



**THE  
SOUTH GEORGIA  
AND THE  
SOUTH SANDWICH ISLANDS GAZETTE  
PUBLISHED BY AUTHORITY**

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*No. 1*

*13th January 1998*

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The following is published in this Gazette —

**Antarctic Act 1994 (Commencement of sections 3, 4 and 6) Order 1998, S.R. & O. No. 1 of 1998).**

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## SUBSIDIARY LEGISLATION

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### ANTARCTICA

Antarctic Act 1994 (Commencement of sections 3, 4 and 6) Order 1998

(S. R. & O. No. 1 of 1998)

*Made..... 8 January 1998*

*Published..... 13 January 1998*

*Coming into force on publication*

IN EXERCISE of my powers under article 1(2) of the Antarctic Act 1994 (Overseas Territories) Order 1995(a) and all other powers enabling me in that behalf, I make the following Order—

#### **Citation and commencement**

1. This Order may be cited as the Antarctic Act 1994 (Commencement of sections 3, 4 and 6) Order 1998 and comes into force upon its publication in the *Gazette*.

#### **Commencement of sections 3, 4 and 6 of the Antarctic Act 1994**

2. Sections 3, 4 and 6 of the Antarctic Act 1994(b) shall come into force in respect of South Georgia and the South Sandwich Islands on 14th January 1998.

Made this 8th day of January 1998

R T Jarvis  
*Assistant Commissioner*

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#### **EXPLANATORY NOTE** *(not forming part of the above Order)*

The Environmental Protocol to the Antarctic Treaty comes into force in relation to South Georgia and the South Sandwich Islands on 14th January 1998 and it is therefore necessary to bring into force sections 3, 4 and 6 of the Antarctic Act 1994 on that date. This Order does so.

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(a) SI 1995/1030

(b) 1994 c.15



**THE  
SOUTH GEORGIA  
AND THE  
SOUTH SANDWICH ISLANDS GAZETTE**  
**PUBLISHED BY AUTHORITY**

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*No. 2*

*23rd March 1998*

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The following are published in this Gazette —

**The Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) (Overseas Territories) Order 1997;**

**The Merchant Shipping (Limitation of Liability for Maritime Claims) (Overseas Territories) Order 1997;**

**The Merchant Shipping (Salvage Convention) (Overseas Territories) Order 1997;**

**The Merchant Shipping (Oil Pollution) (South Georgia and the South Sandwich Islands) Order 1997.**

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STATUTORY INSTRUMENTS

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1997 No. 2578

**MERCHANT SHIPPING**

**The Merchant Shipping (Liability and Compensation  
for Oil Pollution Damage) (Transitional Provisions)  
(Overseas Territories) Order 1997**

*Made* - - - - - 30th October 1997

*Coming into force* 30th November 1997

At the Court at Buckingham Palace, the 30th day of October 1997

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 315 (2) of the Merchant Shipping Act 1995(a) and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) (Overseas Territories) Order 1997, and shall come into force on 30th November 1997.

2. The Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996(b), shall extend to each of the following territories subject to the exceptions, adaptations and modifications specified in the Schedule to this Order:

Anguilla  
Bermuda  
British Indian Ocean Territory  
Falkland Islands  
Pitcairn, Henderson, Ducie and Oeno Islands  
South Georgia and the South Sandwich Islands  
Sovereign Base Areas of Akrotiri and Dhekelia  
Turks and Caicos Islands  
Virgin Islands

3. In this Order, “the Territory” means each of the territories listed in Article 2.

*N. H. Nicholls*  
Clerk to the Privy Council

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(a) 1995 c.21.  
(b) S.I. 1996/1143.

## SCHEDULE

## Article 2

**The Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 as modified and extended to the Territories listed in Article 2**

...

2.—(1) In this Order, unless the context otherwise requires:

“the Act” means the Merchant Shipping Act 1995;

“the 1969 Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels in 1969, as amended by the Protocol signed in London in 1976;

“the 1992 Liability Convention” means the 1969 Liability Convention as amended by the 1992 Liability Protocol;

“the 1992 Liability Protocol” means the Protocol of 1992 to amend the 1969 Liability Convention signed in London in 1992;

“the 1971 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, as amended by the Protocol signed in London in 1976;

“the 1992 Fund Convention” means the 1971 Fund Convention as amended by the 1992 Fund Protocol;

“the 1992 Fund Protocol” means the Protocol of 1992 to amend the 1971 Fund Convention signed in London in 1992.

(2) In this Order, references to “the 1975 Order” shall be construed as follows:

- (a) in the case of Anguilla, as references to the Merchant Shipping (Oil Pollution) (Anguilla) Order 1983(a);
- (b) in the case of Bermuda, as references to the Merchant Shipping (Oil Pollution) (Bermuda) Order 1975(b);
- (c) in the case of the British Indian Ocean Territory, as references to the Merchant Shipping (Oil Pollution) (Overseas Territories) Order 1975(c), as that Order applies to the British Indian Ocean Territory;
- (d) in the case of the Falkland Islands, as references to the Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1975(d), as that Order applies to the Falkland Islands;
- (e) in the case of Pitcairn, Henderson, Ducie and Oeno Islands, as references to the Merchant Shipping (Oil Pollution) (Overseas Territories) Order 1975, as that Order applies to these Islands;
- (f) in the case of South Georgia and the South Sandwich Islands, as references to the Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1975, as that Order applies to South Georgia and the South Sandwich Islands;
- (g) in the case of the Sovereign Base Areas of Akrotiri and Dhekelia, as references to the Merchant Shipping (Oil Pollution) (Overseas Territories) Order 1975, as that Order applies to the Sovereign Base Areas;
- (h) in the case of the Turks and Caicos Islands, as references to the Merchant Shipping (Oil Pollution) (Turks and Caicos Islands) Order 1976(e); and
- (i) in the case of the Virgin Islands, as references to the Merchant Shipping (Oil Pollution) (British Virgin Islands) Order 1975(f).

(3) In this Order, references to the “1997 Order” shall be construed as follows:

- (a) in the case of Anguilla, as references to the Merchant Shipping (Oil Pollution) (Anguilla) Order 1997(g);
- (b) in the case of Bermuda, as references to the Merchant Shipping (Oil Pollution) (Bermuda) Order 1997(h);
- (c) in the case of the British Indian Ocean Territory, as references to the Merchant Shipping (Oil Pollution) (British Indian Ocean Territory) Order 1997(i);

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(a) S.I. 1983/1519.

(b) S.I. 1975/2165, amended by S.I. 1981/215.

(c) S.I. 1975/2171, amended by S.I. 1981/222, 1981/431 and 1984/543.

(d) S.I. 1975/2167, amended by S.I. 1976/2143 and 1981/218.

(e) S.I. 1976/223, amended by S.I. 1981/223.

(f) S.I. 1975/2175, amended by S.I. 1981/216.

(g) S.I. 1997/2580.

(h) S.I. 1997/2581.

(i) S.I. 1997/2583.

- (d) in the case of the Falkland Islands, as references to the Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997(a);
- (e) in the case of Pitcairn, Henderson, Ducie and Oeno Islands, as references to the Merchant Shipping (Oil Pollution) (Pitcairn) Order 1997(b);
- (f) in the case of South Georgia and the South Sandwich Islands, as references to the Merchant Shipping (Oil Pollution) (South Georgia and the South Sandwich Islands) Order 1997(c);
- (g) in the case of the Sovereign Base Areas of Akrotiri and Dhekelia, as references to the Merchant Shipping (Oil Pollution) (Sovereign Base Areas) Order 1997(d);
- (h) in the case of the Turks and Caicos Islands, as references to the Merchant Shipping (Oil Pollution) (Turks and Caicos Islands) Order 1997(e); and
- (i) in the case of the Virgin Islands, as references to the Merchant Shipping (Oil Pollution) (Virgin Islands) Order 1997(f).

3.—(1) Notwithstanding the coming into force of the 1997 Order (and the consequent ceasing to have effect of the 1975 Order), the provisions mentioned paragraph (2) below and set out in Schedule 1 to this Order being transitional provisions shall have the force of law in the Territory, subject to the modifications in Schedule 2 to this Order, and for this purpose the provisions of the 1975 Order shall continue to have effect.

