

MERCHANT SHIPPING ACT 1995

Text of the Act as it has effect in the Isle of Man. Modifications are indicated by ***Bold Italics***.

<i>Section</i>	<i>Subject</i>	<i>Application Order</i>
1.	British ships and United Kingdom ships	SD 23/99
42.	Obligation of shipowner as to seaworthiness	SD 23/99
87.	Dangerous goods : supplementary provisions	SD 23/99
91.	Reports of danger to navigation	SD 23/99
92	Duty of ship to assist the other in case of collision	SD 23/99
93.	Obligation to assist ships etc. in distress	SD 23/99
94.	Meaning of “dangerously unsafe ship”	SD 23/99
98.	Owner and master liable in respect of dangerously unsafe ship	SD 23/99
99.	Use of Unsafe lighters etc.	SD 23/99
100.	Owner liable for unsafe operation of ship	SD 23/99
107.	Return to be furnished by masters of ships as to passengers	SD 23/99
130.	Regulation of transfers between ships in territorial waters.	SD 23/99
CHAPTER III - LIABILITY FOR OIL POLLUTION		
152	Meaning of “Liability Convention” and related expressions	SD 553/97
153	Liability for oil pollution in case of tankers	SD 553/97
154.	Liability for oil pollution in case of other ships.	SD 553/97
155.	Exceptions from liability under sections 153 and 154	SD 553/97
156.	Restriction of liability for oil pollution	SD 553/97
157.	Limitation of liability under section 153.	SD 553/97
158.	Limitation actions.	SD 553/97
159.	Restriction on enforcement after establishment of limitation fund	SD 553/97
160.	Concurrent liabilities of owners and others	SD 553/97
161.	Establishment of limitation fund outside Isle of Man	SD 553/97
162.	Extinguishment of Claims	SD 553/97

163.	Compulsory insurance against liability for pollution	SD 553/97
164.	Issue of certificate by the Department of Trade and Industry	SD 553/97
165.	Rights of third parties against insurers.	SD 553/97
166.	Jurisdiction of Isle of Man Courts and registration of foreign judgements	SD 553/97
167.	Government ships	SD 553/97
168.	Limitation of liability under section 154	SD 553/97
169.	Saving for recourse actions.	SD 553/97
170.	Interpretation.	SD 553/97
171.	Transitory text of this Chapter and power to make transitional provisions	SD 553/97

CHAPTER IV - INTERNATIONAL OIL POLLUTION COMPENSATION FUND

172.	Meaning of the “Liability Convention”, “the Fund Convention” and related expressions	SD 553/97
173.	Contributions by importers of oil and others	SD 553/97
174.	Power to obtain information	SD 553/97
175.	Liability of the Fund.	SD 553/97
176.	Limitation of the Fund’s Liability under section 175.	SD 553/97
177.	Jurisdiction and effect of judgements.	SD 553/97
178.	Extinguishment of claims	SD 553/97
179.	Subrogation.	SD 553/97
180.	Supplementary provisions as to proceedings involving the Fund.	SD 553/97
180A.	Tynwald Procedure	SD 553/97
181.	Interpretation.	SD 553/97
182	Transitory text of this Chapter and power to make transitional provisions	SD 553/97

CHAPTER V - CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES

182A	Introductory	SD 23/99
182B	Power to give effect to Convention	SD 23/99
182C	Power of the Department of Trade and Industry to make Orders	SD 23/99

**PART VII - LIABILITY OF SHIPOWNERS
AND OTHERS**

183.	Scheduled Convention to have force of law.	SD 23/99
185.	Limitation of liability for maritime claims	SD 23/99
186.	Exclusion of liability	SD 23/99
187.	Damage or loss : apportionment of liability	SD 23/99
188.	Loss of Life or personal injuries : joint and several liability	SD 23/99
189.	Loss of Life or personal injuries : right of contribution	SD 23/99
190.	Time limit for proceedings against owners or ship	SD 23/99
191.	Limitation of liability	SD 23/99
192.	Application to Crown and its ships	SD 23/99
192A	Compulsory insurance or security	SD 23/99

PART XII - LEGAL PROCEEDINGS

274.	Time Limit for summary offences	SD 23/99
275.	Time Limit for summary orders	SD 23/99
277.	Offences by officers of bodies corporate	SD 533/97
279.	Jurisdiction in relation to offences	SD 23/99
280.	Jurisdiction over ships lying off coasts	SD 23/99
281.	Jurisdiction in case of offences on board ship.	SD 23/99
282.	Offences committed by British seamen	SD 23/99
283.	Return of offenders	SD 23/99
286.	Depositions of persons abroad admissible	SD 23/99
287.	Admissibility in evidence and inspection of certain documents	SD 23/99
288.	Admissibility of documents in evidence	SD 23/99
289.	Inspection and admissibility in evidence of copies of certain documents.	SD 23/99
290.	Proof etc. of exemptions.	SD 23/99
306.	Regulations, rules, orders etc.	SD 23/99
310.	Application of Act to hovercraft.	SD 23/99
311.	Application of Act to certain structures.	SD 23/99
313.	Definitions.	SD 23/99

313A.	Meaning of “qualifying foreign ship”	SD 23/99
316.	Short title and commencement.	SD 533/97
Sch. 5.	Overall limit on liability of Fund	SD 533/97
Sch 5A.	Text of the International Convention on Liability and Compensation for damage in connection with the carriage of hazardous and noxious substances by sea.	SD 23/99
Sch. 6.	Convention relating to the Carriage of Passengers and their Luggage by Sea.	SD 23/99
Sch 7.	Convention on Limitation of Liability for Maritime Claims 1976.	SD 23/99

