



Merchant Shipping Act 1974

1974 CHAPTER 43

PART I

THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

1 Interpretation of Part I.

- (1) In this Part of this Act—
- (a) the “Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage opened for signature in Brussels on 29th November 1969;
 - (b) the “Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18th December 1971;
 - (c) “the Fund” means the International Fund established by the Fund Convention; and
 - (d) “Fund Convention country” means a country in respect of which the Fund Convention is in force.
- (2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Fund 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.
- (3) In this Part of this Act, unless the context otherwise requires—
- the “Act of 1971” means the ^{M1}Merchant Shipping (Oil Pollution) Act 1971,
 - “damage” includes loss,
 - “discharge or escape”, in relation to pollution damage, means the discharge or escape of oil carried by the ship,
 - “guarantor” means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 10 of the Act of 1971,

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“oil”, except in sections 2 and 3, 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 damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever the escape or discharge may occur, and includes the cost of preventive measures and further damage caused by preventive measures,
 “preventive measures” means any reasonable measures taken by any person after the occurrence to prevent or minimise pollution damage,
 “ship” means any sea-going vessel and any seaborne craft of any type whatsoever carrying oil in bulk as cargo.

- (4) For the purposes of this Part of this Act a ship’s tonnage shall be the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage.

If the ship cannot be measured in accordance with the normal rules, its tonnage shall be deemed to be 40 per cent. of the weight in tons (of 2,240 lbs.) of oil which the ship is capable of carrying.

- (5) For the purposes of this Part 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.

[^{F1}(6) In this Part of this Act a franc shall be taken to be a unit of 65½ milligrammes of gold of millesimal fineness 900.

- (7) The Secretary of State may from time to time by order made by statutory instrument specify the amounts which for the purposes of this Part of this Act are to be taken as equivalent to any specified number of francs.]

Textual Amendments

F1 S. 1(6)(7) repealed (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), s. 52(2), [Sch. 7 Pt. II](#)

Marginal Citations

M1 1971 c. 59.

[^{F2}1 Interpretation of Part I.

- (1) In this Part of this Act—

- ^{F3}(a) “the Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage 1984;
^{F3}(b) “the Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1984;
 (c) “the Fund” means the International Fund established by the Fund Convention; and
 (d) “Fund Convention country” means a country in respect of which the Fund Convention is in force.

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- (2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Fund 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.
- (3) In this Part of this Act, unless the context otherwise requires—
- “the Act of 1971” means the Merchant Shipping (Oil Pollution) Act ^{M2}1971;
 - “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 10 of the Act of 1971;
 - “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 2 and 3, 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 (subject to subsection (4) below)—
 - (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;
 - “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;
 - “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;
 - “ship” means any ship (within the meaning of the Act of 1971) to which section 1 of that Act applies.
- (4) In this Part of this Act “pollution damage” does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of—
- (a) any loss of profits, or
 - (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.
- (5) For the purposes of this Part of this Act—
- (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

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- (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.
- (6) References in this Part of this Act to the area of any country include (in addition to its territorial sea)—
- (a) in the case of the United Kingdom, any area within the British fishery limits set by or under the ^{M3}Fishery Limits Act 1976; and
- (b) in the case of any other Fund 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 the State in question in accordance with international law;
- and references to pollution damage in the United Kingdom shall be construed accordingly.]

Textual Amendments

- F2** S. 1(1)–(6) substituted (*prosp.*) for s. 1(1)–(7) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), Sch. 4 Pt. II para. 15, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch. 2)
- F3** Definitions in s. 1(1)(a)(b) amended (*prosp.*) by 1994 c. 28, ss. 5(1), 10(4) (which amending Act was repealed (1.1.1996) by 1995 c. 21, s. 314(1), Sch. 12)

Marginal Citations

- M2** 1971 c.59 (111).
M3 1976 c.86 (52:1).

Contributions to Fund

2 Contributions by importers of oil and others.

- (1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in the United Kingdom.
- (2) Subsection (1) above applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.
- (3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in the United Kingdom after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.
- (4) The person liable to pay contributions is—
- (a) in the case of oil which is being imported into the United Kingdom, the importer, and
- (b) otherwise, the person by whom the oil is received.
- (5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tonnes.

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- (6) For the purpose of subsection (5) above—
- (a) all the members of a group of companies shall be treated as a single person, and
 - (b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.
- (7) The contributions payable by a person for any year shall—
- (a) be of such amount as may be determined by the Assembly of the Fund under Articles 11 and 12 of the Fund Convention [^{F4}(as amended by Article III of the protocol dated 19th November 1976 to that Convention)] and notified to him by the Fund;
 - (b) be payable in such instalments, becoming due at such times, as may be so notified to him;
- and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the said Assembly, until it is paid.
- (8) The Secretary of State may by regulations contained in a statutory instrument impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Secretary of State, or to the Fund.

