notified that a claim is to be reduced to a specified amount, the judgment shall be enforceable only for the reduced amount.]]

#### **Textual Amendments**

- F1** Words in s. 177(1) inserted (8.9.2006) by [The Merchant Shipping \(Oil Pollution\) \(Supplementary Fund Protocol\) Order 2006 \(S.I. 2006/1265\)](#), arts. 1(2), **7(2)**
- F2** Words in s. 177(2) substituted (8.9.2006) by [The Merchant Shipping \(Oil Pollution\) \(Supplementary Fund Protocol\) Order 2006 \(S.I. 2006/1265\)](#), arts. 1(2), **7(3)**
- F3** S. 177(4)-(6) substituted for s. 177(4)(5) (8.9.2006) by [The Merchant Shipping \(Oil Pollution\) \(Supplementary Fund Protocol\) Order 2006 \(S.I. 2006/1265\)](#), arts. 1(2), **7(4)**

#### **Modifications etc. (not altering text)**

- C1** S. 177 extended (with modifications) to Anguilla (30.11.1997) by [S.I. 1997/2580](#), art. 2, **Sch.**
- S. 177 extended (with modifications) to Bermuda (30.11.1997) by [S.I. 1997/2581](#), art. 2, **Sch.**
- S. 177 extended (with modifications) to the British Antarctic Territory (30.11.1997) by [S.I. 1997/2582](#), art. 2, **Sch.**
- S. 177 extended (with modifications) to the British Indian Ocean Territory (30.11.1997) by [S.I. 1997/2583](#), art. 2, **Sch.**
- S. 177 extended (with modifications) to the Falkland Islands (30.11.1997) by [S.I. 1997/2584](#), art. 2, **Sch.**

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- S. 177 extended (with modifications) to the Pitcairn, Henderson, Ducie and Oneo Islands (30.11.1997) by S.I. 1997/2585, arts. 2, 3, **Sch.**
- S. 177 extended (with modifications) to the Sovereign Base Areas of Akrotiri and Dhekelia (30.11.1997) by S.I. 1997/2587, art. 2, **Sch.**
- S. 177 extended (with modifications) to South Georgia and the South Sandwich Islands (30.11.1997) by S.I. 1997/2588, art. 2, **Sch.**
- S. 177 extended (with modifications) to the Turks and Caicos Islands (30.11.1997) by S.I. 1997/2589, art. 2, **Sch.**
- S. 177 extended (with modifications) to the Virgin Islands (30.11.1997) by S.I. 1997/2590, art. 2, **Sch.**
- S.177 extended (with modifications) to Jersey (1.12.1997) by S.I. 1997/2598, arts. 2, 3, **Sch. 1**
- S. 177 extended (with modifications) to Guernsey (11.3.1998) by S.I. 1998/260, arts. 2, 3, **Sch. 1**
- S. 177 extended (with modifications) to the Cayman Islands (20.5.1998) by S.I. 1998/1261, art. 2, **Sch.**
- S. 177 extended (with modifications) to Montserrat (20.5.1998) by S.I. 1998/1262, art. 2, **Sch.**
- S. 177 extended (with modifications) to Saint Helena (20.5.1998) by S.I. 1998/1263, art. 2, **Sch.**

#### Marginal Citations

**M1** 1956 c. 46.

**178** (1) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in the United Kingdom unless—

- (a) the action is commenced, or
- (b) a third party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund,

not later than three years after the [<sup>F4</sup>damage occurred] .

In this subsection “third party notice” means a notice of the kind described in section 177(2) and (3).

(2) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in the United Kingdom unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the claim against the Fund arose.

[<sup>F5</sup>(3) Subsections (1) and (2) apply in relation to claims against the Supplementary Fund as they apply in relation to claims against the Fund (with the substitution for the reference to the Fund in subsection (1)(b) of a reference to the Supplementary Fund).