(2) The provisions are:

- (i) Article XII bis of the 1969 Liability Convention inserted by Article 9 of the 1992 Liability Protocol;
- (ii) Article 36 bis of the 1971 Fund Convention, inserted by Article 26 of the 1992 Fund Protocol.

4. During the period while the United Kingdom remains a Party to the 1969 Liability Convention, references in sections 163 and 164 of the Act to the "Liability Convention" shall, in respect of ships registered in a State Party to the 1969 Liability Convention but not the 1992 Liability Convention, be references to the 1969 Liability Convention.

5. In section 173(7) of the Act the reference to "Article XII of the Fund Convention" shall have effect as a reference to Article XII subject to Article 36 ter of that Convention.

6. For convenience of reference Article XII bis of the 1992 Liability Convention, and Article 36 bis of the 1992 Fund Convention, as modified by Schedule 2 to this Order, are set out in Schedule 3.

#### *SCHEDULE 1 TO THE 1996 ORDER*

Article 3

#### *ARTICLE XII BIS OF 1992 LIABILITY CONVENTION AND ARTICLE 36 BIS OF THE 1992 FUND CONVENTION*

#### *Article XII bis of 1992 Liability Convention*

#### TRANSITIONAL PROVISIONS

The following transitional provisions shall apply in the case of a State which at the time of an incident is a Party to this Convention and to the 1969 Liability Convention:

- (a) where an incident has caused pollution damage within the scope of this Convention, liability under this Convention shall be deemed to be discharged if, and to the extent that, it also arises under the 1969 Liability Convention;
- (b) where an incident has caused pollution damage within the scope of this Convention, and the State is a Party both to this Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of sub-paragraph (a) of this Article shall arise under this Convention only to the extent that pollution damage remains uncompensated after application of the said 1971 Convention;

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- (a) S.I. 1997/2584.
  - (b) S.I. 1997/2585.
  - (c) S.I. 1997/2588.
  - (d) S.I. 1997/2587.
  - (e) S.I. 1997/2589.
  - (f) S.I. 1997/2590.

- (c) in the application of Article III, paragraph 4, of this Convention the expression "this Convention" shall be interpreted as referring to this Convention or the 1969 Liability Convention, as appropriate;
- (d) in the application of Article V, paragraph 3, of this Convention the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with sub-paragraph (a) of this Article.

*Article 36 bis of 1992 Fund Convention*

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention take effect:

- (a) In the application of paragraph 1(a) of Article 2 of this Convention, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as "the 1969 Liability Convention"), and also the 1971 Fund Convention.
- (b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been Party to each of the above-mentioned Conventions.
- (c) In the application of Article 4 of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1969 Liability Convention, if any, and the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.
- (d) Paragraph 1 of Article 9 of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

*SCHEDULE 2 TO THE 1996 ORDER*

Article 3

*PART A*

**The following are the modifications to Article XII bis of the 1992 Liability Convention:**

1. References to State being a party to a Convention shall be construed as references to the United Kingdom being Party to such a Convention in respect of the Territory.
2. In the chapeau, the reference to "this Convention" shall be a reference to the 1992 Liability Convention.
3. In sub-paragraph (a) of Article XII bis references to "this Convention" shall be references to sections 152 to 170 of the Act, and the reference to "the 1969 Liability Convention" shall be a reference to Schedule 1 to the 1975 Order.
4. In sub-paragraph (b) of Article XII bis the first and third references to "this Convention" shall be references to Sections 152 to 170 of the Act, and the second shall be a reference to the 1992 Liability Convention; and the reference to "the said 1971 Convention" shall be a reference to Schedule 2 to the 1975 Order.
5. For sub-paragraph (c) of Article XII bis there shall be substituted "subsection (1)(i) of section 156 of the Act refers to liability under section 153 of the Act or under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 as set out in Schedule 1 to the 1975 Order, as appropriate, and subsection (1)(ii) of section 156 of the Act applies to the persons referred to in section 156(2) of the Act or section 3(b) of the Merchant Shipping (Oil Pollution) Act 1971 as set out in Schedule 1 to the 1975 Order, as appropriate".
6. In sub-paragraph (d) of Article XII bis, the reference to "Article V, paragraph 3 of this Convention" shall be a reference to section 158 of the Act.



## *PART B*

**The following are the modifications to Article 36 bis of the 1992 Fund Convention:**

1. The "transitional period" means the period from entry into force of the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) (Overseas Territories) Order 1997 to the date on which the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 ceases to have effect.
2. "The Fund" shall have the same meaning as in section 172 of the Act.
3. Except for the second reference in sub-paragraph (b), references to the "1971 Fund Convention" shall be references to Schedule 2 to the 1975 Order.
4. Except for the third reference in sub-paragraph (b), references to "this Convention" shall be references to sections 172 to 181 of the Act.
5. References to the "1969 Liability Convention" shall be references to Schedule 1 to the 1975 Order.
6. References to the "1992 Liability Convention" shall be references to sections 152 to 170 of the Act.
7. Sub-paragraph (a) of Article 36 bis shall be omitted.
8. In sub-paragraph (b) of Article 36 bis for "the above-mentioned Conventions" there shall be substituted "the 1969 Liability Convention, the 1992 Liability Convention and the 1971 Fund Convention".
9. In sub-paragraph (c) of Article 36 bis, the reference to "Article 4 of this Convention" shall be a reference to Part I of Schedule 5 to the Act.
10. In sub-paragraph (d) of Article 36 bis, the reference to "paragraph 1 of Article 9 of this Convention" shall be a reference to section 179(1) of the Act.

### *SCHEDULE 3 TO THE 1996 ORDER*

Article 5

**The text of Article XII bis of the 1992 Liability Convention and Article 36 bis of the 1992 Fund Convention, as modified by Schedule 2 to this Order.**

#### Article XII bis

#### TRANSITIONAL PROVISIONS

The following transitional provisions shall apply when at the time of an incident the United Kingdom is Party in respect of the Territory both to the 1992 Liability Convention and to the 1969 Liability Convention:

- (a) where an incident has caused pollution damage within the scope of sections 152 to 170 of the Act liability under sections 152 to 170 of the Act shall be deemed to be discharged if, and to the extent that, it also arises under Schedule 1 to the 1975 Order;
- (b) where an incident has caused pollution damage within the scope of sections 152 to 170 of the Act and the United Kingdom in respect of the Territory is Party both to the 1992 Liability Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of sub-paragraph (a) of this Article shall arise under sections 152 to 170 of the Act only to the extent that pollution damage remains uncompensated after application of Schedule 2 to the 1975 Order;
- (c) subsection (1)(i) of section 156 of the Act refers to liability under section 153 of the Act or under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 as set out in Schedule 1 to the 1975 Order as appropriate and subsection (1)(ii) of section 156 applies to the persons referred to in section 156(2) of the Act or in section 3(b) of the Merchant Shipping (Oil Pollution) Act 1971 as set out in Schedule 1 to the 1975 Order, as appropriate;
- (d) in the application of section 158 of the Act the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with sub-paragraph (a) of this Article.



*Article 36 bis*

The following transitional provisions shall apply from the date of entry into force of the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) (Overseas Territories) Order 1997 to the date on which the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 ceases to have effect;

- (b) Where an incident has caused pollution damage within the scope of sections 172 to 181 of the Act, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of Schedule 1 to the 1975 Order, Schedule 2 to the 1975 Order, and sections 152 to 170 of the Act, provided that, in respect of pollution damage within the scope of sections 172 to 181 of the Act in respect of a Party to this Convention but not a party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the 1969 Liability Convention, the 1992 Liability Convention and the 1971 Fund Convention.
- (c) In the application of Part I of Schedule 5 to the Act the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under Schedule 1 to the 1975 Order if any, and the amount of compensation actually paid or deemed to have been paid under Schedule 2 to the 1975 Order.
- (d) Section 179(1) of the Act shall also apply to the rights enjoyed under Schedule 1 to the 1975 Order.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

The International Convention on Civil Liability for Oil Pollution Damage 1969 (the CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the Fund Convention) ensure that compensation is available to victims of oil pollution from tankers and provide for the sharing of the costs of compensation between shipowners and cargo interests.