Regulations under this subsection—

- (a) may contain such supplemental or incidental provisions as appear to the Secretary of State expedient,
 - (b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding [^{F5}level 5 of the standard scale], or such lower limit as may be specified in the regulations, and
 - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this and the next following section, unless the context otherwise requires—
- “company” means a body incorporated under the law of the United Kingdom, or of any other country;
- “group” in relation to companies, means a holding company and its subsidiaries as defined by [^{F6}section 736 of the Companies Act 1985](or for companies in Northern Ireland [^{F7}Article 4 of the Companies (Northern Ireland) Order 1986]), subject, in the case of a company incorporated outside the United Kingdom, to any necessary modifications of those definitions;
- “importer” means the person by whom or on whose behalf the oil in question is entered for [^{F8}customs or excise purposes] on importation, and “import” shall be construed accordingly;
- “oil” means crude oil and fuel oil, and
- (a) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—
 - (i) crude oils from which distillate fractions have been removed, and
 - (ii) crude oils to which distillate fractions have been added,
 - (b) “fuel oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing

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and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier;

"terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site.

- (10) In this section "sea" does not include any waters on the landward side of the baselines from which the territorial sea of the United Kingdom is measured.

Textual Amendments

- F4** Words inserted (*prosp.*) by Merchant Shipping Act 1979 (c. 39), **ss. 38(4)(b)**, 52(2)
- F5** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 40**, 46; (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F**, 289G and (N.I.) S.I. 1984/703 (N.I. 3), **arts. 5**, 6
- F6** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F7** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F8** Words substituted by Customs and Excise Management Act 1979 (c. 2), **Sch. 4 para. 12** Table Pt. I

Modifications etc. (not altering text)

- C1** The definition of "group" in s. 2(9) amended by S.I. 1986/1035, **art. 22**

2 Contributions by importers of oil and others. **U.K.**

- (1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in the United Kingdom.
- (2) Subsection (1) above applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.
- (3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in the United Kingdom after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.
- (4) The person liable to pay contributions is—
 - (a) in the case of oil which is being imported into the United Kingdom, the importer, and
 - (b) otherwise, the person by whom the oil is received.
- (5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tonnes.
- (6) For the purpose of subsection (5) above—
 - (a) all the members of a group of companies shall be treated as a single person, and
 - (b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.
- (7) The contributions payable by a person for any year shall—
 - ^{F19}(a) be of such amount as may be determined by the Assembly of the Fund under Articles 11 and 12 of the Fund Convention ^{F20}(as amended by Article III of

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the protocol dated 19th November 1976 to that Convention)] and notified to him by the Fund;]

- [^{F19}(a) be of such amount as may be determined by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund;]
- (b) be payable in such instalments, becoming due at such times, as may be so notified to him;

and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the said Assembly, until it is paid.

- (8) The Secretary of State may by regulations contained in a statutory instrument impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Secretary of State, or to the Fund.

Regulations under this subsection—

- (a) may contain such supplemental or incidental provisions as appear to the Secretary of State expedient,
- (b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding [^{F21}level 5 of the standard scale], or such lower limit as may be specified in the regulations, and
- (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (9) In this and the next following section, unless the context otherwise requires—

“company” means a body incorporated under the law of the United Kingdom, or of any other country;

“group” in relation to companies, means a holding company and its subsidiaries as defined by [^{F22}section 736 of the Companies Act 1985](or for companies in Northern Ireland [^{F23}Article 4 of the Companies (Northern Ireland) Order 1986]), subject, in the case of a company incorporated outside the United Kingdom, to any necessary modifications of those definitions;

“importer” means the person by whom or on whose behalf the oil in question is entered for [^{F24}customs or excise purposes] on importation, and “import” shall be construed accordingly;

“oil” means crude oil and fuel oil, and

- (a) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—
- (i) crude oils from which distillate fractions have been removed, and
- (ii) crude oils to which distillate fractions have been added,
- (b) “fuel oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D 396-69)”, or heavier;

“terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site.

- (10) In this section “sea” does not include any waters on the landward side of the baselines from which the territorial sea of the United Kingdom is measured.

