



# Merchant Shipping Act 1995

## 1995 CHAPTER 21

### PART VII

#### LIABILITY OF SHIPOWNERS AND OTHERS

##### *Carriage of passengers and luggage by sea*

#### **183 Scheduled convention to have force of law.**

- (1) The provisions of the Convention relating to the Carriage of Passengers and their Luggage by Sea as set out in Part I of Schedule 6 (hereafter in this section and in Part II of that Schedule referred to as “the Convention”) shall have the force of law in the United Kingdom.
- (2) The provisions of Part II of that Schedule shall have effect in connection with the Convention and subsection (1) above shall have effect subject to the provisions of that Part.
- (3) If it appears to Her Majesty in Council that there is a conflict between the provisions of this section or of Part I or II of Schedule 6 and any provisions relating to the carriage of passengers or luggage for reward by land, sea or air in—
  - (a) any convention which has been signed or ratified by or on behalf of the government of the United Kingdom before 4th April 1979 (excluding the Convention); or
  - (b) any enactment of the Parliament of the United Kingdom giving effect to such a convention,

She may by Order in Council make such modifications of this section or that Schedule or any such enactment as She considers appropriate for resolving the conflict.

- (4) If it appears to Her Majesty in Council that the government of the United Kingdom has agreed to any revision of the Convention She may by Order in Council make such modification of Parts I and II of Schedule 6 as She considers appropriate in consequence of the revision.

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- (5) Nothing in subsection (1) or (2) above or in any modification made by virtue of subsection (3) or (4) above shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the said subsection (1) or (2) above, or as the case may be, the modification, comes into force.
- (6) This section shall bind the Crown, and any Order in Council made by virtue of this section may provide that the Order or specified provisions of it shall bind the Crown.
- (7) A draft of an Order in Council proposed to be made under subsection (3) or (4) above shall not be submitted to Her Majesty in Council unless the draft has been approved by a resolution of each House of Parliament.

## **184 Application of Schedule 6 to carriage within British Islands.**

- (1) Her Majesty may by Order in Council provide that Part I of Schedule 6—
  - (a) shall have the force of law in the United Kingdom, with such modifications as are specified in the Order, in relation to, and to matters connected with, a contract of carriage where the places of departure and destination under the contract are within the British Islands and under the contract there is no intermediate port of call outside those Islands; and
  - (b) shall, as modified in pursuance of paragraph (a) above, have effect in relation to, and to matters connected with, any such contract subject to the provisions of Part II of that Schedule or to those provisions with such modifications as are specified in the Order.
- (2) An Order in Council made by virtue of subsection (1) above may contain such provisions, including provisions modifying section 28 of the <sup>M1</sup>Unfair Contract Terms Act 1977 (which relates to certain contracts as respects which the Convention mentioned in section 183(1) does not have the force of law in the United Kingdom), as the Secretary of State considers appropriate for the purpose of dealing with matters arising in connection with any contract to which the said section 28 applies before the Order is made.
- (3) An Order in Council made by virtue of subsection (1) above may provide that the Order or specified provisions of it shall bind the Crown.
- (4) A draft of an Order in Council proposed to be made by virtue of subsection (1) above shall not be submitted to Her Majesty in Council unless the draft of the Order in Council has been approved by a resolution of each House of Parliament.
- (5) In subsection (1) above expressions to which meanings are assigned by article 1 of the Convention set out in Part I of Schedule 6 have those meanings but any reference to a contract of carriage excludes such a contract which is not for reward.

### **Marginal Citations**

**M1** 1977 c. 50.

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*Limitation of liability of shipowners, etc and salvors for maritime claims*

**185 Limitation of liability for maritime claims.**

- (1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 as set out in Part I of Schedule 7 (in this section and Part II of that Schedule referred to as “the Convention”) shall have the force of law in the United Kingdom.
  - (2) The provisions of Part II of that Schedule shall have effect in connection with the Convention, and subsection (1) above shall have effect subject to the provisions of that Part.
  - <sup>F1</sup>[<sup>F1</sup>(2A) Her Majesty may by Order in Council make such modifications of Parts I and II of Schedule 7 as She considers appropriate in consequence of the revision of the Convention by the Protocol of 1996 amending the Convention (in this section referred to as “the 1996 Protocol”).
  - <sup>F1</sup>(2B) If it appears to Her Majesty in Council that the Government of the United Kingdom has agreed to any further revision of the Convention or to any revision of article 8 of the 1996 Protocol, She may by Order in Council make such modifications of Parts I and II of Schedule 7 and subsections (2C) and (2D) below as She considers appropriate in consequence of the revision.
  - <sup>F1</sup>(2C) The Secretary of State may by order make such amendments of Parts I and II of Schedule 7 as appear to him to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 8 of the 1996 Protocol.
  - <sup>F1</sup>(2D) In subsection (2C) above “a relevant limit” means any of the limits for the time being specified in either of the following provisions of the Convention—
    - (a) article 6, paragraph 1, and
    - (b) article 7, paragraph 1.
  - <sup>F1</sup>(2E) No modification made by virtue of subsection (2A), (2B) or (2C) above shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the modification comes into force.]
  - (3) The provisions having the force of law under this section shall apply in relation to Her Majesty’s ships as they apply in relation to other ships.
  - (4) The provisions having the force of law under this section shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any property of, a person who is on board the ship in question or employed in connection with that ship or with the salvage operations in question if—
    - (a) he is so on board or employed under a contract of service governed by the law of any part of the United Kingdom; and
    - (b) the liability arises from an occurrence which took place after the commencement of this Act.
- In this subsection,
- “ship” and “salvage operations” have the same meaning as in the Convention.
- <sup>F2</sup>[(5) A draft of an Order in Council proposed to be made by virtue of subsection (2A) or (2B) above shall not be submitted to Her Majesty in Council unless it has been approved by a resolution of each House of Parliament.]