(4) For the purposes of this section—

- (a) a person who commences an action to enforce a claim against the Fund in relation to any damage shall be deemed to have also commenced an action to enforce any claim he may have against the Supplementary Fund in relation to that damage; and
- (b) a person who gives a third party notice to the Fund in relation to any damage as mentioned in subsection (1)(b) shall be deemed to have also given a notice to the Supplementary Fund in relation to that damage.]

#### Textual Amendments

**F4** Words in s. 178(1) substituted (30.5.2006) by Merchant Shipping (Pollution) Act 2006 (c. 8), ss. 3, 4(2)(3)

**F5** S. 178(3)(4) inserted (8.9.2006) by The Merchant Shipping (Oil Pollution) (Supplementary Fund Protocol) Order 2006 (S.I. 2006/1265), arts. 1(2), 8

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#### **Modifications etc. (not altering text)**

- C2** S. 178 extended (with modifications) to Anguilla (30.11.1997) by [S.I. 1997/2580, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to Bermuda (30.11.1997) by [S.I. 1997/2581, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to the British Antarctic Territory (30.11.1997) by [S.I. 1997/2582, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to the British Indian Ocean Territory (30.11.1997) by [S.I. 1997/2583, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to the Falkland Islands (30.11.1997) by [S.I. 1997/2584, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to the Pitcairn, Henderson, Ducie and Oneo Islands (30.11.1997) by [S.I. 1997/2585, arts. 2, 3, Sch.](#)  
 S. 178 extended (with modifications) to the Sovereign Base Areas of Akrotiri and Dhekelia (30.11.1997) by [S.I. 1997/2587, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to South Georgia and the South Sandwich Islands (30.11.1997) by [S.I. 1997/2588, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to the Turks and Caicos Islands (30.11.1997) by [S.I. 1997/2589, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to the Virgin Islands (30.11.1997) by [S.I. 1997/2590, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to Jersey (1.12.1997) by [S.I. 1997/2598, arts. 2, Sch. 1](#)  
 S. 178 extended (with modifications) to Guernsey (11.3.1998) by [S.I. 1998/260, arts. 2, 3, Sch. 1](#)  
 S. 178 extended (with modifications) to the Cayman Islands (20.5.1998) by [S.I. 1998/1261, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to Montserrat (20.5.1998) by [S.I. 1998/1262, art. 2, Sch.](#)  
 S. 178 extended (with modifications) to Saint Helena (20.5.1998) by [S.I. 1998/1263, art. 2, Sch.](#)

#### **179 Subrogation.**

- (1) In respect of any sum paid by the Fund as compensation for pollution damage the Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.
- [<sup>F6</sup>(1A) In respect of any sum paid by the Supplementary Fund as compensation for pollution damage the Supplementary Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.]
- (2) In respect of any sum paid by a public authority in the United Kingdom as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund [<sup>F7</sup>or the Supplementary Fund] under this Chapter.

#### **Textual Amendments**

- F6** S. 179(1A) inserted (8.9.2006) by [The Merchant Shipping \(Oil Pollution\) \(Supplementary Fund Protocol\) Order 2006 \(S.I. 2006/1265\), arts. 1\(2\), 9\(a\)](#)
- F7** Words in s. 179(2) inserted (8.9.2006) by [The Merchant Shipping \(Oil Pollution\) \(Supplementary Fund Protocol\) Order 2006 \(S.I. 2006/1265\), arts. 1\(2\), 9\(b\)](#)

#### **Modifications etc. (not altering text)**

- C3** S. 179 extended (with modifications) to Anguilla (30.11.1997) by [S.I. 1997/2580, art. 2, Sch.](#)  
 S. 179 extended (with modifications) to Bermuda (30.11.1997) by [S.I. 1997/2581, art. 2, Sch.](#)  
 S. 179 extended (with modifications) to the British Antarctic Territory (30.11.1997) by [S.I. 1997/2582, art. 2, Sch.](#)