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Textual Amendments

- F19** S. 2(7)(a) commencing “be of such amount as may be determined by the Director” substituted (*prosp.*) for s. 2(7)(a) commencing “be of such amount as may be determined by the Assembly” by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 58(2), [Sch. 4 Pt. II para. 16](#), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, [Sch. 4](#) by 1993 c. 22, s. 8(4), [Sch. 5 Pt.II](#); S.I. 1993/3137, art. 3(2), [Sch.2](#))
- F20** Words inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), ss. [38\(4\)\(b\)](#), 52(2)
- F21** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. [40](#), 46; (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), ss. [289F](#), 289G and (N.I.) S.I. 1984/703 (N.I. 3), [arts. 5, 6](#)
- F22** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. [30](#), [Sch. 2](#)
- F23** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, [Sch. 1 Pt. II](#)
- F24** Words substituted by [Customs and Excise Management Act 1979 \(c. 2\)](#), [Sch. 4 para. 12](#) Table Pt. I

Modifications etc. (not altering text)

- C3** The definition of “group” in s. 2(9) amended by S.I. 1986/1035, [art. 22](#)

3 Power to obtain information.

- (1) For the purpose of transmitting to the Fund the names and addresses of the persons who under the last preceding section are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Secretary of State may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.
- (2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by subsection (6) of the last preceding section.
- (3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.
- (4) In proceedings by the Fund against any person to recover any amount due under the last preceding section, particulars contained in any list transmitted by the Secretary of State to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.
- (5) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, he shall, unless the disclosure is made—
 - (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the execution of this section, or
 - (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings,

be liable on summary conviction to a fine not exceeding [^{F9}level 5 on the standard scale].

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- (6) A person who—
- (a) refuses or wilfully neglects to comply with a notice under this section, or
 - (b) in furnishing any information in compliance with a notice under this section makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,
- shall be liable—
- (i) [F10 on summary conviction to a fine not exceeding £500 in the case of an offence under paragraph (a) of this subsection and not exceeding £1,000 in the case of an offence under paragraph (b) of this subsection, and]
 - (ii) on conviction on indictment to a fine, or to imprisonment for a term not exceeding twelve months, or to both.

Textual Amendments

- F9** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 46](#); (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#) and (N.I.) [S.I. 1984/703 \(N.I. 3\), art. 5](#)
- F10** Words substituted for s. 3(6)(i) by [Merchant Shipping Act 1979 \(c. 39\), Sch. 6 Pt. VI para. 18](#)

Modifications etc. (not altering text)

- C2** [S. 3\(6\)\(i\)](#) amended by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 49\(1\)](#)

Compensation for persons suffering pollution damage

4 Liability of the Fund.

- (1) The Fund shall be liable for pollution damage in the United Kingdom if the person suffering the damage has been unable to obtain full compensation under section 1 of the Act of 1971 (which gives effect to the Liability Convention)—
- (a) because the discharge or escape causing the damage—
 - (i) resulted from an exceptional, inevitable and irresistible phenomenon, or
 - (ii) 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
 - (iii) 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,(and because liability is accordingly wholly displaced by section 2 of the Act of 1971), or
 - (b) because the owner or guarantor liable for the damage cannot meet his obligations in full, or
 - (c) because the damage exceeds the liability under section 1 of the Act of 1971 as limited—
 - (i) by section 4 of the Act of 1971, . . . ^{F11}
 - (ii) ^{F11}
- (2) Subsection (1) above shall apply with the substitution for the words “the United Kingdom” of the words “a Fund Convention country” where—

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- (a) the headquarters of the Fund is for the time being in the United Kingdom, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country, or
 - (b) the incident has caused pollution damage both in the United Kingdom and in another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the United Kingdom.
- (3) Where the incident has caused pollution damage both in the United Kingdom and in another country in respect of which the Liability Convention is in force, references in this section to the provisions of the Act of 1971 shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.
- (4) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country and the Fund is liable for that pollution damage by virtue of subsection (2)(a) above, references in this section to the provisions of the Act of 1971 shall be treated as references to the corresponding provisions of the law of the country in which those proceedings were brought.
- (5) For the purposes of this section an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.
- (6) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 1 of the Act of 1971.
- (7) The Fund shall incur no obligation under this section if—
- (a) it proves that the pollution damage—
 - (i) resulted from an act of war, hostilities, civil war or insurrection, or
 - (ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on Government non-commercial service, or
 - (b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.
- (8) If the Fund proves that the pollution damage resulted wholly or partly—
- (a) from an act or omission done with intent to cause damage by the person who suffered the damage, or
 - (b) from the negligence of that person,
- the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person:
 Provided that this subsection shall not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimise pollution damage.