This text includes amendments made to this Act by:

SD269/04 Merchant Shipping (Safety of Navigation – SOLAS Chapter V) Regulations 2004;

SD03/05 Merchant Shipping (Oil Pollution Compensation Limits) Order 2005;

SD197/07 Merchant Shipping (Oil Pollution) (Supplementary Fund Protocol) (Application) Order 2007

SD531/08 Merchant Shipping (Bunkers Convention)(Application) Order 2008

PART I - BRITISH SHIPS

British ships and United Kingdom ships

1. (1) A ship is a British ship if -
 - (a) the ship is registered in the United Kingdom under Part II; or
 - (b) the ship is, as a Government ship, registered in the United Kingdom in pursuance of an Order in Council under section 308; or
 - (c) the ship is registered under the law of a relevant British possession; or
 - (d) the ship is a small ship other than a fishing vessel and -
 - (i) is not registered under Part II, but
 - (ii) is wholly owned by qualified owners, and
 - (iii) is not registered under the law of a country outside the United Kingdom.
- (2) For the purposes of subsection (1)(d) above -

“qualified owners” means persons of such description qualified to own British ships as is prescribed by regulations made by the Secretary of State for the purposes of that paragraph; and

“small ship” means a ship less than 24 metres in length (“length” having the same meaning as in the tonnage regulations).
- (3) (*Omit*)

Obligation of shipowner as to seaworthiness

42. (1) In every contract of employment between the owner of a Manx ship and the master of or any seamen employed in the ship there shall be implied an obligation on the owner of the ship that -
- (a) the owner of the ship,
 - (b) the master of the ship, and
 - (c) every agent charged with -
 - (i) the loading of the ship,
 - (ii) the preparing of the ship for sea, or
 - (iii) the sending of the ship to sea,

shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences and to keep her in a seaworthy condition for the voyage during the voyage.

(2) The obligation imposed by subsection (1) above applies notwithstanding any agreement to the contrary.

(3) No liability on the owner of a ship arises under subsection (1) above in respect of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable.

Dangerous goods: supplementary provisions

87. (1) Where any dangerous goods have been sent or carried or attempted to be sent or carried, on board any ship, whether or not a *Manx* ship -

- (a) without being marked as required by safety regulations,
- (b) without such notice having been given as is required by safety regulations,
- (c) under a false description, or
- (d) with a false description of their sender or carrier,

any court having Admiralty jurisdiction may declare the goods, and any package or receptacle in which they are contained, to be forfeited.

(2) On a declaration of forfeiture being made, the goods shall be forfeited and they shall be disposed of as the court directs.

(3) The powers conferred on the court by subsections (1) and (2) above are exercisable notwithstanding that the owner of the goods -

- (a) has not committed any offence under safety regulations relating to dangerous goods;
- (b) is not before the court, and
- (c) has no notice of the proceedings;

and notwithstanding that there is no evidence to show to whom the goods belong.

(4) Nevertheless, the court may, in their discretion, require such notice as they may direct to be given to the owner or shipper of the goods before they are forfeited.

(5) In this section “dangerous goods” means goods designated as dangerous goods by safety regulations.

Reports of danger to navigation

91. Sections (1) – (4) omitted by SD269/04 Merchant Shipping (Safety of Navigation – SOLAS Chapter V) Regulations 2004.

(5) Every person in charge of a controlled station for wireless telegraphy shall, on receiving the signal prescribed *under safety regulations relating to dangers to navigation, which indicates that a message is about to be sent under those regulations*, refrain from sending messages for a time sufficient to allow other stations to receive the message, and, if so required by the *Department of Trade and Industry*, shall transmit the message in such manner as may be required by *that Department*.

(6) Compliance with subsection (5) above shall be deemed to be a condition of every wireless telegraphy licence.

(7) In this section -

“controlled station for wireless telegraphy” means such a station *issued with a license under the Wireless Telegraphy Act 1949¹ as that Act has effect in the Isle of Man²* ;

“wireless telegraphy licence” and “station for wireless telegraphy” have the same meaning as in the Wireless Telegraphy Act 1949;

Assistance at sea

Duty of ship to assist the other in case of collision

92. (1) In every case of collision between two ships, it shall be the duty of the master of each ship, if and so far as he can do so without danger to his own ship, crew and passengers (if any) -

- (a) to render to the other ship, its master, crew and passengers (if any) such assistance as may be practicable, and may be necessary to save them from any danger caused by the collision, and to stay by the other ship until he has ascertained that it has no need of further assistance; and
- (b) to give to the master of the other ship the name *and IMO ship identification number* of his own ship and also the names the ports from which it comes and to which it is bound.

(2) The duties imposed on the master of a ship by subsection (1) above apply to the masters of *Manx* ships and to the masters of foreign ships when in *Manx* waters.

¹ 1949 c.49

² Extended by SI 1952/1899

(3) The failure of the master of a ship to comply with the provisions of this section shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default.

(4) If the master fails without reasonable excuse to comply with this section, he shall -

- (a) in the case of a failure to comply with subsection (1)(a) above, be liable -
 - (i) on summary conviction, to a fine not exceeding £50,000 or imprisonment for a term not exceeding six months or both;
 - (ii) on conviction on *information*, to a fine or imprisonment for a term not exceeding two years or both; and
- (b) in the case of a failure to comply with subsection (1)(b) above be liable -
 - (i) on summary conviction, to a fine not exceeding £5,000;
 - (ii) on conviction on *information*, to a fine.

and in either case if he is a certified officer, an inquiry into his conduct may be held, *and the authority who issued his certificate of competency notified of the outcome of the inquiry.*

Obligation to assist ships etc., in distress.