Protocols were negotiated in 1992 which created a new 1992 CLC and a new 1992 Fund Convention. These Conventions provide for higher levels of compensation and more extensive liability, but they do not immediately replace the 1969 and 1971 Conventions: the latter will co-exist with the former for a transitional period. If an incident occurs during this period, compensation could in principle be available under both the original Conventions and the 1992 Conventions. The 1992 Protocols set out specific rules on the payment of compensation in these circumstances. This Order gives effect to these rules in the Territories listed in Article 2 of the Order by extending to these Territories (with the necessary exceptions, adaptations and modifications) the provisions of the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996.

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STATUTORY INSTRUMENTS

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1997 No. 2579

**MERCHANT SHIPPING**

**The Merchant Shipping (Limitation of Liability for  
Maritime Claims) (Overseas Territories) Order 1997**

*Made - - - - 30th October 1997*

*Coming into force 30th November 1997*

At the Court at Buckingham Palace, the 30th day of October 1997

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 315(2) of the Merchant Shipping Act 1995(a) and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Citation and commencement**

1. This Order may be cited as the Merchant Shipping (Limitation of Liability for Maritime Claims) (Overseas Territories) Order 1997 and shall come into force on 30th November 1997.

**Implementation of the Limitation of Liability Convention**

2. Sections 185 and 186 of and Schedule 7 to the Merchant Shipping Act 1995 shall extend to each of the Territories listed in Schedule 1 to this Order subject to the exceptions, adaptations and modifications specified in Schedule 2 to this Order; and any instrument made, or to be made, under paragraphs 3, 5(2), 8(1) or 13 of Part II of Schedule 7 to the Act shall also extend to each Territory.

**Interpretation**

3. In this Order, "the Territory" means any of the territories listed in Schedule 1 to this Order.

*N. H. Nicholls*  
Clerk of the Privy Council

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(a) 1995 c.21.

## SCHEDULE 1 TO THE ORDER

Article 2

Anguilla  
 British Antarctic Territory  
 British Indian Ocean Territory  
 South Georgia and the South Sandwich Islands

## SCHEDULE 2 TO THE ORDER

SECTIONS 185 AND 186 OF THE MERCHANT  
SHIPPING ACT 1995

Article 2

Limitation of  
 liability for maritime  
 claims

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

185.—(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 Territory.

(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) 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 the Territory; and
- (b) the liability arises from an occurrence which took place after the commencement of this Order.

In this subsection, “ship” and “salvage operations” have the same meaning as in the Convention.

Exclusion of  
 liability

186.—(1) Subject to subsection (3) below, the owner of a British 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 an 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.

SCHEDULE 7 TO THE MERCHANT SHIPPING ACT 1995  
CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME  
CLAIMS 1976

Article 2

## PART I

## TEXT OF CONVENTION

## CHAPTER I. THE RIGHT OF LIMITATION

## ARTICLE 1

*Persons entitled to limit liability*

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term "shipowner" shall mean the owner, charterer, manager or operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(d), (e) and (f).
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.
5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.
6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.
7. The act of invoking limitation of liability shall not constitute an admission of liability.

## ARTICLE 2

*Claims subject to limitation*

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:
  - (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
  - (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
  - (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
  - (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
  - (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
  - (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.
2. Claims set out in paragraph 1 shall be subject to limitation of liability even

if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

### ARTICLE 3

#### *Claims excepted from limitation*

The rules of this Convention shall not apply to:

- (a) claims for salvage or contribution in general average;
- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29th November 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

### ARTICLE 4

#### *Conduct barring limitation*

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

### ARTICLE 5

#### *Counterclaims*

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

## CHAPTER II. LIMITS OF LIABILITY

### ARTICLE 6

#### *The general limits*

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:
  - (a) in respect of claims for loss of life or personal injury,
    - (i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons,
    - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
      - for each ton from 501 to 3,000 tons, 500 Units of Account;
      - for each ton from 3,001 to 30,000 tons, 333 Units of Account;
      - for each ton from 30,001 to 70,000 tons, 250 Units of Account, and
      - for each ton in excess of 70,000 tons, 167 Units of Account,
  - (b) in respect of any other claims,



- (i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons,
- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):  
for each ton from 501 to 30,000 tons, 167 Units of Account;  
for each ton from 30,001 to 70,000 tons, 125 Units of Account; and  
for each ton in excess of 70,000 tons, 83 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

3. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

## ARTICLE 7

### *The limit for passenger claims*

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:

- (a) under a contract of passenger carriage, or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

## ARTICLE 8

### *Unit of Account*

The Unit of Account referred to in Articles 6 and 7 is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.

## ARTICLE 9

### *Aggregation of claims*

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:

- (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or
- (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
- (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct

occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

## ARTICLE 10

### *Limitation of liability without constitution of a limitation fund*

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.
2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.
3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

## CHAPTER III. THE LIMITATION FUND

### ARTICLE 11

#### *Constitution of the Fund*

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.
3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

### ARTICLE 12

#### *Distribution of the fund*

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.
2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the persons so compensated would have enjoyed under this Convention.
3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.
4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where

the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

### ARTICLE 13

#### *Bar to other actions*

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:

- (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or
- (b) at the port of disembarkation in respect of claims for loss of life or personal injury; or
- (c) at the port of discharge in respect of damage to cargo; or
- (d) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

### ARTICLE 14

#### *Governing law*

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

## CHAPTER IV. SCOPE OF APPLICATION

### ARTICLE 15

This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State.

## PART II

### PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

#### *Interpretation*

1. In this Part of this Schedule and reference to a numbered article is a reference to the article of the Convention which is so numbered.

*Right to limit liability*

2. The right to limit liability under the Convention shall apply in relation to any ship whether seagoing or not, and the definition of "shipowner" in paragraph 2 of article 1 shall be construed accordingly.

*Claims subject to limitation*

3.—(1) Paragraph 1(d) of article 2 shall not apply unless provision has been made by an order of the Secretary of State for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said paragraph 1(d), of amounts recoverable by them in claims of the kind there mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.

(2) Any order under sub-paragraph (1) above may contain such incidental and supplemental provisions as appear to the Secretary of State to be necessary or expedient.

*Claims excluded from limitation*

4.—(1) The claims excluded from the Convention by paragraph (a) of article 3 include claims under article 14 of the International Convention on Salvage, 1989 as set out in Part I of Schedule 11(a) and corresponding claims under a contract.

(2) The claims excluded from the Convention by paragraph (b) of article 3 are claims in respect of any liability incurred under section 153 of this Act(b).

...

*The general limits*

5.—(1) In the application of article 6 to a ship with a tonnage less than 300 tons that article shall effect as if—

- (a) paragraph 1(a)(i) referred to 166,667 Units of Account; and
- (b) paragraph 1(b)(i) referred to 83,333 Units of Account.

(2) For the purposes of article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Secretary of State.

(3) ...

*Limit for passenger claims*

6.—(1) In the case of a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by safety regulations, the ship's certificate mentioned in paragraph 1 of article 7 shall be that certificate.

(2) In paragraph 2 of article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person.

*Units of Account*

7.—(1) For the purpose of converting the amounts mentioned in articles 6 and 7 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—

- (a) the relevant date under paragraph 1 of article 8; or
- (b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Authority stating—

- 
- (a) Schedule 11 to the 1995 Act, which sets out the International Convention on Salvage 1989 was extended to the Territories by The Merchant Shipping (Salvage Convention) (Overseas Territories) Order 1997 (S.I. 1997/ ).
  - (b) Section 153 of the 1995 Act was extended to Anguilla by S.I. 1997/ ; to the British Antarctic Territory by S.I. 1997/ ; and to the British Indian Ocean Territory by S.I. 1997/ . and to South Georgia and the South Sandwich Islands by S.I. 1997 ( ).

- (a) that a particular sum in sterling has been fixed as mentioned in sub-paragraph (1) above for a particular date; or
- (b) that no sum has been so fixed for that date and that a particular sum in sterling has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

shall be conclusive evidence of those matters for the purposes of those articles; and 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.

(3) For the purposes of this paragraph, "the Authority" means—

- (a) in Anguilla, the Director of Finance;
- (b) in the British Antarctic Territory, the Commissioner;
- (c) in the British Indian Ocean Territory, the Commissioner;
- (d) in South Georgia and the South Sandwich Islands, the Financial Secretary.