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- (9) Where the liability under section 1 of the Act of 1971 is limited to any extent by subsection (5) of that section (contributory negligence), the Fund shall be exonerated to the same extent.
- (10) The Fund's liability under this section shall be subject to the limits imposed by paragraphs 4, 5 and 6 of Article 4 of the Fund Convention [^{F12}as amended by Article III of the protocol dated 19th November 1976 to that convention)] which impose an overall liability on the liabilities of the owner and of the Fund, and the text of which is set out in Schedule 1 to this Act.
- (11) 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 be received in evidence without proof of the official position or handwriting of the person signing the certificate.
- (12) For the purpose of giving effect to the said provisions of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under this section shall notify the Fund, and—
- (a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it,
 - (b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under the said provisions of Article 4 of the Fund Convention, or that it is to be reduced to a specified amount, and
 - (c) in the latter case the judgment shall be enforceable only for the reduced amount.
- [^{F13}(13) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (12) above shall be steps to obtain payment in sterling; and—
- (a) for the purpose of converting such an amount 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—
 - (i) the day on which the judgment is given, or
 - (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
 - (b) a certificate given by or on behalf of the Treasury stating—
 - (i) that a particular sum in sterling has been so fixed for the day on which the judgment was given, or
 - (ii) that no sum has been so fixed for that day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the judgment was given,shall be conclusive evidence of those matters for the purposes of this Act;
 - (c) 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.]

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Textual Amendments

- F11** Word “or” and s. 4(1)(c)(ii) repealed by [Merchant Shipping Act 1979 \(c. 39\)](#), ss. 50(4), 52(2), [Sch. 7 Pt. 1](#)
- F12** Words inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), ss. [38\(4\)\(b\)](#), 52(2)
- F13** [S. 4\(13\)](#) inserted (*prosp.*) by [Merchant Shipping Act 1979 \(c. 39\)](#), ss. [38\(4\)\(c\)](#), 52(2)

4 Liability of the Fund. **U.K.**

- (1) The Fund shall be liable for pollution damage in the United Kingdom if the person suffering the damage has been unable to obtain full compensation under section 1 of the Act of 1971 (which gives effect to the Liability Convention)—
- (a) because the discharge or escape [^{F25}causing the damage][^{F25}, or the relevant threat of contamination, by reason of which the damage was caused]—
- (i) resulted from an exceptional, inevitable and irresistible phenomenon, or
- (ii) was due wholly to anything done or [^{F26}left undone][^{F26}omitted to be done]by another person (not being a servant or agent of the owner) with intent to do damage, or
- (iii) 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, (and because liability is accordingly wholly displaced by section 2 of the Act of 1971), or
- (b) because the owner or guarantor liable for the damage cannot meet his obligations in full, or
- (c) because the damage exceeds the liability under section 1 of the Act of 1971 as limited—
- (i) by section 4 of the Act of 1971, . . . ^{F27}
- (ii) ^{F27}
- (2) Subsection (1) above shall apply with the substitution for the words “the United Kingdom” of the words “a Fund Convention country” where—
- (a) the headquarters of the Fund is for the time being in the United Kingdom, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country, or
- (b) the incident has caused pollution damage both in the United Kingdom and in another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the United Kingdom.
- (3) Where the incident has caused pollution damage both in the United Kingdom and in another country in respect of which the Liability Convention is in force, references in this section to the provisions of the Act of 1971 shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.
- (4) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country and the Fund is liable for that pollution damage by virtue of subsection (2)(a) above,

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references in this section to the provisions of the Act of 1971 shall be treated as references to the corresponding provisions of the law of the country in which those proceedings were brought.

- (5) For the purposes of this section an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.
- (6) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 1 of the Act of 1971.
- (7) The Fund shall incur no obligation under this section if—
- (a) it proves that the pollution damage—
 - (i) resulted from an act of war, hostilities, civil war or insurrection, or
 - (ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on Government non-commercial service,or
 - (b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.
- [^{X1}(8) If the Fund proves that the pollution damage resulted wholly or partly—
- (a) from an act or omission done with intent to cause damage by the person who suffered the damage, or
 - (b) from the negligence of that person,
- the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person:
- Provided that this subsection shall not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimise pollution damage.
- (9) Where the liability under section 1 of the Act of 1971 is limited to any extent by subsection (5) of that section (contributory negligence), the Fund shall be exonerated to the same extent.]
- [^{F28}(8) If the Fund proves that the pollution damage resulted wholly or partly—
- (a) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage, or
 - (b) from the negligence of that person,
- the Fund may (subject to subsection (9A) below) be exonerated wholly or partly from its obligation to pay compensation to that person.
- (9) Where the liability under section 1 of the Act of 1971 in respect of the pollution damage is limited to any extent by subsection (8) of that section (contributory negligence), the Fund shall (subject to subsection (9A) below) be exonerated to the same extent.
- (9A) Subsections (8) and (9) above shall not apply where the pollution damage consists of the cost of preventive measures or any damage caused by such measures.]