93. (1) The master of a ship, on receiving at sea a signal of distress *from an aircraft* or information from any source that *an aircraft* is in distress, shall proceed with all speed to the assistance of the persons in distress (informing them if possible that he is doing so) unless he is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to do so, or unless he is released from this duty under subsection (4) or (5) below.

(2) *(Omitted by SD 474/99).*

(3) The duties imposed on the master of a ship by *subsection (1)* above apply to the masters of *Manx* ships and to the masters of foreign ships when in *Manx* waters.

(4) *(Omitted by SD 474/99).*

(5) A master shall be released from the obligation imposed by subsection (1) above, *[...]* if he is informed by the persons in distress, or by the master of any ship that has reached the persons in distress, that assistance is no longer required.

(6) If a master fails to comply with the preceding provisions of this section he shall be liable

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000, or both;

- (b) on conviction on *information* to imprisonment for a term not exceeding two years or to a fine, or both.

(7) Compliance by the master of a ship with the provisions of this section shall not affect his right, or the right of any other person, to salvage.

Meaning of “dangerously unsafe ship”

94. (1) For the purposes of *section* 98 a ship in port is “dangerously unsafe” if having regard to the nature of the service for which it is intended, the ship is, by reason of the matters mentioned in subsection (2) below, unfit to go to sea without serious danger to human life.

(1A) For the purposes of those sections a ship at sea is “dangerously unsafe” if, having regard to the nature of the service for which it is being used or is intended, the ship is, by reason of the matters mentioned in subsection (2) below, either -

- (a) unfit to remain at sea without serious danger to human life, or
- (b) unfit to go on a voyage without serious danger to human life.

(2) Those matters are

- (a) the condition, or the unsuitability for its purpose, of -
 - (i) the ship or its machinery or equipment; or
 - (ii) any part of the ship or its machinery or equipment;
- (b) undermanning;
- (c) overloading or unsafe or improper loading;
- (d) any other matter relevant to the safety of the ship;

and are referred to in those sections, in relation to any ship, as “the matters relevant to its safety”.

(3) Any reference in those sections to “going to sea” shall, in a case where the service for which the ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.

Owner and master liable in respect of dangerously unsafe ship.

98. (1) If a ship which -

- (a) is in a port in the *Isle of Man*; or
- (b) a *Manx* ship and is in any other port,

is dangerously unsafe, then subject to subsections (4) and (5) below, the master and the owner of the ship shall each be guilty of an offence.

(2) Where, at the time when a ship is dangerously unsafe, any responsibilities of the owner with respect to the matters relevant to its safety have been assumed (whether wholly or in part) by any person or persons other than the owner, and have been so assumed by that person or (as the case may be) by each of those persons either -

- (a) directly, under the terms of a charter-party or management agreement made with the owner, or
- (b) indirectly, under the terms of a series of charter-parties or management agreements

the reference to the owner in subsection (1) above shall be construed as a reference to that other person or (as the case may be) to each of those other persons.

(3) A person guilty of an offence under this section shall be liable -

- (a) on summary conviction to a fine not exceeding £50,000.
- (b) on conviction on *information*, to imprisonment for a term not exceeding two years or a fine, or both.

(4) It shall be a defence in proceedings for an offence under the preceding subsection to prove that at the time of the alleged offence -

- (a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters aforesaid which are specified in the charge [...]; or
- (b) it was reasonable for such arrangements not to have been made.

(5) It shall also be a defence in proceedings for an offence under this section to prove -

- (a) that, under the terms of one or more charter parties or management agreements entered into by the accused, the relevant responsibilities, namely -
 - (i) where the accused is the owner, his responsibilities with respect to the matters relevant to the ship's safety, or
 - (ii) where the accused is liable to proceedings under this section by virtue of subsection (2) above, so much of those responsibilities as has been assumed by him as mentioned in that subsection,

had at the time of the alleged offence been wholly assumed by some other person or persons party thereto; and

- (b) that in all the circumstances of the case the accused had taken such steps as it was reasonable for him to take, and exercised such diligence as it was reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in paragraph (a) above;

and, in determining whether the accused had done so, regard shall be had in particular to the matters mentioned in subsection (6) below.

- (6) Those matters are -
- (a) whether prior to the time of the alleged offence the accused was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and
 - (b) the extent to which the accused was or was not able, under the terms of any such charter-party or management agreement as is mentioned in subsection (5)(a) above -
 - (i) to terminate it, or
 - (ii) to intervene in the management of the ship,in the event of any such deficiency, and whether it was reasonable for the accused to place himself in that position

(7) No proceedings for an offence under this section shall be instituted *except by and with the consent of the Attorney General*.

(8) In this section -

“management agreement”, in relation to a ship, means any agreement (other than a charter-party or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person); and

“relevant responsibilities” shall be construed in accordance with subsection (5) above.

(9) References in this section to responsibilities being assumed by a person under the terms of a charter-party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

Use of unsafe lighters etc.

99. (1) If any person uses or causes or permits to be used in navigation any lighter, barge or like vessel when, because of -

- (a) the defective condition of its hull or equipment,
- (b) overloading or improper loading, or
- (c) undermanning,

it is so unsafe that human life is thereby endangered, he shall be liable -

- (i) on summary conviction, to a fine not exceeding *£5,000*;
- (ii) on conviction on *information*, to a fine.

(2) Proceedings for an offence under this section shall not be instituted *except by and with the consent of the Attorney General*.

(3) This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel.

Owner liable for unsafe operation of ship

100. (1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.