#### *Constitution of fund*

8.—(1) The Secretary of State may, with the concurrence of the Treasury, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of article 11.

(2) . . .

(3) Where a fund is constituted with the court in accordance with article 11 for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

#### *Distribution of fund*

9. No lien or other right in respect of any ship or property shall affect the proportions in which under article 12 the fund is distributed among several claimants.

#### *Bar to other actions*

10. Where the release of a ship or other property is ordered under paragraph 2 of article 13 the person on whose application it is ordered to be released shall be deemed to have submitted to . . . the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

#### *Meaning of "court"*

11. References in the Convention and the preceding provisions of this Part of this Schedule to the court are references to—

- (a) the High Court, in Anguilla;
- (b) the Supreme Court, in the British Antarctic Territory;
- (c) the Supreme Court, in the British Indian Ocean Territory.
- (d) the Supreme Court, in South Georgia and the South Sandwich Islands.

#### *Meaning of "ship"*

12. References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.

#### *Meaning of "State Party"*

13. An Order in Council made for the purposes of this paragraph and declaring that any State specified in the Order is a party to the Convention shall, subject to the provisions of any subsequent Order made for those purposes, be conclusive evidence that the State is a party to the Convention.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order gives effect in Anguilla, the British Antarctic Territory, the British Indian Ocean Territory and South Georgia and the South Sandwich Islands to the Convention on Limitation of Liability for Maritime Claims 1976, which lays down uniform rules relating to the liability of shipowners and salvors in respect of certain maritime claims.



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STATUTORY INSTRUMENTS

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**1997 No. 2586**

**MERCHANT SHIPPING**

**The Merchant Shipping (Salvage Convention) (Overseas Territories) Order 1997**

*Made - - - - 30th October 1997*

*Coming into force 30th November 1997*

At the Court at Buckingham Palace, the 30th day of October 1997

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 315(2) of the Merchant Shipping Act 1995 and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Citation and commencement**

1. This Order may be cited as the Merchant Shipping (Salvage Convention) (Overseas Territories) Order 1997 and shall come into force on 30th November 1997.

**Implementation of the Salvage Convention**

2. Sections 224 and 255(1) of and Schedule 11 to the Merchant Shipping Act 1995 shall extend to each of the territories listed in Schedule 1 to this Order subject to the exceptions, adaptations and modifications specified in Schedule 2 to this Order, and any instrument made, or to be made under paragraph 7 of part II of Schedule 2 to this Order shall also extend to each Territory.

**Interpretation**

3. In this Order “the Territory” means any of the territories listed in Schedule 1.

*N. H. Nicholls*  
Clerk of the Privy Council

## SCHEDULE 1 TO THE ORDER

Article 2

Anguilla  
 British Antarctic Territory  
 British Indian Ocean Territory  
 Cayman Islands  
 Falkland Islands  
 Pitcairn, Henderson, Ducie and Oeno Islands and its Dependencies  
 Saint Helena  
 South Georgia and the South Sandwich Islands  
 Turks and Caicos Islands  
 Virgin Islands

## SCHEDULE 2 TO THE ORDER

Article 2

## SECTIONS 224 AND 255(1) OF THE MERCHANT SHIPPING ACT 1995

*Salvage*

224.—(1) The provisions of the International Convention on Salvage, 1989 as set out in Part I of Schedule 11 (in this Chapter referred to as “the Salvage Convention”) shall have the force of law in the Territory.

Salvage  
 Convention  
 1989 to have  
 force of law

(2) The provisions of Part II of that Schedule shall have effect in connection with the Salvage Convention, and subsection (1) above shall have effect subject to the provisions of that Part.

...

(4) Nothing in subsection (1) or (2) above shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the entry into force of this Order.

...

255.—(1) In this Part—

...

“salvage” includes, subject to the Salvage Convention, all expenses properly incurred by the salvor in the performance of the salvage services;

...

“salvor” means, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of the ship;

...

“vessel” includes any ship or boat, or any other description of vessel used in navigation.

## SCHEDULE 11 TO THE MERCHANT SHIPPING ACT 1995

## INTERNATIONAL CONVENTION ON SALVAGE 1989

## PART I

## TEXT OF CONVENTION

## CHAPTER I—GENERAL PROVISIONS

## ARTICLE 1

*Definitions*

For the purpose of this Convention—

- (a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) Vessel means any ship or craft, or any structure capable of navigation.
- (c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.

- (e) Payment means any reward, remuneration or compensation due under this Convention.
- (f) Organisation means the International Maritime Organisation.
- (g) Secretary-General means the Secretary-General of the Organisation.

## ARTICLE 2

### *Application of the Convention*

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

## ARTICLE 3

### *Platforms and drilling units*

This Convention shall not apply to fixed or floating platforms or to mobile off-shore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

## ARTICLE 4

### *State-owned vessels*

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law unless that State decides otherwise.

2. Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

## ARTICLE 5

### *Salvage operations controlled by public authorities*

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

## ARTICLE 6

### *Salvage contracts*

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.

2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

3. Nothing in this article shall affect the application of article 7 nor duties to prevent or minimise damage to the environment.

## ARTICLE 7

### *Annulment and modification of contracts*

A contract or any terms thereof may be annulled or modified if—

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

## CHAPTER II—PERFORMANCE OF SALVAGE OPERATIONS

### ARTICLE 8

#### *Duties of the salvor and of the owner and master*

1. The salvor shall owe a duty to the owner of the vessel or other property in danger—
  - (a) to carry out the salvage operations with due care;
  - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimise damage to the environment;
  - (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
  - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.
2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor—
  - (a) to cooperate fully with him during the course of the salvage operations;
  - (b) in so doing, to exercise due care to prevent or minimise damage to the environment; and
  - (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

### ARTICLE 9

#### *Rights of coastal States*

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognised principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

### ARTICLE 10

#### *Duty to render assistance*

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.
3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

### ARTICLE 11

#### *Cooperation*

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for cooperation between salvors, other interested parties and public authorities in

order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

### CHAPTER III—RIGHTS OF SALVORS

#### ARTICLE 12

##### *Conditions for reward*

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

#### ARTICLE 13

##### *Criteria for fixing the reward*

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below—
  - (a) the salvaged value of the vessel and other property;
  - (b) the skill and efforts of the salvors in preventing or minimising damage to the environment;
  - (c) the measure of success obtained by the salvor;
  - (d) the nature and degree of the danger;
  - (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
  - (f) the time used and expenses and losses incurred by the salvors;
  - (g) the risk of liability and other risks run by the salvors or their equipment;
  - (h) the promptness of the services rendered;
  - (i) the availability and use of vessels or other equipment intended for salvage operations;
  - (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.
2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.
3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

#### ARTICLE 14

##### *Special compensation*

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30 per cent. of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100 per cent. of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

5. If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

#### ARTICLE 15

##### *Apportionment between salvors*

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.

2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

#### ARTICLE 16

##### *Salvage of persons*

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.

2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimising damage to the environment.

#### ARTICLE 17

##### *Services rendered under existing contracts*

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

#### ARTICLE 18

##### *The effect of salvor's misconduct*

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

#### ARTICLE 19

##### *Prohibition of salvage operations*

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.



## CHAPTER IV—CLAIMS AND ACTIONS

## ARTICLE 20

*Maritime lien*

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

## ARTICLE 21

*Duty to provide security*

1. Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2. Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
3. The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

## ARTICLE 22

*Interim payment*

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.
2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

## ARTICLE 23

*Limitation of actions*

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.
2. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.
3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

## ARTICLE 24

*Interest*

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

## ARTICLE 25

*State-owned cargoes*

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings *in rem* against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognised principles of international law.

## ARTICLE 26

*Humanitarian cargoes*

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

## ARTICLE 27

*Publication of arbitral awards*

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

## PART II

## PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation*

## 1. In this Part of this Schedule:

- (a) "the Convention" means the Convention as set out in Part I of this Schedule and any reference to a numbered article is a reference to the article of the Convention which is so numbered;
- (b) "the waters of the Territory" means the sea or other waters within the seaward limits of the territorial sea of the Territory.