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- S. 179 extended (with modifications) to the British Indian Territory (30.11.1997) by [S.I. 1997/2583, art. 2, Sch.](#)
- S. 179 extended (with modifications) to the Falkland Islands (30.11.1997) by [S.I. 1997/2584, art. 2, Sch.](#)
- S. 179 extended (with modifications) to the Pitcairn, Henderson, Ducie and Oneo Islands (30.11.1997) by [S.I. 1997/2585, arts. 2, 3, Sch.](#)
- S. 179 extended (with modifications) to the Sovereign Base Areas of Akrotiri and Dhekelia (30.11.1997) by [S.I. 1997/2587, art. 2, Sch.](#)
- S. 179 extended (with modifications) to South Georgia and the South Sandwich Islands (30.11.1997) by [S.I. 1997/2588, art. 2, Sch.](#)
- S. 179 extended (with modifications) to the Turks and Caicos Islands (30.11.1997) by [S.I. 1997/2589, art. 2, Sch.](#)
- S. 179 extended (with modifications) to the Virgin Islands (30.11.1997) by [S.I. 1997/2590, art. 2, Sch.](#)
- S. 179 extended (with modifications) to Jersey (1.12.1997) by [S.I. 1997/2598, arts. 2, 3, Sch. 1](#)
- S. 179 extended (with modifications) to Guernsey (11.3.1998) by [S.I. 1998/260, arts. 2, 3, Sch. 1](#)
- S. 179 extended (with modifications) to the Cayman Islands (20.5.1998) by [S.I. 1998/1261, art. 2, Sch.](#)
- S. 179 extended (with modifications) to Montserrat (20.5.1998) by [S.I. 1998/1262, art. 2, Sch.](#)
- S. 179 extended (with modifications) to Saint Helena (20.5.1998) by [S.I. 1998/1263, art. 2, Sch.](#)

## 180 Supplementary provisions as to proceedings involving the Fund.

- (1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund's representative.
- (2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.
- [<sup>F8</sup>(3) Subsections (1) and (2) apply in relation to the Supplementary Fund as they apply in relation to the Fund (with the substitution for references to the Director, any organ or an official of the Fund of references to the Director, any organ or an official of the Supplementary Fund).]

### Textual Amendments

- F8** [S. 180\(3\)](#) inserted (8.9.2006) by [The Merchant Shipping \(Oil Pollution\) \(Supplementary Fund Protocol\) Order 2006 \(S.I. 2006/1265\)](#), arts. 1(2), **10**

### Modifications etc. (not altering text)

- C4** [S. 180](#) extended (with modifications) to Anguilla (30.11.1997) by [S.I. 1997/2580, art. 2, Sch.](#)
- [S. 180](#) extended (with modifications) to Bermuda (30.11.1997) by [S.I. 1997/2581, art. 2, Sch.](#)
- [S. 180](#) extended (with modifications) to the British Antarctic Territory (30.11.1997) by [S.I. 1997/2582, art. 2, Sch.](#)
- [S. 180](#) extended (with modifications) to the British Indian Ocean Territory (30.11.1997) by [S.I. 1997/2583, art. 2, Sch.](#)
- [S. 180](#) extended (with modifications) to the Falkland Islands (30.11.1997) by [S.I. 1997/2584, art. 2, Sch.](#)

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S. 180 extended (with modifications) to the Pitcairn, Henderson, Ducie and Oneo Islands (30.11.1997) by [S.I. 1997/2585](#), arts. 2, 3, [Sch.](#)

S. 180 extended (with modifications) to the Sovereign Base Areas of Akrotiri and Dhekelia (30.11.1997) by [S.I. 1997/2587](#), art. 2, [Sch.](#)

S. 180 extended (with modifications) to South Georgia and the South Sandwich Islands (30.11.1997) by [S.I. 1997/2588](#), art. 2, [Sch.](#)

S. 180 extended (with modifications) to the Turks and Caicos Islands (30.11.1997) by [S.I. 1997/2589](#), art. 2, [Sch.](#)