(2) This section applies to -

- (a) any *Manx* ship; and
- (b) any ship which -
 - (i) is registered under the law of any country *or territory* outside the *Isle of Man*, and
 - (ii) is within *Manx* waters while proceeding to or from a port in the *Isle of Man*,

unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.

(3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by section (1) above, he shall be liable -

- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on *information*, to imprisonment for a term not exceeding two years or a fine, or both.

(4) Where any such ship -

- (a) is chartered by demise, or
- (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of section 98,

any reference to the owner of the ship in subsection (1) or (3) above shall be construed as including a reference -

- (i) to the charterer under the charter by demise, or
- (ii) to any such manager as is referred to in paragraph (b) above, or
- (iii) (if the ship is both chartered and managed as mentioned above) to both the charterer and any such manager,

and accordingly the reference in subsection (1) above to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.

(5) No proceedings for an offence under this section shall be instituted *except by and with the consent of the Attorney General*.

Return to be furnished by masters of ships as to passengers

107. (1) The master of every ship, whether or not a *Manx* ship, which carries any passenger to a place in the *Isle of Man* from any place out of the *Isle of Man*, or from any place in the *Isle of Man* to any place out of the *Isle of Man*, shall furnish to such person and in such manner as the *Department of Trade and Industry* directs a return giving the total number of any class of passengers so carried, and giving, if the *Department of Trade and Industry* so directs, such particulars with respect to passengers as may be for the time being required by the *Department of Trade and Industry*.

(2) Any passenger shall furnish the master of the ship with any information required by him for the purpose of the return.

(3) If -

- (a) the master of a ship fails to make a return as required by this section, or makes a false return,
- (b) any passenger refuses to give any information required by the master of the ship for the purpose of the return required by this section, or, for that purpose, gives to the master information which he knows to be false or recklessly gives to him information which is false,

the master or (or as the case may be) passenger shall be liable on summary conviction to a fine not exceeding **£500** in the case of a failure and **£1,000** in the case of a false return or false information.

Regulation of transfers between ships in territorial waters

130.- (1) The *Department of Trade and Industry* may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within the seaward limits of the territorial sea of the *Isle of Man*, such provision as *it* considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.

(2) Regulations under this section may, in particular, do any of the following things, namely -

- (a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;

- (b) make provision about -
 - (i) the design of, and standards to be met by, ships and equipment,
 - (ii) the manning of ships including the qualifications and experience to be possessed by persons of any specified description employed on board, and
 - (iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary thereto;
 - (c) provide for proposed transfers to be notified to and approved by persons appointed by the *Department of Trade and Industry*, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
 - (d) provide-
 - (i) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations, and
 - (ii) for references in the regulations to any document so specified to operate as references to that document as revised or re-issued from time to time;
 - (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
 - (f) provide for the granting by the *Department of Trade and Industry* or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the *Department of Trade and Industry* or that other person may specify, and for altering or cancelling exemptions;
 - (g) limit any provision of the regulations to specified cases or kinds of case.
- (3) Regulations under this section may provide-
- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding £25,000 and on conviction on *information* by imprisonment for a term not exceeding two years or a fine or both;
 - (b) that any contravention shall be an offence punishable only on summary conviction by a fine not exceeding £25,000 or such lower amount as is prescribed by the regulations.
 - (c) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (a) or (b) above.

CHAPTER III

LIABILITY FOR OIL POLLUTION

Preliminary

Meaning of “the Bunkers Convention”, “the Liability Convention” and related expressions

152.- (1) In this Chapter-

“the Bunkers Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;

“Bunkers Convention country” means a country in respect of which the Bunkers Convention is in force;

“Bunkers Convention State” means a State which is a party to the Bunkers Convention;

“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

“Liability Convention State” means a State which is a party to the Liability Convention.

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

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 registered owner of the ship shall be liable -

- (a) for any damage caused outside the ship in the territory of the *Isle of Man* 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 *Isle of Man* by contamination resulting from the discharge or escape; and

- (c) for any damage caused in the territory of the *Isle of Man* 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 registered 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 *Isle of Man*; and
- (b) for any damage caused outside the ship in the territory of the *Isle of Man* by any measures so taken.

(2A) In this Chapter, such a threat is referred to as a relevant threat of contamination falling within subsection (2) of this section.

(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 *Isle of Man* 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 registered owner of each of two or more ships, but
- (b) the damage or cost for which each of the registered owners would be liable cannot reasonably be separated from that for which the other or others would be liable;

each of the registered owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the registered owners together would be liable under this section.

Liability for pollution by bunker oil

153A (1) Subject to subsection (3), where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship 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 *Isle of Man* 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 *Isle of Man* by contamination resulting from the discharge or escape; and
- (c) for any damage caused in the territory of the *Isle of Man* by any measures so taken.

(2) Subject to subsection (3), where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship by the contamination that might result if there were a discharge or escape of bunker 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 *Isle of Man*; and
- (b) for any damage caused outside the ship in the territory of the *Isle of Man* by any measures so taken.

(3) There shall be no liability under this section in relation to —

- (a) a discharge or escape of bunker oil from a ship to which section 153 applies, or
- (b) a threat mentioned in subsection (2) arising in relation to a potential discharge or escape of bunker oil from such a ship,

where that bunker oil is also persistent hydrocarbon mineral oil.

(4) In the subsequent provisions of this Chapter—

- (a) a discharge or escape of bunker oil from a ship, other than a discharge or escape of oil excluded by subsection (3), is referred to as a discharge or escape of bunker oil falling within subsection (1) of this section; and
- (b) a threat mentioned in subsection (2), other than one excluded by subsection (3), is referred to as a relevant threat of contamination falling within subsection (2) of this section.