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- [^{F29}(10) The Fund's liability under this section shall be subject to the limits imposed by paragraphs 4, 5 and 6 of Article 4 of the Fund Convention [^{F30}as amended by Article III of the protocol dated 19th November 1976 to that convention)] which impose an overall liability on the liabilities of the owner and of the Fund, and the text of which is set out in Schedule 1 to this Act.
- (11) 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 be received in evidence without proof of the official position or handwriting of the person signing the certificate.
- (12) For the purpose of giving effect to the said provisions of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under this section shall notify the Fund, and—
- (a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it,
 - (b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under the said provisions of Article 4 of the Fund Convention, or that it is to be reduced to a specified amount, and
 - (c) in the latter case the judgment shall be enforceable only for the reduced amount.
- [Any steps taken to obtain payment of an amount or a reduced amount in pursuance ^{F31}(13) of such a judgment as is mentioned in subsection (12) above shall be steps to obtain payment in sterling; and—
- (a) for the purpose of converting such an amount 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—
 - (i) the day on which the judgment is given, or
 - (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
 - (b) a certificate given by or on behalf of the Treasury stating—
 - (i) that a particular sum in sterling has been so fixed for the day on which the judgment was given, or
 - (ii) that no sum has been so fixed for that day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the judgment was given,
 shall be conclusive evidence of those matters for the purposes of this Act;
 - (c) 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.]]

Editorial Information

X1 S. 4(8)–(9A) substituted (*prosp.*) for S. 4(8)(9) by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), ss. 34, 58(2), [Sch. 4 Pt. II para. 17\(3\)](#), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell

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(1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)

Textual Amendments

- F25** Words substituted (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), **Sch. 4 Pt. II para. 17(2)(a)**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)
- F26** Words substituted (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), **Sch. 4 Pt. II para. 17(2)(b)**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)
- F27** Word “or” and s. 4(1)(c)(ii) repealed by Merchant Shipping Act 1979 (c. 39), ss. 50(4), 52(2), **Sch. 7 Pt. I**
- F28** S. 4(8)–(9A) substituted (*prosp.*) for S. 4(8)(9) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), **Sch. 4 Pt. II para. 17(3)**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)
- F29** S. 4(10)–(13) repealed (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 57(5), 58(2), **Sch. 4 Pt. II para. 17(4)**, **Sch. 7**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)
- F30** Words inserted (*prosp.*) by Merchant Shipping Act 1979 (c. 39), **ss. 38(4)(b)**, 52(2)
- F31** S. 4(13) inserted (*prosp.*) by Merchant Shipping Act 1979 (c. 39), **ss. 38(4)(c)**, 52(2)

[^{F14}4A Limitation of Fund’s liability under s. 4.

- (1) The Fund’s liability under section 4 of this Act shall be subject to the limits imposed by paragraphs 4 and 5 of Article 4 of the Fund Convention (which impose an overall limit on the liabilities of the Fund and the text of which is set out in Schedule 1 to this Act); and in those provisions references to the 1984 Liability Convention are references to the Liability Convention within the meaning of this Part of this Act.
- (2) A certificate given by the Director of the Fund stating that sub-paragraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 4 of this Act shall be conclusive evidence for the purposes of this Part of this Act that it is so applicable.
- (3) For the purpose of giving effect to paragraphs 4 and 5 of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under section 4 of this Act shall notify the Fund, and—
 - (a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it,
 - (b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount, and
 - (c) in the latter case the judgment shall be enforceable only for the reduced amount.
- (4) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (3) above shall be steps to obtain payment in sterling; and—
 - (a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in

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sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

- (i) the relevant day, namely the day on which the Assembly of the Fund decide the date for the first payment of compensation in respect of the incident, or
- (ii) if no sum has been so fixed for the relevant day, the last day before that day for which a sum has been so fixed; and
- (b) a certificate given by or on behalf of the Treasury stating—
 - (i) that a particular sum in sterling has been so fixed for the relevant day, or
 - (ii) that no sum has been so fixed for the relevant day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,

shall be conclusive evidence of those matters for the purposes of this Part of this Act.

- (5) The Secretary of State may by order made by statutory instrument make such amendments of this section and of Schedule 1 to this Act as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the provisions set out in that Schedule.
- (6) Any document purporting to be such a certificate as is mentioned in subsection (2) or (4)(b) above shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.]