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**Textual Amendments**

**F1** S. 185(2A)-(2E) inserted (17.7.1997) by 1997 c. 28, s. 15(1); S.I. 1997/1539, art. 2, Sch.

**F2** S. 185(5) inserted (17.7.1997) by 1997 c. 28, s. 15(2); S.I. 1997/1539, art. 2, Sch.

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

**C1** S. 185 extended (with modifications) to specified colonies (30.11.1997) by S.I. 1997/2579, art. 2, Schs. 1, 2

**186 Exclusion of liability.**

- (1) Subject to subsection (3) below, the owner of a United Kingdom ship shall not be liable for any loss or damage in the following cases, namely—
- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or
  - (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.
- (2) Subject to subsection (3) below, where the loss or damage arises from anything done or omitted by any person in his capacity of master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) above shall also exclude the liability of—
- (a) the master, member of the crew or servant; and
  - (b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he is.
- (3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in Article 4 of the Convention set out in Part I of Schedule 7.
- (4) This section shall apply in relation to Her Majesty’s ships as it applies in relation to other ships.
- (5) In this section “owner”, in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

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

**C2** S. 186 extended (with modifications) to specified colonies (30.11.1997) by S.I. 1997/2579, art. 2, Schs. 1, 2

*Multiple fault; apportionment, liability and contribution*

**187 Damage or loss: apportionment of liability.**

- (1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability

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to make good the damage or loss shall be in proportion to the degree in which each ship was in fault.

- (2) If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.
- (3) This section applies to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, this section applies to the charterers or other persons for the time being so responsible instead of the owners.
- (4) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.
- (5) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.
- (6) In this section “freight” includes passage money and hire.
- (7) In this section references to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

**188 Loss of life or personal injuries: joint and several liability.**

- (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.
- (2) Subsection (3) of section 187 applies also to this section.
- (3) Nothing in this section shall be construed as depriving any person of any right of defence on which, apart from this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in the manner provided by law.
- (4) Subsection (7) of section 187 applies also for the interpretation of this section.

**189 Loss of life or personal injuries: right of contribution.**

- (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault.
- (2) Subsection (3) of section 187 applies also to this section.
- (3) Nothing in this section authorises the recovery of any amount which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or

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which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

- (4) In addition to any other remedy provided by law, the persons entitled to any contribution recoverable under this section shall, for the purposes of recovering it, have the same rights and powers as the persons entitled to sue for damages in the first instance.

*Time limit for proceedings against owners or ship*

**190 Time limit for proceedings against owners or ship.**

- (1) This section applies to any proceedings to enforce any claim or lien against a ship or her owners—
- (a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or
  - (b) for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship.
- (2) The extent of the fault is immaterial for the purposes of this section.
- (3) Subject to subsections (5) and (6) below, no proceedings to which this section applies shall be brought after the period of two years from the date when—
- (a) the damage or loss was caused; or
  - (b) the loss of life or injury was suffered.
- (4) Subject to subsections (5) and (6) below, no proceedings under any of sections 187 to 189 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury shall be brought after the period of one year from the date of payment.
- (5) Any court having jurisdiction in such proceedings may, in accordance with rules of court, extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit.
- (6) Any such court, if satisfied that there has not been during any period allowed for bringing proceedings any reasonable opportunity of arresting the defendant ship within—
- (a) the jurisdiction of the court, or
  - (b) the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business,
- shall extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship.

*Limitation of liability of harbour, conservancy, dock and canal authorities*

**191 Limitation of liability.**

- (1) This section applies in relation to the following authorities and persons, that is to say, a harbour authority, a conservancy authority and the owners of any dock or canal.
- (2) The liability of any authority or person to which this section applies for any loss or damage caused to any ship, or to any goods, merchandise or other things whatsoever on

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board any ship shall be limited in accordance with subsection (5) below by reference to the tonnage of the largest United Kingdom ship which, at the time of the loss or damage is, or within the preceding five years has been, within the area over which the authority or person discharges any functions.