(5) Where a person incurs a liability under subsection (1) or (2) 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 *Isle of Man* included the territory of any other Bunkers 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) In this Chapter (except in section 170(1) “owner”, except when used in the term “registered owner”, means the registered owner, bareboat charterer, manager and operator of the ship.

Liability for oil pollution in other cases

154.- (1) Subject to subsection (2A) where, as a result of any occurrence, any oil is discharged or escapes from the ship, then (except as otherwise provided by this Chapter) the registered owner of the ship shall be liable -

- (a) for any damage caused outside the ship in the territory of the *Isle of Man* 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 *Isle of Man* by contamination resulting from the discharge or escape; and
- (c) for any damage so caused in the territory of the *Isle of Man* by any measures so taken.

(2) Subject to subsection (2A) where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship 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 registered 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 *Isle of Man*; and
- (b) for any damage caused outside the ship in the territory of the *Isle of Man* by any measures so taken;

- (2A) No liability shall be incurred under this section by reason of –
- (a) a discharge or escape of oil from a ship to which section 153 applies or a relevant threat of contamination falling within subsection (2) of that section;
 - (b) a discharge or escape of bunker oil falling within section 153A(1) or relevant threat of contamination falling within section 153A(2).
- (2B) In the subsequent provisions of this Chapter –
- (a) a discharge or escape of oil from a ship, other than one excluded by subsection (2A), is referred to as a discharge or escape of oil falling within subsection (1) of this section; and
 - (b) a threat mentioned in subsection (2), other than once excluded by subsection (2A), is referred to as a relevant threat of contamination falling within subsection (2) of this section.
- (3) Where -
- (a) as a result of any occurrence, a liability is incurred under this section by the registered owner of each of two or more ships, but
 - (b) the damage or cost for which each of the registered owners would be liable cannot reasonably be separated from that for which the other or others would be liable;

each of the registered owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the registered owners together would be liable under this section.

(4) The Law Reform (Contributory Negligence) Act 1946 (an Act of Tynwald) 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 (apart from subsection 2(A)) “ship” includes a vessel which is not seagoing.

Exceptions from liability under sections 153, 153A and 154

155. (1) No liability shall be incurred by a person (“the defendant”) under section 153, 153A or 154 by reason of a discharge or escape of oil or bunker oil from a ship, or of a relevant threat of contamination, if the defendant proves that subsection (2) applies.

(2) This subsection applies if the discharge or escape or the relevant threat of contamination (as the case may be) —

- (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 defendant, 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 pollution from oil or bunker oil

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

- (a) there is a discharge or escape of oil from a ship to which section 153 applies or there arises a relevant threat of contamination falling within subsection (2) of that section, or
- (b) there is a discharge or escape of oil falling within section 154(1) or there arises a relevant threat of contamination falling within section 154(2),

then, whether or not the registered 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 registered 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 registered 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.

(2A) Where, as a result of any occurrence—

- (a) there is a discharge or escape of bunker oil falling within section 153A(1), or
- (b) there arises a relevant threat of contamination falling within section 153A(2),

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

- (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.

(2B) Subsection (2A)(ii) applies to—

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

(3) The liability of a person under section 153, 153A 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.

156A Liability under section 153, 153A or 154: supplementary provisions

- (1) For the purposes of this Chapter —
 - (a) references to a discharge or escape of oil or bunker oil from a ship are references to such a discharge or escape wherever it may occur;
 - (b) references to a discharge or escape of oil from a ship include a discharge or escape of oil carried in the bunkers of the ship;
 - (c) where more than one discharge or escape of oil or bunker oil 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
 - (d) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

(2) *The Law Reform (Contributory Negligence) Act 1946*³ shall apply in relation to any damage or cost for which a person is liable under section 153, 153A or 154, but which is not due to his fault, as if it were due to his fault.

Limitation of liability under section 153

Limitation of liability under section 153

157. (1) Where, as the result of any occurrence, the registered owner of a ship incurs a liability under section 153 by reason of a discharge or escape or by reason of any relevant threat of contamination falling within subsection (2) of that section, 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, **4.51 million** special drawing rights;

³ Vol.XVI p.518

- (b) in relation to a ship exceeding 5,000 tons, **4.51 million** special drawing rights together with an additional **631** special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of **89.77 million** special drawing rights;

but the **Department of Trade and Industry** may by order make such amendments of paragraphs (a) and (b) above as appear to it 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 registered 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 manner as may be prescribed by an order made by the **Department of Trade and Industry**.

(5) Any such order shall, so far as it appears to the **Department of Trade and Industry** to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.

Limitation actions

158.- (1) Where the registered 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 subsection (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 Treasury 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 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 registered owner or the persons referred to in section 165 as "the insurer" in relation to any insurance or other security provided as mentioned in subsection (1) of that section; 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;

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 *outside the Isle of Man*.

(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 judgement 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) *Omitted.*

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 registered 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 registered 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 registered owner paid the sum into court, no further steps shall be taken in the proceedings except in relation to costs.

Establishment of limitation fund outside *Isle of Man*

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.

Limitation period for claims under this Chapter

Extinguishment of claims

162. No action to enforce a claim in respect of a liability incurred under section 153, 153A or 154 shall be entertained by any court in the *Isle of Man* 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 *Department of Trade and Industry*.

(2) The ship shall not enter or leave a port in the *Isle of Man* or arrive at or leave a terminal in the territorial sea of the *Isle of Man* nor, if the ship is registered in the *Isle of Man*, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) below and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention (cover for owner's liability).