Textual Amendments

F14 S. 4A inserted (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), **Sch. 4 Pt. II para. 17(5)**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) insertion fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt. II**; S.I. 1993/3137, art. 3(2), **Sch. 2**)

Indemnification of shipowners

5 Indemnification where damage is caused by ship registered in Fund Convention country.

- (1) Where a liability is incurred under section 1 of the Act of 1971 in respect of a ship registered in a Fund Convention country the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of the liability which—
 - (a) is in excess of an amount equivalent to 1,500 francs for each ton of the ship's tonnage or of an amount of 125 million francs, whichever is the less, and
 - (b) is not in excess of an amount equivalent to 2,000 francs for each ton of the said tonnage or an amount of 210 million francs, whichever is the less.
- (2) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country (but is a country in respect of which the Liability Convention is in force), and either—
 - (a) the incident has caused pollution damage in the United Kingdom (as well as in that other country); or
 - (b) the headquarters of the Fund is for the time being in the United Kingdom,

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subsection (1) above shall apply with the omission of the words “under section 1 of the Act of 1971”.

- (3) The Fund shall not incur an obligation under this section where the pollution damage resulted from the wilful misconduct of the owner.
- (4) In proceedings to enforce the Fund’s obligation under this section the court may exonerate the Fund wholly or partly if it is proved that, as a result of the actual fault or privity of the owner—
 - (a) the ship did not comply with such requirements as the Secretary of State may by order prescribe for the purposes of this section, and
 - (b) the occurrence or damage was caused wholly or partly by that non-compliance.
- (5) The requirements referred to in subsection (4) above are such requirements as appear to the Secretary of State appropriate to implement the provisions of—
 - (a) article 5(3) of the Fund Convention (marine safety conventions), and
 - (b) article 5(4) of the Fund Convention (which enables the Assembly of the Fund to substitute new conventions).
- (6) An order made under subsection (4) above—
 - (a) may be varied or revoked by a subsequent order so made, or
 - (b) may contain such transitional or other supplemental provisions as appear to the Secretary of State to be expedient, and
 - (c) shall be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise the pollution damage shall be treated as included in the owner’s liability for the purposes of this section.

^{F325} **Indemnification where damage is caused by ship registered in Fund Convention country. U.K.**

- (1) Where a liability is incurred under section 1 of the Act of 1971 in respect of a ship registered in a Fund Convention country the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of the liability which—
 - (a) is in excess of an amount equivalent to [^{F33}1,500 francs][^{F33}100 special drawing rights] for each ton of the ship’s tonnage or of an amount of [^{F33}125 million francs][^{F33}8,333,000 special drawing rights], whichever is the less, and
 - (b) is not in excess of an amount equivalent to [^{F33}2,000 francs][^{F33}133 special drawing rights] for each ton of the said tonnage or an amount of [^{F33}210 million francs][^{F33}14 million special drawing rights], whichever is the less.
- (2) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country (but is a country in respect of which the Liability Convention is in force), and either—
 - (a) the incident has caused pollution damage in the United Kingdom (as well as in that other country); or
 - (b) the headquarters of the Fund is for the time being in the United Kingdom,subsection (1) above shall apply with the omission of the words “under section 1 of the Act of 1971”.

Status: Point in time view as at 01/02/1991.

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- (3) The Fund shall not incur an obligation under this section where the pollution damage resulted from the wilful misconduct of the owner.
- (4) In proceedings to enforce the Fund's obligation under this section the court may exonerate the Fund wholly or partly if it is proved that, as a result of the actual fault or privity of the owner—
- (a) the ship did not comply with such requirements as the Secretary of State may by order prescribe for the purposes of this section, and
 - (b) the occurrence or damage was caused wholly or partly by that non-compliance.
- (5) The requirements referred to in subsection (4) above are such requirements as appear to the Secretary of State appropriate to implement the provisions of—
- (a) article 5(3) of the Fund Convention (marine safety conventions), and
 - (b) article 5(4) of the Fund Convention (which enables the Assembly of the Fund to substitute new conventions).
- (6) An order made under subsection (4) above—
- (a) may be varied or revoked by a subsequent order so made, or
 - (b) may contain such transitional or other supplemental provisions as appear to the Secretary of State to be expedient, and
 - (c) shall be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise the pollution damage shall be treated as included in the owner's liability for the purposes of this section.
- [For the purpose of converting into sterling the amount in special drawing rights
- ^{F34}(8) adjudged to be payable by the Fund by way of indemnity in such proceedings as are mentioned in subsection (4) of this section, paragraphs (a) to (c) of subsection (13) of section 4 of this Act shall have effect—
- (a) if the liability in question has been limited in pursuance of section 5 of the ^{M5}Merchant Shipping (Oil Pollution) Act 1971, as if—
 - (i) for the reference in the said paragraph (a) to the amount there mentioned there were substituted a reference to the amount adjudged as aforesaid, and
 - (ii) for any reference to the day on which the judgment is or was given there were substituted a reference to the day on which the determination of the limit was made in pursuance of the said section 5; and
 - (b) if the liability in question has not been so limited, with the modification made by paragraph (a)(i) of this subsection and as if for any reference to the day on which the judgment is or was given there were substituted a reference to the day on which the said amount was so adjudged.]]