*Claims excluded from Convention*

## 2.—(1) The provisions of the Convention do not apply—

- (a) to a salvage operation which takes place in inland waters of the Territory and in which all the vessels involved are of inland navigation; and
- (b) to a salvage operation which takes place in inland waters of the Territory and in which no vessel is involved.

(2) In this paragraph "inland waters" does not include any waters within the ebb and flow of the tide at ordinary spring tides or the waters of any dock which is directly or (by means of one or more other docks) indirectly, connected with such waters.

*Assistance to persons in danger at sea*

3.—(1) The master of a vessel who fails to comply with the duty imposed on him by article 10, paragraph 1 commits an offence and shall be liable—

- (a) in Anguilla,
  - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding 5000 East Caribbean dollars or both;
  - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
- (b) in the British Antarctic Territory, to be tried by the Supreme Court and, if convicted, to imprisonment for a term not exceeding two years or a fine, or both;

- (c) in the British Indian Ocean Territory, to be tried by the Supreme Court, and, if convicted, to imprisonment for a term not exceeding two years or a fine, or both;
  - (d) in the Falkland Islands,
    - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
    - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
  - (e) Pitcairn, Henderson, Ducie and Oeno Islands,
    - (i) on conviction by the Subordinate Court, to imprisonment for a term not exceeding six months, or a fine not exceeding two thousand five hundred pounds or its equivalent, or both;
    - (ii) on conviction by the Supreme Court, to imprisonment for a term not exceeding two years or a fine not exceeding ten thousand pounds or its equivalent, or both.
  - (f) in Saint Helena and its Dependencies,
    - (i) on summary conviction, to imprisonment for a term not exceeding two years or a fine not exceeding £1000 or both;
    - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
  - (g) in South Georgia and the South Sandwich Islands,
    - (i) on summary conviction, to imprisonment for a term not exceeding two years or a fine not exceeding the statutory maximum or both;
    - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
  - (h) in the Turks and Caicos Islands,
    - (i) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding 3000 United States dollars or both;
    - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
  - (i) in the Virgin Islands,
    - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding 3000 United States dollars or both;
    - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
- and in subparagraphs (d) and (g), "statutory maximum" means such sum as is for the time being the prescribed sum for the purposes of section 32 of the Magistrates' Courts Act 1980.

(2) Compliance by the master of a vessel with that duty shall not affect his right or the right of any other person to a payment under the Convention or under any contract.

*The reward and special compensation: the common understanding*

4. In fixing a reward under article 13 and assessing special compensation under article 14 the court or arbitrator is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

*Recourse for life salvage payment*

5.—(1) This paragraph applies where—

- (a) services are rendered wholly or in part in the waters of the Territory in saving life from a vessel of any nationality or elsewhere in saving life from any ship registered in the Territory; and
- (b) either—
  - (i) the vessel and other property are destroyed, or
  - (ii) the sum to which the salvor is entitled under article 16, paragraph 2 is less than a reasonable amount for the services rendered in saving life.

(2) Where this paragraph applies, the Authority may, if he thinks fit, pay to the salvor such sum or, as the case may be, such additional sum as he thinks fit in respect of the services rendered in saving life; and for the purposes of this paragraph, "the Authority" means—

- (a) in Anguilla, the Governor;
- (b) in the British Antarctic Territory, the Commissioner;

- (c) in the British Indian Ocean Territory, the Commissioner;
- (d) in the Cayman Islands, the Governor in Council;
- (e) in Pitcairn, Henderson, Ducie and Oeno Islands, the Governor;
- (f) in the Falkland Islands, the Governor;
- (g) in Saint Helena, the Governor;
- (h) in South Georgia and the South Sandwich Islands, the Commissioner;
- (i) in the Turks and Caicos Islands, the Governor;
- (j) in the Virgin Islands, the Governor in Council.

*Meaning of "judicial proceedings"*

6. References in the Convention to judicial proceedings are references to proceedings—
- (a) in Anguilla, in the High Court;
  - (b) in the British Antarctic Territory, in the Supreme Court;
  - (c) in the British Indian Ocean Territory, in the Supreme Court;
  - (d) in the Cayman Islands, in the Summary Court or the Grand Court;
  - (e) in Pitcairn, Henderson, Ducie and Oeno Islands, the Supreme Court;
  - (f) in the Falkland Islands, in the Supreme Court or the Magistrate's Court;
  - (g) in Saint Helena, in the Saint Helena Supreme Court;
  - (h) in South Georgia and the South Sandwich Islands, in the Supreme Court;
  - (i) in the Turks and Caicos Islands, in the Magistrate's Court or the Supreme Court;
  - (j) in the Virgin Islands, in the High Court;

and any reference to the tribunal having jurisdiction (so far as it refers to judicial proceedings) shall be construed accordingly.

*Meaning of "State Party"*

7.—(1) An Order in Council made for the purposes of this paragraph and declaring that any State specified in the Order is a party to the Convention in respect of a specified country shall, subject to the provisions of any subsequent Order made for those purposes, be conclusive evidence that the State is a party to the Convention in respect of that country.

- (2) In this paragraph "country" includes "territory".

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order extends to the dependent territories listed in Schedule 1 provisions of the Merchant Shipping Act 1995 which give effect in the United Kingdom to the International Convention on Salvage, 1989.

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STATUTORY INSTRUMENTS

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1997 No. 2588

**MERCHANT SHIPPING****The Merchant Shipping (Oil Pollution)  
(South Georgia and the South Sandwich Islands)  
Order 1997***Made* - - - - - *30th October 1997**Coming into force* *30th November 1997*

At the Court at Buckingham Palace, the 30th day of October 1997

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 315(2) of the Merchant Shipping Act 1995(a) and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Citation and commencement**

1. This Order may be cited as the Merchant Shipping (Oil Pollution) (South Georgia and the South Sandwich Islands) Order 1997 and shall come into force on 30th November 1997.

**Implementation of the Liability and Fund Conventions**

2. Sections 152 to 170(b) and 172 to 181 of, and Schedule 5 to, the Merchant Shipping Act 1995, subject to the exceptions, adaptations and modifications specified in the Schedule to this Order, shall extend to South Georgia and the South Sandwich Islands, and any instrument made, or to be made, under section 152(2), 157(2), 157(4), 172(2) or 176(5) shall also extend to the South Georgia and the South Sandwich Islands.

**Interpretation**

3. In this Order—

- (a) “the Islands” means the South Georgia and the South Sandwich Islands;
- (b) a reference to a fine on the standard scale means a fine of an amount not exceeding the amount specified in relation to that level of the standard scale of fines appearing in section 37(2) of the Criminal Justice Act 1982(c) having effect on the date of the offence;
- (c) “statutory maximum” means such sum as is for the time being the prescribed sum for the purposes of section 32 of the Magistrate's Court Act 1980(d).

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(a) 1995 c.21.

(b) Section 158(2) was amended and section 158(2A) was added, by section 29(1) and Schedule 6 paragraph 4 of the Merchant Shipping and Maritime Security Act 1997 (1997 c.28).

(c) 1982 c.48.

(d) 1980 c.43.



**Revocations**

4. The following Orders, to the extent that they apply to the Islands, are hereby revoked—

- (a) The Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1975(a);
- (b) The Merchant Shipping (Oil Pollution) (Falkland Islands) (Amendment) Order 1976(b);
- (c) The Merchant Shipping (Oil Pollution) (Falkland Islands) (Amendment) Order 1981(c).

*N. H. Nicholls*  
Clerk of the Privy Council

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(a) S.I. 1975/2167.  
(b) S.I. 1976/2143.  
(c) S.I. 1981/218.

# SCHEDULE TO THE ORDER

Article 2

## THE MERCHANT SHIPPING ACT 1995

### PART VI

### PREVENTION OF POLLUTION

### CHAPTER III

### LIABILITY FOR OIL POLLUTION

#### *Preliminary*

Meaning of  
"the Liability  
Convention"  
and related  
expressions.

**152.—**(1) In this Chapter—

"the Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage 1992;

"Liability Convention country" means a country in respect of which the Liability Convention is in force, and includes the United Kingdom and any relevant British possession to which the Liability Convention has been extended; and

"Liability Convention State" means a State which is a party to the Convention.