(3) *The certificate must be -*

- (a) *if the ship is registered in the Isle of Man, a certificate issued by the Department of Trade and Industry;*

- (b) *if the ship is registered in a Liability Convention country other than the Isle of Man, 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 Department of Trade and Industry or under the authority of the government of any Liability Convention country other than the Isle of Man.*

(Sub-section (3) amended by SD 23/99)

(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 officer of customs *or of the Department of Trade and Industry.*

(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 registered owner shall be liable on conviction on *information* 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 **£2,500.**

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

Compulsory insurance against liability for pollution from bunker oil

(163A)(1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) below shall apply to any ship having a gross tonnage greater than 1,000 tons calculated in the manner prescribed by an order made by the *Department of Trade and Industry* under paragraph 5(2) of Part II of Schedule 7.

(2) The ship shall not enter or leave a port in the *Isle of Man* or arrive at or leave a terminal in the territorial sea of the *Isle of Man* nor, if the ship is a ship *registered in the Isle of Man*, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force—

- (a) a contract of insurance or other security in respect of the ship satisfying the requirements of Article 7 of the Bunkers Convention; and
- (b) a certificate complying with the provisions of subsection (3) showing that there is in force in respect of the ship a contract of insurance or other security satisfying those requirements.

- (3) The certificate must be—
- (a) if the ship is a ship *registered in the Isle of Man*, a certificate issued by the *Department of Trade and Industry*;
 - (b) if the ship is registered in a Bunkers Convention country other than the *Isle of Man*, a certificate issued by or under the authority of the government of the other Bunkers Convention country; and
 - (c) if the ship is registered in a country which is not a Bunkers Convention country, a certificate issued by the *Department of Trade and Industry* or by or under the authority of the government of any Bunkers Convention country other than the *Isle of Man*.

(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 officer of *Customs and Excise* or of the *Department of Trade and Industry*. and, if the ship is a *ship registered in the Isle of Man*, to any proper 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) by reason of there being no certificate in force as mentioned in that subsection, the master or registered owner shall be liable on conviction on *information* 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), the master shall be liable on summary conviction to a fine not exceeding **£5,000**.

(7) If a ship attempts to leave a port in the *Isle of Man* in contravention of subsection (2), the ship may be detained.

(8) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of (or otherwise in connection with) proceedings for an offence under subsection (5) against the company as registered owner of the ship shall be treated as duly served on the company if the document is served on the master of the ship.

(9) *In subsection (8)*, “foreign company” means a company or body which is not one to which any of sections *312 and 318 of the Companies Act 1931*⁴ applies so as to authorise the service of the document under any of those provisions.

(10) Any person authorised to serve any document for the purposes of the institution of (or otherwise in connection with) the institution of proceedings for an offence under this section shall, for that purpose, have the right to go on board the ship in question.

⁴ Vol. XIII p.235

(II) In the case of a ship of which, at any relevant time, the tonnage has not been and cannot be ascertained in the manner set out in subsection (1), the best available evidence shall be used in calculating the tonnage of the ship in accordance with any order under paragraph 5(2) of Part II of Schedule 7.

Issue of certificate by the *Department of Trade and Industry*

164.- (1) Subject to subsection (2) below, if the *Department of Trade and Industry* is satisfied, on the application for such certificate as is mentioned in section 163 (2) in respect of a ship registered in the *Isle of Man*, or a ship registered in any country which is not a Liability Convention country that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the *Department of Trade and Industry* shall issue such a certificate to the registered owner.

(1A) Subject to subsection (2) below, if the *Department of Trade and Industry* is satisfied, on the application for such a certificate as is mentioned in section 163A(2) in respect of a ship *registered in the Isle of Man* or a ship registered in any country which is not a Bunkers 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 7 of the Bunkers Convention, the *Department of Trade and Industry* shall issue such a certificate to the registered owner.

(2) The *Department of Trade and Industry* may refuse the certificate if *it* is of the opinion that there is a doubt whether—

- (a) the person providing the insurance or other security will be able to meet his obligations thereunder; or
- (b) the insurance or other security will cover the registered owner's liability under section 153, or the owner's liability under section 153A, as the case may be.

(3) The *Department of Trade and Industry* may make regulations providing for the cancellation and delivery up of a certificate under this section in such circumstances as may be prescribed by the regulations.

(4) If a person required by regulations under subsection (3) above to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding **£2,500**.

(5) *The Department of Trade and Industry shall make available for public inspection a copy of any certificate issued by it under this section.*

Rights of third parties against insurers

165.- (1) Where it is alleged that the registered 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 (2) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security.

(1A) Where it is alleged that the owner of a ship has incurred a liability under section 153A as a result of any discharge or escape of bunker 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 163A(2) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security.

(1B) In the following provisions of this section, “the insurer” means the person who provided the insurance or other security referred to in subsection (1) or subsection (1A), as the case may be.

(2) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 153 it shall be a defence (in addition to any defence affecting the registered 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 registered owner himself.

(3) The insurer may limit his liability in respect of claims in respect of liability under section 153 which are made against him by virtue of this section in like manner and to the same extent as the registered owner may limit his liability under section 157 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 registered owner as mentioned in section 157(3).

(4) Where the registered owner and the insurer each apply to the court for the limitation of his liability in relation to liability under section 153 any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.

(4A) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 153A 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.

(4B) The insurer may limit his liability in respect of claims in respect of liability under section 153A which are made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability by virtue of section 185; 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 any act or omission mentioned in Article 4 of the Convention set out in Part I of Schedule 7.