- (3) The limitation of liability under this section relates to the whole of any losses and damages which may arise on any one distinct occasion, although such losses and damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any general or local or private Act, and notwithstanding anything contained in such an Act.
- (4) This section does not exclude the liability of an authority or person to which it applies for any loss or damage resulting from any such personal act or omission of the authority or person as is mentioned in Article 4 of the Convention set out in Part I of Schedule 7.
- (5) The limit of liability shall be ascertained by applying to the ship by reference to which the liability is to be determined the method of calculation specified in paragraph 1(b) of Article 6 of the Convention set out in Part I of Schedule 7 read with paragraph 5(1) and (2) of Part II of that Schedule.
- (6) Articles 11 and 12 of that Convention and paragraphs 8 and 9 of Part II of that Schedule shall apply for the purposes of this section.
- (7) For the purposes of subsection (2) above a ship shall not be treated as having been within the area over which a harbour authority or conservancy authority discharges any functions by reason only that it has been built or fitted out within the area, or that it has taken shelter within or passed through the area on a voyage between two places both situated outside that area, or that it has loaded or unloaded mails or passengers within the area.
- (8) Nothing in this section imposes any liability for any loss or damage where no liability exists apart from this section.
- (9) In this section—
  - “dock” includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties; and
  - “owners of any dock or canal” includes any authority or person having the control and management of any dock or canal, as the case may be.

#### *Application to Crown and its ships*

### **192 Application to Crown and its ships.**

- (1) Sections 185, 186, 187, 188, 189 and 190 (except subsection (6)) apply in the case of Her Majesty’s ships as they apply in relation to other ships and section 191 applies to the Crown in its capacity as an authority or person specified in subsection (1).
- (2) In this section “Her Majesty’s ships” means—
  - (a) ships of which the beneficial interest is vested in Her Majesty;
  - (b) ships which are registered as Government ships;
  - (c) ships which are for the time being demised or sub-demised to or in the exclusive possession of the Crown;

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except that it does not include any ship in which Her Majesty is interested otherwise than in right of Her Government in the United Kingdom unless that ship is for the time being demised or sub-demised to Her Majesty in right of Her Government in the United Kingdom or in the exclusive possession of Her Majesty in that right.

- (3) In the application of subsection (2) above to Northern Ireland, any reference to Her Majesty's Government in the United Kingdom includes a reference to Her Government in Northern Ireland.

*<sup>F3</sup> Regulations requiring insurance or security*

**Textual Amendments**

**F3** S. 192A and crossheading inserted (19.3.1997) by 1997 c. 28, ss. 16, 31(4)

**<sup>F4</sup>192A Compulsory insurance or security**

- (1) Subject to subsections (2) and (3) below, the Secretary of State may make regulations requiring that, in such cases as may be prescribed by the regulations, while a ship is in United Kingdom waters, there must be in force in respect of the ship—
- (a) a contract of insurance insuring such person or persons as may be specified by the regulations against such liabilities as may be so specified and satisfying such other requirements as may be so specified, or
  - (b) such other security relating to those liabilities as satisfies requirements specified by or under the regulations.
- (2) Regulations under this section shall not apply in relation to—
- (a) a qualifying foreign ship while it is exercising—
    - (i) the right of innocent passage, or
    - (ii) the right of transit passage through straits used for international navigation,
  - (b) any warship, or
  - (c) any ship for the time being used by the government of any State for other than commercial purposes.
- (3) Regulations under this section may not require insurance or security to be maintained in respect of a ship in relation to any liability in any case where an obligation to maintain insurance or security in respect of that ship in relation to that liability is imposed by section 163 or by or under an Order in Council under section 182B.
- (4) Regulations under this section may require that, where a person is obliged to have in force in respect of a ship a contract of insurance or other security, such documentary evidence as may be specified by or under the regulations of the existence of the contract of insurance or other security must be carried in the ship and produced on demand, by such persons as may be specified in the regulations, to such persons as may be so specified.
- (5) Regulations under this section may provide—
- (a) that in such cases as are prescribed a ship which contravenes the regulations shall be liable to be detained and that section 284 shall have effect, with such



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- modifications (if any) as are prescribed by the regulations, in relation to the ship,
- (b) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine of an amount not exceeding £50,000, or such less amount as is prescribed by the regulations, and on conviction on indictment by a fine, and
  - (c) that any such contravention shall be an offence punishable only on summary conviction by a fine of an amount not exceeding £50,000, or such less amount as is prescribed by the regulations.
- (6) Regulations under this section may—
- (a) make different provision for different cases,
  - (b) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time, and
  - (c) include such incidental, supplemental and transitional provision as appears to the Secretary of State to be expedient for the purposes of the regulations.]

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**Textual Amendments**

**F4** S. 192A inserted (19.3.1997) by 1997 c. 28, ss. 16, 31(4)

**Status:**

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