S. 180 extended (with modifications) to the Virgin Islands (30.11.1997) by [S.I. 1997/2590](#), art. 2, [Sch.](#)

S. 180 extended (with modifications) to Jersey (1.12.1997) by [S.I. 1997/2598](#), arts. 2, 3, [Sch. 1](#)

S. 180 extended (with modifications) to Guernsey (11.3.1998) by [S.I. 1998/260](#), arts. 2, 3, [Sch. 1](#)

S. 180 extended (with modifications) to the Cayman Islands (20.5.1998) by [S.I. 1998/1261](#), art. 2, [Sch.](#)

S. 180 extended (with modifications) to Montserrat (20.5.1998) by [S.I. 1998/1262](#), art. 2, [Sch.](#)

S. 180 extended (with modifications) to Saint Helena (20.5.1998) by [S.I. 1998/1263](#), art. 2, [Sch.](#)

## 181 Interpretation.

(1) In this Chapter, unless the context otherwise requires—

“damage” includes loss;

“discharge or escape”, in relation to pollution damage, means the discharge or escape of oil from the ship;

“guarantor” means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 163;

“incident” means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination;

“oil”, except in sections 173 and 174, 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;

“pollution damage” means—

- (a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship,
- (b) the cost of preventive measures, and
- (c) further damage caused by preventive measures,

but does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of—

(i) any loss of profits, or

(ii) the cost of any reasonable measures of reinstatement actually taken or to be taken;

“preventive measures” means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken—

- (a) after an incident has occurred, or
- (b) in the case of an incident consisting of a series of occurrences, after the first of those occurrences;

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“relevant threat of contamination” means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship; and

“ship” means any ship (within the meaning of Chapter III of this Part) to which section 153 applies.

- (2) For the purposes of this Chapter—
- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and
  - (b) 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.
- (3) References in this Chapter to the territory of any country shall be construed in accordance with section 170(4) reading the reference to a Liability Convention country as a reference to a Fund Convention country [<sup>F9</sup>or a Supplementary Fund Protocol country (as the case may be)] .

#### Textual Amendments

- F9** Words in s. 181(3) inserted (8.9.2006) by [The Merchant Shipping \(Oil Pollution\) \(Supplementary Fund Protocol\) Order 2006 \(S.I. 2006/1265\)](#), arts. 1(2), **11**

#### Modifications etc. (not altering text)

- C5** S. 181 extended (with modifications) to Anguilla (30.11.1997) by [S.I. 1997/2580](#), art. 2, **Sch.**  
S. 181 extended (with modifications) to Bermuda (30.11.1997) by [S.I. 1997/2581](#), art. 2, **Sch.**  
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S. 181 extended (with modifications) to Montserrat (20.5.1998) by [S.I. 1998/1262](#), art. 2, **Sch.**  
S. 181 extended (with modifications) to Saint Helena (20.5.1998) by [S.I. 1998/1263](#), art. 2, **Sch.**

## 182 Transitory text of this Chapter and power to make transitional provisions.

- (1) Until such day as the Secretary of State may by order appoint the provisions set out in Schedule 4 as Chapter IV shall have effect instead of the foregoing provisions of

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this Chapter; and references in that Schedule to a section whose number is included in that Schedule is a reference to the section so included.

- (2) Notwithstanding subsection (1) above, Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate in connection with the implementation of any transitional provisions contained in the 1992 Protocol or the Conventions which they amend; and any such Order may in particular provide, in relation to occurrences of any description specified in the Order—
- (a) for specified provisions of this Chapter, whether as contained in this Chapter or in the Chapter IV set out in Schedule 4, to have effect;
  - (b) for any such provisions to have effect subject to specified modifications.
- (3) In subsection (2) above—

“the 1992 Protocol” means the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 signed in London on 27th November 1992; and

“specified” means specified in the Order.

**Subordinate Legislation Made**

**P1** S. 182(1) power exercised (30.5.1996) by [S.I. 1996/1210](#), [art. 2](#)



**Status:**

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