Textual Amendments

- F32** S. 5 repealed (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 57(5), 58(2), Sch. 4 Pt. II para. 18, Sch. 7, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch.2)

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- F33** Words “100 special drawing rights” and “133 special drawing rights” substituted (*prosp.*) respectively for words “1,500 francs” and “2,000 francs”, and words “8,333,000 special drawing rights” and “14 million special drawing rights” substituted (*prosp.*) respectively for words “125 million francs” and “210 million francs” by Merchant Shipping Act 1979 (c. 39, SIF 111), ss. 38(4)(d), 52(d)
- F34** S. 5(8) inserted (*prosp.*) by Merchant Shipping Act 1979 (c. 39), ss. 38(4)(e), 52(2)

Marginal Citations

- M5** 1971 c. 59.

Supplemental

6 Jurisdiction and effect of judgments.

- (1) [^{F15}Paragraph 1(1)(d) of Schedule 1 to the 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 under this Part of this Act; 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 1 of the Act of 1971, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.
- (3) Where a person incurs a liability under the law of a Fund Convention country corresponding to the Act of 1971 for damage which is partly in the area of the United Kingdom, subsection (2) above shall, for the purpose of proceedings under this Part of this Act, apply with any necessary modifications to a judgment in proceedings under that law of the said country.
- (4) Subject to subsection (5) below, Part I of the ^{M4}Foreign Judgments (Reciprocal Enforcement) Act 1933 shall apply, whether or not it would so apply apart from this subsection, to 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 4 or 5 of this Act; and in its application to such a judgment the said Part I shall have effect with the omission of subsections (2) and (3) of section 4 of the Act of 1933.
- (5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part I of the Act of 1933 gives leave to enforce it: and—
 - (a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention (as set out [^{F16}as amended]in Schedule 1 to this Act) or that it is to be reduced to a specified amount; and
 - (b) in the latter case, the judgment shall be enforceable only for the reduced amount.

Textual Amendments

- F15** Words substituted by Supreme Court Act 1981 (c. 54, SIF 37), s. 152(1), Sch. 5
- F16** Words inserted (*prosp.*) by Merchant Shipping Act 1979 (c. 39), ss. 38(4)(f), 52(2)

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974, Part I. (See end of Document for details)

Marginal Citations

M4 1933 c. 13.

6 Jurisdiction and effect of judgments. **U.K.**

- (1) [^{F35}Paragraph 1(1)(d) of Schedule 1 to the 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 under this Part of this Act; 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 1 of the Act of 1971, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.
- (3) Where a person incurs a liability under the law of a Fund Convention country corresponding to the Act of 1971 for damage which is partly in the area of the United Kingdom, subsection (2) above shall, for the purpose of proceedings under this Part of this Act, apply with any necessary modifications to a judgment in proceedings under that law of the said country.
- (4) Subject to subsection (5) below, Part I of the ^{M6}Foreign Judgments (Reciprocal Enforcement) Act 1933 shall apply, whether or not it would so apply apart from this subsection, to 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 4 [^{F36}or 5] of this Act; and in its application to such a judgment the said Part I shall have effect with the omission of subsections (2) and (3) of section 4 of the Act of 1933.
- (5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part I of the Act of 1933 gives leave to enforce it: and—
 - (a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention (as set out [^{F37} [^{F38}as amended]]) in Schedule 1 to this Act) or that it is to be reduced to a specified amount; and
 - (b) in the latter case, the judgment shall be enforceable only for the reduced amount.

Textual Amendments

- F35** Words substituted by Supreme Court Act 1981 (c. 54, SIF 37), s. 152(1), **Sch. 5**
- F36** Words repealed (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 57(5), 58(2), **Sch. 4 Pt. II para. 19(a), Sch. 7**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)
- F37** Words repealed (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 57(5), 58(2), **Sch. 4 Pt. II para. 19(b), Sch. 7**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)
- F38** Words inserted (*prosp.*) by Merchant Shipping Act 1979 (c. 39), **ss. 38(4)(f), 52(2)**

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974, Part I. (See end of Document for details)

Marginal Citations

M6 1933 c. 13.

7 Extinguishment of claims.

- (1) No action to enforce a claim against the Fund under this Part of this Act 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 claim against the Fund arose.