(4C) Where the owner and the insurer each apply to the court for the limitation of his liability (in relation to liability under section 153A) any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.

(5) *The Third Parties (Rights against Insurers) Act 1932 (an Act of Tynwald)*⁵ shall not apply in relation to any contract of insurance to which such a certificate as is mentioned in section 163 or section 163A relates.

Supplementary

Jurisdiction of *Isle of Man* courts and registration of foreign judgements

166.- (1) *Paragraph 2(d) of Schedule 1 to the High Court Act 1991 (an Act of Tynwald)*⁶ (Admiralty jurisdiction in claims for damage done by ships) shall be construed as extending to any claim in respect of a liability incurred under this Chapter.

(2) Where -

- (a) there is a discharge or escape of oil from a ship to which section 153 applies, or a discharge or escape of oil falling within section 154 (1) which does not result in any damage caused by contamination in the territory of the *Isle of Man* and no measures are reasonably taken to prevent or minimise such damage in that territory, or
- (b) any relevant threat of contamination falling within section 153 (2) or 154 (2) arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the *Isle of Man*,

no court in the *Isle of Man* shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost -

- (i) against the registered 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,

⁵ *Vol. XIII p.502*

⁶ *1991 c. 12*

- (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.

(3A) Where—

- (a) there is a discharge or escape of bunker oil falling within section 153A(1) which does not result in any damage caused by contamination in the territory of the *Isle of Man* and no measures are reasonably taken to prevent or minimise such damage in that territory, or
- (b) any relevant threat of contamination falling within section 153A(2) arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the *Isle of Man*,

no court in the *Isle of Man* 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(2A)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(3B) In subsection (3A) 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 Bunkers 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 Bunkers 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 Bunkers Convention country; or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b) above;

and section 156(2B)(d) shall have effect for the purpose of subsection (3A)(ii) above as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b) above.

(4) Part I of the *Judgments (Reciprocal Enforcement) Act 1968*⁷ shall apply, whether or not it would so apply apart from this section, to—

- (a) 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
- (b) any judgment given by a court in a Bunkers Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 153A;

and in its application to any such judgment that Part shall have effect with the omission of section 4(2) and (3) of that Act.

(5) *In Schedule 1 to the High Court Act 1991 (an Act of Tynwald), at the beginning of paragraph 2(b) insert “subject to sections 166 and 177 of the Merchant Shipping Act 1995 (an Act of Parliament) as that Act has effect in the Island.”*

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—

- (a) it shall be 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 that Convention; and
- (b) it shall be sufficient compliance with section 163A(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 1 of the Bunkers Convention will be met up to the limits set out in Chapter II of the Convention in Part I of Schedule 7.

⁷ Vol. XIII,p502

(3) Every Liability Convention State shall, for the purposes of any proceedings brought in a court in the *Isle of Man* 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.

(4) Every Bunkers Convention State shall, for the purposes of any proceedings brought in a court in the *Isle of Man* to enforce a claim in respect of a liability incurred under section 153A, 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 153A or 154

168. For the purposes of section 185 any liability incurred under section 153A or 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 in Part I of Schedule 7.

Saving for recourse actions

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

Interpretation

170.- (1) In this Chapter (except this subsection) –

“bunker oil” means any hydrocarbon mineral oil (including lubricating oil) which is carried by a ship and used or intended to be used for the operation or propulsion of that ship and any residues of such oil;

“the Court” means *the High Court of Justice of the Isle of Man*;

“damage” includes loss;

“oil” except in the term “bunker oil”, means persistent hydrocarbon mineral oil;

“owner” has the meaning given by section 153A(7);

“registered 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” includes (unless a contrary intention appears) —

- (a) a relevant threat of contamination falling within section 153(2) (as defined in section 153(2A));
- (b) a relevant threat of contamination falling within section 153A(2) (as defined in section 153A(4)); and
- (c) a relevant threat of contamination falling within section 154(2) (as defined in section 154(2B));

“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 or bunker oil from a ship, or from a relevant threat of contamination, references in this Chapter to the owner or the registered owner of the ship are references to the owner or the registered owner (as the case may be) 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) *Omitted.*

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

(a) *Omitted.*

(b) in the case of any other Liability Convention country or Bunkers Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by that State in question in accordance with international law.

Transitory text of this Chapter and power to make transitional provisions

171.- (1) *Omitted.*

(2) The *Department of Trade and Industry* may by Order make such provisions as appears to it to be appropriate in connection with the implementation of any transitional provisions contained in the 1992 Protocol or the Conventions which they amend; and any such Order may in particular provide, in relation to occurrences of any description specified in the Order -

(a) *for specified provisions of this Chapter, or of the Merchant Shipping (Oil Pollution) Act 1971 (as extended to the Isle of Man, to have effect;)*

(b) for any such provisions to have effect subject to specified modifications.

(3) In subsection (2) above -

“the 1992 Protocol” means the Protocol of 1992 to amend the International Convention for Oil Pollution Damage 1969 signed in London on 27th November 1992; and

“specified” means specified in the Order.

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;
- (d) "Fund Convention Country" means a country in respect of which the Fund Convention is in force
- (e) *"the Supplementary Fund Protocol" means the Protocol of 2003 to the Fund Convention[3]⁸;*
- (f) *"the Supplementary Fund" means the International Supplementary Fund established by the Supplementary Fund Protocol; and*
- (g) *"Supplementary Fund Protocol country" means a country in respect of which the Supplementary Fund Protocol is in force.*

(2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Fund Convention in respect of any country so specified, the Order shall, while in force, be conclusive evidence that that State is a party to that Convention in respect of that country.