(2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Liability 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 Liability Convention in respect of that country.

#### *Liability*

Liability for oil  
pollution in  
case of  
tankers.

**153.—**(1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for any damage caused outside the ship in the territory of the Islands by contamination resulting from the discharge or escape; and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the Islands by contamination resulting from the discharge or escape; and
- (c) for any damage caused in the territory of the Islands by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the Islands, and
- (b) for any damage caused outside the ship in the territory of the Islands by any measures so taken;

and in this Chapter any such threat is referred to as a relevant threat of contamination.

(3) Subject to subsection (4) below, this section applies to any ship constructed or adapted for carrying oil in bulk as cargo.

(4) Where any ship so constructed or adapted is capable of carrying other cargoes besides oil, this section shall apply to any such ship—

- (a) while it is carrying oil in bulk as cargo; and
- (b) unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil,

but not otherwise.

(5) Where a person incurs a liability under subsection (1) or (2) above he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the territory of the Islands included the territory of any other Liability Convention country.

## (6) Where—

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
  - (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,
- each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

## (7) For the purposes of this Chapter—

- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank;
- (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, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
- (c) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

(8) The Law Reform (Contributory Negligence) Act 1945(a) shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.

Liability for oil pollution in case of other ships.

**154.**—(1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship other than a ship to which section 153 applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for any damage caused outside the ship in the territory of the Islands by contamination resulting from the discharge or escape; and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the Islands by contamination resulting from the discharge or escape; and
- (c) for any damage so caused in the territory of the Islands by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a ship to which section 153 applies by the contamination which might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the Islands; and
- (b) for any damage caused outside the ship in the territory of the Islands by any measures so taken;

and in the subsequent provisions of this Chapter any such threat is referred to as a relevant threat of contamination.

## (3) Where—

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
  - (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,
- each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(4) The Law Reform (Contributory Negligence) Act 1945 shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.

(5) In this section “ship” includes a vessel which is not seagoing.

(a) 1945 c.28.

Exceptions  
from liability  
under sections  
153 and 154.

**155.** No liability shall be incurred by the owner of a ship under section 153 or 154 by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or (as the case may be) the threat of contamination—

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

Restriction of  
liability for oil  
pollution.

**156.**—(1) Where, as a result of any occurrence—

- (a) any oil is discharged or escapes from a ship (whether one to which section 153 or one to which section 154 applies), or
- (b) there arises a relevant threat of contamination,

then, whether or not the owner of the ship in question incurs a liability under section 153 or 154—

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it, and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2) Subsection (1)(ii) above applies to—

- (a) any servant or agent of the owner of the ship;
- (b) any person not falling within paragraph (a) above but employed or engaged in any capacity on board the ship or to perform any service for the ship;
- (c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
- (e) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 153 or 154;
- (f) any servant or agent of a person falling within paragraph (c), (d) or (e) above.

(3) The liability of the owner of a ship under section 153 or 154 for any impairment of the environment shall be taken to be a liability only in respect of—

- (a) any resulting loss of profits, and
- (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

### *Limitation of liability*

Limitation of  
liability under  
section 153.

**157.**—(1) Where, as a result of any occurrence, the owner of a ship incurs liability under section 153 by reason of a discharge or escape or by reason of any relevant threat of contamination, then (subject to subsection (3) below)—

- (a) he may limit that liability in accordance with the provisions of this Chapter, and
- (b) if he does so, his liability (being the aggregate of his liabilities under section 153 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subsection (1) above, “the relevant amount” means—

- (a) in relation to a ship not exceeding 5,000 tons, three million special drawing rights;

- (b) in relation to a ship exceeding 5,000 tons, three million special drawing rights together with an additional 420 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 59.7 million special drawing rights;

but the Commissioner may by order make such amendments of paragraphs (a) and (b) above as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in paragraph 1 of Article V of the Liability Convention.

(3) Subsection (1) above shall not apply in a case where it is proved that the discharge or escape, or (as the case may be) the relevant threat of contamination, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in section 153 or recklessly and in the knowledge that any such damage or cost would probably result.

(4) For the purposes of this section a ship's tonnage shall be its gross tonnage calculated in such a manner as may be prescribed by an order made by the Secretary of State.

(5) ...

Limitation  
actions.

**158.—**(1) Where the owner of a ship has or is alleged to have incurred a liability under section 153 he may apply to the court for the limitation of that liability to an amount determined in accordance with section 157.

(2) If on such an application the court finds that the applicant has incurred such a liability but has not found that he is not entitled to limit it, the court shall, after determining the limit which would apply to the applicant's liability if he were entitled to limit it and directing payment into court of the amount of that limit—

- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
- (b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

(2A) Where—

- (a) a distribution is made under (2)(b) above without the court having found that the applicant is entitled to limit his liability, and
- (b) the court subsequently finds that the applicant is not so entitled,

the making of the distribution is not to be regarded as affecting the applicant's liability in excess of the amount distributed.

(3) A payment into court of the amount of a limit determined in pursuance of this section shall be made 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 determination is made; 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 Financial Secretary stating—
  - (i) that a particular sum in sterling has been so fixed for the day on which the determination was made, 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 determination was made,

shall be conclusive evidence of those matters for the purposes of this Chapter;

- (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.



(4) No claim shall be admitted in proceedings under this section unless it is made within such time as the court may direct or such further time as the court may allow.

(5) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends—

- (a) by the owner or the person referred to in section 165 as “the insurer”; or
- (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 153, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of section 185 or 186 as extended to the Islands<sup>(a)</sup>;

the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

(6) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(7) The court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the Islands.

(8) No lien or other right in respect of any ship or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2)(b) above.

Restriction on enforcement after establishment of limitation fund.

**159.**—(1) Where the court has found that a person who has incurred a liability under section 153 is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount—

- (a) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and
- (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs. . . ;

if the sum paid into court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 158 had been taken.

(2) . . .

Concurrent liabilities of owners and others.

**160.** Where, as a result of any discharge or escape of oil from a ship or as a result of any relevant threat of contamination, the owner of the ship incurs a liability under section 153 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) or (2) of that section then, if—

- (a) the owner has been found, in proceedings under section 158 to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount; and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of section 185 or 186;

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

(a) Sections 185 and 186 of and Schedule 7 to the Merchant Shipping Act 1995 were extended to the Islands by the Merchant Shipping (Limitation of Liability for Maritime Claims) (Overseas Territories) Order 1997 (S.I. 1997/2579).

Establishment  
of limitation  
fund outside  
the Islands.

**161.** Where the events resulting in the liability of any person under section 153 also resulted in a corresponding liability under the law of another Liability Convention country sections 159 and 160 shall apply as if the references to sections 153 and 158 included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability.

Extinguishment  
of claims.

**162.** No action to enforce a claim in respect of a liability incurred under section 153 or 154 shall be entertained by any court in the Islands unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the liability was incurred.

### *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 oil of a description specified in regulations made by the Commissioner.

(2) The ship shall not enter or leave a port in the Islands or arrive at or leave a terminal in the territorial sea of the Islands 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).

(3) The certificate must be—

(a) ...

(b) if the ship is registered in a Liability Convention country other than the Islands, 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 Commissioner or by or under the authority of the government of any Liability Convention country other than the Islands.

(4) 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 customs officer.

(5) 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 on conviction on indictment to a fine, or on summary conviction to a fine not exceeding £50,000.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4) above, the master shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) If a ship attempts to leave a port in the Islands in contravention of this section the ship may be detained.

Issue of  
certificate by  
Commissioner.

**164.—**(1) Subject to subsection (2) below, if the Commissioner is satisfied, on the application for such a certificate as is mentioned in section 163 in respect of 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 Commissioner shall issue such a certificate to the owner.

(2) If the Commissioner 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 certificate.

(3) The Commissioner 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 to 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) ...

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, or as a result of any relevant threat of contamination arising, 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, or (as the case may be) the threat of contamination, 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, or (as the case may be) the threat of contamination, resulted from anything done or omitted to be done by the owner as mentioned in section 157(3).

(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) ...

### *Supplementary*

Jurisdiction of the Islands courts and registration for foreign judgments.