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

- (2) No action to enforce a claim against the Fund under this Part of this Act 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.
- (3) Notwithstanding the preceding provision of this section, a person’s right to bring an action under section 5 of this Act shall not be extinguished before six months from the date when that person first acquired knowledge of the bringing of an action against him under the Act of 1971 (that is to say an action to enforce a liability against which he seeks indemnity), or under the corresponding provisions of the law of any country outside the United Kingdom giving effect to the Liability Convention.

7 Extinguishment of claims. U.K.

- (1) No action to enforce a claim against the Fund under this Part of this Act 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 claim against the Fund arose.

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

- (2) No action to enforce a claim against the Fund under this Part of this Act 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 [^{F39}, or (as the case may be) in the relevant threat of contamination,] by reason of which the claim against the Fund arose.

- [^{F40}(3) Notwithstanding the preceding provision of this section, a person’s right to bring an action under section 5 of this Act shall not be extinguished before six months from the date when that person first acquired knowledge of the bringing of an action against him under the Act of 1971 (that is to say an action to enforce a liability against which he seeks indemnity), or under the corresponding provisions of the law of any country outside the United Kingdom giving effect to the Liability Convention.]

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974, Part I. (See end of Document for details)

Textual Amendments

- F39** Words inserted (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), **Sch 4 Pt. II para. 20(a)**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) insertion fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)
- F40** S. 7(3) repealed (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 57(5), 58(2), Sch. 4 Pt. II para. 20(b), **Sch. 7**, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, **Sch. 4** by 1993 c. 22, s. 8(4), **Sch. 5 Pt.II**; S.I. 1993/3137, art. 3(2), **Sch.2**)

8 Subrogation and rights of recourse.

- (1) In respect of any sum paid under section 4(1)(b) of this Act (default by owner or guarantor on liability for pollution damage) the Fund shall acquire by subrogation the rights of the recipient against the owner or guarantor.
- (2) The right of the Fund under subsection (1) above is subject to any obligation of the Fund under section 5 of this Act to indemnify the owner or guarantor for any part of the liability on which he has defaulted.
- (3) In respect of any sum paid—
 - (a) under paragraph (a) or paragraph (c) of section 4(1); or
 - (b) under section 5,
 the Fund shall acquire by subrogation any rights of recourse or subrogation which the owner or guarantor or any other person has in respect of his liability for the damage in question.
- (4) 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 under this Part of this Act.

8 Subrogation and rights of recourse. **U.K.**

- (1) In respect of any sum paid under section 4(1)(b) of this Act (default by owner or guarantor on liability for pollution damage) the Fund shall acquire by subrogation the rights of the recipient against the owner or guarantor.
- [^{F41}(2) The right of the Fund under subsection (1) above is subject to any obligation of the Fund under section 5 of this Act to indemnify the owner or guarantor for any part of the liability on which he has defaulted.]
- [^{F42F42}(3) In respect of any sum paid—
 - (a) under paragraph (a) or paragraph (c) of section 4(1); or
 - (b) under section 5,
 the Fund shall acquire by subrogation any rights of recourse or subrogation which the owner or guarantor or any other person has in respect of his liability for the damage in question.]
- [^{F42}(3) In respect of any sum paid under section 4(1)(a) or (c) of this Act (exclusion or limitation of liability for pollution damage) the Fund shall acquire by subrogation any rights of recourse in respect of the damage in question which the recipient has against any person other than the owner or guarantor.]

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping Act 1974, Part I. (See end of Document for details)

- (4) 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 under this Part of this Act.

Textual Amendments

- F41** S. 8(2) repealed (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 57(5), 58(2), Sch. 4 Pt. II para. 21(a), Sch. 7, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) repeal fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch.2)
- F42** S. 8(3) commencing “In respect of any sum paid under section 4(1)(a)” substituted (*prosp.*) for s. 8(3) commencing “In respect of any sum paid (a) under paragraph (a)” by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), Sch. 4 Pt. II para. 21(b), (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) substitution fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch.2)

(^{F17}8A) 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.]

Textual Amendments

- F17** S. 8A inserted (*prosp.*) by Merchant Shipping Act 1988 (c. 12, SIF 111), ss. 34, 58(2), Sch. 4 Pt. II para. 22, (with s. 58(4), Sch. 8 para. 1) (which (*prosp.*) insertion fell (1.5.1994) by the repeal of 1988 c. 12, s. 34, Sch. 4 by 1993 c. 22, s. 8(4), Sch. 5 Pt.II; S.I. 1993/3137, art. 3(2), Sch.2)

9 ^{F18}

Textual Amendments

- F18** S. 9 repealed by Merchant Shipping Act 1979 (c. 39, SIF 111), ss. 47(2), 50(4), Sch. 7 Pt. I

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

There are currently no known outstanding effects for the Merchant Shipping Act 1974, Part I.