

Status: Point in time view as at 05/02/2015.

Changes to legislation: Merchant Shipping Act 1995, Cross Heading: Compulsory insurance is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 4

PREVENTION OF OIL POLLUTION: TRANSITORY PROVISIONS

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 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 a United Kingdom ship, 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).

For the purposes of this subsection the reference in Article VII to Article V of the Liability Convention shall be construed as a reference to Article V as amended by Article II of the protocol dated 19th November 1976 to the Liability Convention.

- (3) The certificate must be—
- (a) if the ship is a United Kingdom ship, a certificate issued by the Secretary of State;
 - (b) if the ship is registered in a Liability Convention country other than the United Kingdom, 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 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 Liability Convention country shall, in such circumstances as may be specified in the regulations, be recognised for the purposes of subsection (3)(c) above if issued by or under the authority of the government of the country designated in the regulations for that

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- purpose; and the country that may be so designated may be either or both of the following, that is to say—
- (a) the country in which the ship is registered; and
 - (b) any country specified in the regulations for the purposes 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 and excise or of the Secretary of State and, if the ship is a United Kingdom ship, to any proper officer.
- (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) above, the master or owner shall be liable—
- (a) on summary conviction, to a fine not exceeding £50,000;
 - (b) on conviction on indictment, to a fine.
- (7) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (5) above, the master shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) If a ship attempts to leave a port in the United Kingdom in contravention of this section the ship may be detained.

Issue of certificate by Secretary of State.

- 164 (1) Subject to subsection (2) below, if the Secretary of State is satisfied, on an application for such a certificate as is mentioned in section 163 in respect of a United Kingdom ship or a ship registered in any country which is not a Liability 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 Liability Convention, the Secretary of State shall issue such a certificate to the owner.

For the purposes of this subsection the reference in Article VII to Article V of the Liability Convention shall be construed as a reference to Article V as amended by Article II of the protocol dated 19th November 1976 to the Liability Convention.

- (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 153 in all circumstances, he may refuse the certificates.
- (3) The Secretary of State 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 Secretary of State shall send a copy of any certificate issued by him under this section in respect of a United Kingdom ship to the Registrar General of Shipping and Seamen, and the Registrar shall make the copy available for public inspection.

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Rights of third parties 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 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 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 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 ^{M1}Third Parties (Rights against Insurers) Act 1930 and the ^{M2}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 163 relates.

Marginal Citations

M1 1930 c.25.

M2 1930 c.9 (N.I.)

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