**166.**—(1) ...

(2) Where—

(a) any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of the Islands and no measures are reasonably taken to prevent or minimise such damage in the territory, or

(b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the Islands,

no court in the Islands shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost—

(i) against the owner of the ship, or

(ii) against any person to whom section 156(1)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(3) In subsection (2) above, “relevant damage or cost” means—

(a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Liability Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country;

(b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; or

(c) any damage caused by any measures taken as mentioned in paragraph (a) or (b) above;

and section 156(2)(e) shall have effect for the purposes of subsection (2)(ii) above as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b) above.

(4) The Foreign Judgments (Reciprocal Enforcement) Ordinance 1959(a) shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 153; and in its application to such a judgment that Ordinance shall have effect with the omission of subsections (2) and (3) of section 6.

Government ships.

**167.**—(1) Nothing in the preceding provisions of this Chapter applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with section 163(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Convention.

(3) Every Liability Convention State shall, for the purposes of any proceedings brought in a court in the Islands to enforce a claim in respect of a liability incurred under section 153, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution against the property of any State.

Limitation of liability under section 154.

**168.** For the purposes of section 185 as extended to the Islands any liability incurred under section 154 shall be deemed to be a liability to damages in respect of such damage to property as is mentioned in paragraph 1(a) of Article 2 of the Convention on Limitation of Liability for Maritime Claims 1976.

Saving for recourse actions.

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

Interpretation.

**170.**—(1) In this Chapter—

“the court” means the Supreme Court of the Falkland Islands;

“damage” includes loss;

“oil” 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;

“relevant threat of contamination” shall be construed in accordance with section 153(2) or 154(2); and

“ship” (subject to section 154(5)) means any sea-going vessel or seaborne craft of any type whatsoever.

(2) In relation to any damage or cost resulting from the discharge or escape of any oil from a ship, or from a relevant threat of contamination, references in this Chapter to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape or (as the case may be) in the threat of contamination.

(3) ...

(4) References in this Chapter to the territory of any country include the territorial sea of that country and—

(a) in the case of the Islands, any area within the Maritime Zone; and

(b) in the case of any other Liability Convention country, the exclusive economic zone of that country established in accordance with international law, or, if

(a) Laws of the Falkland Islands, No 4 of 1959.

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 that State in question in accordance with international law.

(5) In subsection (4) above, "Maritime Zone" means the maritime zone which was established for the Islands by and delimited in section 1 of the Proclamation by the Commissioner dated 7th May 1993(a);

171.—...

## CHAPTER IV INTERNATIONAL OIL POLLUTION COMPENSATION FUND

### *Preliminary*

Meaning of the "Liability Convention", "the Fund Convention" and related expressions.

172.—(1) In this Chapter—

- (a) "the Liability Convention" has the same meaning as in Chapter III of this Part;
- (b) "the Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;
- (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, and includes the United Kingdom and any relevant British possession to which the Fund Convention has been extended.

(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 that Convention in respect of that country.

### *Contributions to Fund*

Contributions by importers of oil and others.

173.—(1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in the Islands otherwise than on a voyage only within waters landward of the baselines for measuring the breadth of the territorial sea of the Islands.

(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 Islands 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 Islands, 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 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.

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(a) Proclamation Number 1 of 1993 of South Georgia and the Sandwich Islands.

(7) The contributions payable by a person for any year shall—

- (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 Assembly of the Fund, until it is paid.

(8) The Commissioner may by regulations impose on persons who are or may be likely to pay contributions under this section obligations to give security for payment to the Commissioner or the Fund.

(9) Regulations under subsection (8) above—

- (a) may contain such supplemental or incidental provisions as appear to the Commissioner expedient,
- (b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding level 5 on the standard scale, or such lower limit as may be specified in the regulations.

(10) In this section and in section 174, unless the context otherwise requires—

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

“group” in relation to companies, means a holding company and any subsidiaries as defined by section 736 of the Companies Act 1985(a) as in force in the Islands, subject, in the case of a company incorporated outside the Islands, to any necessary modifications of those definitions;

“importer” means the person by whom or on whose behalf the oil in question is entered for 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 oil from which distillate fractions have been removed, and
  - (ii) crude oil 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 D396-69)”, 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 off-shore and linked to any such site.

Power to  
obtain  
information.

**174.—**(1) For the purpose of transmitting to the Fund the names and addresses of the persons who under section 173 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 Commissioner 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 section 173(6).

(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 section 173, particulars contained in any list transmitted by the Commissioner to the

(a) 1985 c.6.

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, then, 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,

he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(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) on summary conviction, to a fine not exceeding level 4 on the standard scale in the case of an offence under paragraph (a) above and not exceeding the statutory maximum in the case of an offence under paragraph (b) above, and
- (ii) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding twelve months, or both.

#### *Compensation for persons suffering pollution damage*

Liability of the Fund. **175.**—(1) The Fund shall be liable for pollution damage in the territory of the Islands if the person suffering the damage has been unable to obtain full compensation under section 153—

- (a) because the discharge or escape, 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 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 155), 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 153 as limited by section 157.

(2) Subsection (1) above shall apply with the substitution for the words “the Islands” of the words “a Fund Convention country” where the incident has caused pollution damage in the territory of the Islands and of 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 Islands.

(3) Where the incident has caused pollution damage in the territory of the Islands and of another country in respect of which the Liability Convention is in force, references in this section to the provisions of Chapter III of this Part shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.



(4) ...

(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 153.

(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 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 (10) below) be exonerated wholly or partly from its obligations to pay compensation to that person.

(9) Where the liability under section 153 in respect of the pollution damage is limited to any extent by subsection (8) of that section, the Fund shall (subject to subsection (10) below) be exonerated to the same extent.

(10) Subsections (8) and (9) above shall not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures.

**176.**—(1) The Fund's liability under section 175 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 Part I of Schedule 5), and in those provisions references to the Liability Convention are references to the Liability Convention within the meaning of this Chapter.

(2) A certificate given by the Director of the Fund stating that subparagraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 175 shall be conclusive evidence for the purposes of this Chapter that it is so applicable.

(3) For the purpose of giving effect to paragraphs 4 and 5 of the Fund Convention a court giving judgment against the Fund in proceedings under section 175 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

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 Financial Secretary 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 Chapter.

(5) The Secretary of State may by order make such amendments of this section and Part I of Schedule 5 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.

### *Supplemental*

Jurisdiction  
and effect of  
judgments.

177.—(1) . . .

(2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 153, 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 Chapter III of this Part for damage which is partly in the territory of the Islands, subsection (2) above shall, for the purpose of proceedings under this Chapter, apply with any necessary modifications to a judgment in proceedings under that law of the said country.

(4) Subject to subsection (5) below, Part I of the Foreign Judgments (Reciprocal Enforcement) Ordinance 1959(a) 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 175; and in its application to such a judgment the said Ordinance shall have effect with the omission of subsections (2) and (3) of section 6.

(5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under the 1959 Ordinance 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 in Part I of Schedule 5) 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.

Extinguishment  
of claims.

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

- (a) the action is commenced, or
- (b) a third party notice of 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.

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(a) Laws of the Falkland Islands, No. 4 of 1959.



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

(2) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in the Islands 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.

**Subrogation.** **179.**—(1) In respect of any sum paid by the Fund as compensation for pollution damage the Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.

(2) In respect of any sum paid by a public authority in the Islands as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under this Chapter.

**Supplementary provisions as to proceedings involving the Fund.** **180.**—(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.

**Interpretation.** **181.**—(1) In this Chapter, unless the context otherwise requires—

"damage" includes loss;

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

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

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

"oil", except in sections 173 and 174, means persistent hydrocarbon mineral oil;

"owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship's operator, it means the person registered as its operator;

"pollution damage" means—

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

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

- (i) any loss of profits, or
- (ii) the cost of any reasonable measures of reinstatement actually taken or to be taken;

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

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

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

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

(2) For the purposes of this Chapter—

- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and
- (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.

(3) References in this Chapter to the territory of any country shall be construed in accordance with section 170(4) reading the reference to a Liability Convention country as a reference to a Fund Convention country.

## SCHEDULE 5

Section 176

### OVERALL LIMIT ON LIABILITY OF FUND

#### PART I

#### PERMANENT PROVISION

#### Article 4—paragraphs 4 and 5

4. (a) Except as otherwise provided in sub-paragraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of account.
- (b) Except as otherwise provided in sub-paragraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 135 million units of account.
- (c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.
- (d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.
- (e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

The International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC), which was implemented in the South Georgia and the South Sandwich Islands by Schedule 1 to the Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1975, provides uniform rules and procedures for determining questions of liability and for awarding compensation when damage is caused by pollution resulting from the escape or discharge of oil from ships. The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the Fund Convention), which was implemented in the Islands by Schedule 2 to the 1975 Order, set up an international fund to provide a supplementary system for compensation and indemnification for such damage. The 1992 Protocol to the CLC, and the 1992 Protocol to the Fund Convention respectively create a new 1992 Civil Liability Convention and a 1992 Fund Convention which together provide for higher levels of compensation and more extensive liability. The 1992 Conventions are given effect in the United Kingdom by Part VI, Chapters III and IV of the Merchant Shipping Act 1995. This Order extends those provisions of the 1995 Act to South Georgia and the South Sandwich Islands, with the necessary exceptions, adaptations and modifications.





**THE  
SOUTH GEORGIA  
AND THE  
SOUTH SANDWICH ISLANDS GAZETTE**  
**PUBLISHED BY AUTHORITY**

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*No. 3*

*30th June 1998*

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The following are published in this Gazette —

**Visitors (Landing Fees) Regulations 1998, (S.R. & O. No. 2 of 1998);**

**Harbours (Fees) (Amendment) Regulations 1998, (S.R. & O. No. 3 of 1998);**

**Customs (Fees) (Amendment) Regulations 1998, (S.R. & O. No. 4 of 1998);**

**Fisheries (Transshipment and Export) (Amendment) Regulations 1998, (S.R. & O. No. 5 of 1998).**

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## SUBSIDIARY LEGISLATION

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### SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS

#### VISITORS

##### Visitors (Landing Fees) Regulations 1998

S. R. & O. No. 2 of 1998

*Made:* 24 June 1998  
*Published:* 30 June 1998  
*Coming into force:* 1 July 1998

IN EXERCISE of my powers under section 6 of the Visitors Ordinance 1992(a), and of all other powers enabling me in that behalf, I make the following Regulations—

##### **Citation and commencement**

1. These Regulations may be cited as the Visitor (Landing Fees) Regulations 1998 and shall come into force on 1 July 1998.

##### **Amendment of the passenger landing fee**

2. The passenger landing fee payable under section 3(1) of the Visitors Ordinance 1992 is 50 pounds sterling.

Made this 24th day of June 1998

R P Ralph  
*Commissioner*

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## SUBSIDIARY LEGISLATION

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### SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS

#### HARBOURS

#### Harbours (Fees)(Amendment) Regulations 1998

S. R. & O. No. 3 of 1998

*Made:* 25 June 1998  
*Published:* 30 June 1998  
*Coming into force:* 1 July 1998

IN EXERCISE of my powers under section 3 of the Harbours Ordinance(a), and of all other powers enabling me in that behalf, I make the following Regulations—

#### **Citation and commencement**

1. These Regulations may be cited as the Harbours (Fees)(Amendment) Regulations 1998 and shall come into force on 1 July 1998.

#### **Amendment of the Harbours (Fees) Regulations 1994**

2. The Harbours (Fees) Regulations 1994(b) are amended as follows—

(a) regulation 2 is amended by deleting the figures and symbol “£25” and replacing them with “£30”.

(b) the Schedule to the Regulations is amended by replacing it with the following—

#### “SCHEDULE

(regulation 3(1))

Yachts (irrespective of tonnage)— £50.00

The following fees are payable in relation to the net tonnage of the vessel concerned—

Vessels (other than yachts)—	Fee—
Under 30 tonnes	£53.00
30 tonnes and under 50 tonnes	£182.00
50 tonnes and under 800 tonnes	£254.00

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(a) Cap 30 Laws of the Falkland Islands 1950 Edition in its application under Cap 1 (DS) to South Georgia and the South Sandwich Islands

(b) S.R.&O. No 1 of 1994 as amended by S.R.&O. No 1 of 1995



800 tonnes and under 1000 tonnes	£319.00
1000 tonnes and under 1500 tonnes	£373.00
1500 tonnes and under 2000 tonnes	£452.00
2000 tonnes and under 5000 tonnes	£547.00
5000 tonnes and under 7000 tonnes	£680.00
7000 tonnes and under 10000 tonnes	£1,012.00
10000 tonnes and under 15000 tonnes	£1,234.00
15000 tonnes and under 20000 tonnes	£1,452.00
Vessels over 20000 tonnes	£1,525.00"

Made this 25th day of June 1998

R P Ralph  
*Commissioner*

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**EXPLANATORY NOTE**  
*(not forming part of the above regulations)*

These Regulations set revised harbour dues for South Georgia and the South Sandwich Islands.

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## SUBSIDIARY LEGISLATION

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### SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS

#### CUSTOMS

##### **Customs (Fees)(Amendment) Regulations 1998**

S. R. & O. No. 4 of 1998

*Made:* 25 June 1998

*Published:* 30 June 1998

*Coming into force:* 1 July 1998

IN EXERCISE of my powers under section 230 of the Customs Ordinance<sup>(a)</sup>, and of all other powers enabling me in that behalf, I make the following Regulations—

##### **Citation and commencement**

1. These Regulations may be cited as the Customs (Fees)(Amendment) Regulations 1998 and shall come into force on 1 July 1998.

##### **Amendment of the Customs (Fees) Regulations 1992**

2. Regulation 3 of the Customs (Fees) Regulations 1992<sup>(b)</sup> are amended by deleting the figures and symbols “£40.00”, “£20.00”, “£60” and “£30” wherever they appear in regulation 3 and replacing them as follows—

- “£40.00” to be replaced by “£44”;
- “£20.00” to be replaced by “£22”;
- “£60” to be replaced by “£66”; and
- “£30” to be replaced by “£33”.

Made this 25th day of June 1998

R P Ralph  
*Commissioner*

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(a) Cap 16 Laws of the Falkland Islands 1950 Edition in its application under Cap 1(DS) to South Georgia and the South Sandwich Islands

(b) SR&O No 1 of 1992

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**EXPLANATORY NOTE**

*(not forming part of the above regulations)*

These Regulations make revised provision for the charging of customs fees for customs services provided in respect of South Georgia and the South Sandwich Islands.

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## SUBSIDIARY LEGISLATION

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### SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS

#### FISHERIES

#### **Fisheries (Transshipment and Export)(Amendment) Regulations 1998**

S. R. & O. No. 5 of 1998

*Made:* 25 June 1998

*Published:* 30 June 1998

*Coming into force:* 1 July 1998

IN EXERCISE of my powers under section 3 of the Fisheries Ordinance(a), and of all other powers enabling me in that behalf, I make the following Regulations—

#### **Citation and commencement**

1. These Regulations may be cited as the Fisheries (Transshipment and Export) (Amendment) Regulations 1998 and shall come into force on 1 July 1998.

#### **Amendment of the Fisheries (Transshipment and Export) Regulations 1990**

2. The Fisheries (Transshipment and Export) Regulations 1990(b) are amended by deleting the symbol and figures “£1000” appearing in the Schedule and replacing them with “£1,100”.

Made this 25th day of June 1998

R P Ralph  
*Commissioner*

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(a) Cap 27 Laws of the Falkland Islands 1950 Edition in its application under Cap 1 (DS) to South Georgia and the South Sandwich Islands

(b) SR&O No 1 of 1990

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**EXPLANATORY NOTE**  
*(not forming part of the above regulations)*

These Regulations revise the fee payable for a licence to tranship fish within the waters of South Georgia and the South Sandwich Islands.



**THE  
SOUTH GEORGIA  
AND THE  
SOUTH SANDWICH ISLANDS GAZETTE  
PUBLISHED BY AUTHORITY**

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*No. 4*

*23rd December 1998*

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**Marriage Ordinance 1949, Cap 43  
(section 5)**

**Registration as a Minister for Celebrating Marriage**

It is hereby notified that ALISTAIR McHAFFIE has been registered as a Minister for Celebrating Marriage with effect from 18 December 1998.

Dated 21 December 1998.