(3) *Subsection (2) applies in relation to the Supplementary Fund Protocol as it applies in relation to the Fund Convention.*

⁸ Cmnd 6245

Contributions by importers of oil and others.

173.- (1) Contributions shall be payable to the Fund *and to the Supplementary Fund* in respect of oil carried by sea to ports or terminal installations in the *Isle of Man* otherwise than on a voyage only within its national waters *or a voyage between a port or terminal installation in those waters and a port or terminal installation in the national waters of the United Kingdom.*

(2) Subsection (1) above applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions shall also be payable –

(a) to the Fund in respect of oil when first received in any installation in the *Isle of Man* after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country; *and*

(b) *to the Supplementary Fund in respect of oil when first received in any installation in the Isle of Man after having been carried by sea and discharged in a port or terminal installation in a country which is not a Supplementary Fund Protocol country.*

(4) The person liable to pay contributions is -

(a) in the case of oil which is being imported into the *Isle of Man*, the importer, and

(b) otherwise, the person by whom the oil is received.

(5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tonnes.

(6) For the purpose of subsection (5) above -

(a) all the members of a group of companies shall be treated as a single person, and

(b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

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

(a) be of such amount as may be determined –

(i) in the case of contributions to the Fund, by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund;

(ii) in the case of contributions to the Supplementary Fund, by the Director of the Supplementary Fund under Article 11 of the Supplementary Fund Protocol and notified to that person by the Supplementary Fund; and

- (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 *or the Assembly of the Supplementary Fund (as the case may be)*, until it is paid.

(8) The *Department of Trade and Industry* may by regulations impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the *Department of Trade and Industry*, or the Fund.

(9) Regulations under subsection (8) above-

- (a) may contain such supplemental or incidental provisions as appear to the *Department of Trade and Industry* expedient, and
- (b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding **£5,000**, 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 *Isle of Man*, or of any other country;

"group", in relation to companies, means a holding company and its subsidiaries as defined in section 1 of the Companies Act 1974 (an Act of Tynwald)⁹, subject, in the case of a company incorporated outside the Isle of Man, to any necessary modification 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

⁹ 1974 c.30

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

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

Power to obtain information.

174.- (1) For the purpose of transmitting to the Fund *or the Supplementary Fund* the names and addresses of the persons who under section 173 are liable to make contributions to the Fund *or the Supplementary Fund* for any year, and the quantity of oil in respect of which they are so liable, the *Department of Trade and Industry* 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 *or the Supplementary Fund* against any person to recover any amount due under section 173, particulars contained in any list transmitted by the *Department of Trade and Industry* to *either of those Funds* 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 **£5,000**.

- (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 **£2,500** in the case of an offence under paragraph (a) above and not exceeding **£5,000** in the case of an offence under paragraph (b) above, and
- (ii) on conviction on **information** to a fine, or to imprisonment for a term not exceeding twelve months, or to 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 **Isle of Man** 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 Isle of Man*" of the words "a Fund Convention country" where -

- (a) the headquarters of the Fund is for the time being in the *Isle of Man*, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country, or
- (b) the incident has caused pollution damage in the territory of the *Isle of Man* 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 *Isle of Man*.

(3) Where the incident has caused pollution damage in the Territory of the *Isle of Man* 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) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country and the Fund is liable for that pollution damage by virtue of subsection (2)(a) above, references in this section to the provisions of Chapter III of this Part shall be treated as references to the corresponding provisions of the law of the country in which those proceedings were brought.

(5) For the purposes of this section an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

(6) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimising 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 has 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) if 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.

Limitation of Fund's liability under section 175

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 sub-paragraph (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 Article 4 of the Fund Convention a court giving judgement against the Fund in proceedings under section 175 shall notify the Fund, and -

- (a) no steps shall be taken to enforce the judgement 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 judgement 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 judgement 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 Treasury stating -
 - (i) that a particular sum in sterling has been so fixed for the relevant day, or
 - (ii) that no sum has been so fixed for 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 relevant day,

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

(5) The *Department of Trade and Industry* may by order make such amendments of this section and Part I of Schedule 5 as appear to it 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.

176A Liability of the Supplementary Fund

(1) The Supplementary Fund shall be liable for pollution damage in the territory of the Isle of Man in accordance with the Supplementary Fund Protocol in the circumstances mentioned in paragraph 1 of Article 4 of that Protocol (cases where full compensation cannot be obtained because of the limit imposed by paragraph 4 of Article 4 of the Fund Convention).

The text of paragraph 1 of Article 4 of the Supplementary Fund Protocol is set out in Schedule 5ZA.

(2) Subsection (1) shall apply with the substitution for the words "the Isle of Man" of the words "a Supplementary Fund Protocol country" where—

(a) [omitted]

(b) the incident has caused pollution damage in the territory of the Isle of Man or another Supplementary Fund Protocol country, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country or the Isle of Man.

(3) Nothing in this section applies to pollution damage resulting from an incident if—

(a) in the case of a single occurrence, it took place before the day on which the Supplementary Fund Protocol enters into force as respects the Isle of Man; or

(b) in the case of a series of occurrences having the same origin, the first of those occurrences took place before that day.

176B Limitation of the Supplementary Fund's liability under section 176A

(1) The Supplementary Fund's liability under section 176A shall be subject to—

(a) paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (which impose an overall limit on the liabilities of the Supplementary Fund); and

(b) paragraphs 2 and 3 of Article 15 of the Supplementary Fund Protocol (which prevent the Supplementary Fund from paying compensation temporarily and permanently where obligations to communicate information to the Director under paragraph 1 of Article 13 and paragraph 1 of Article 15 have not been met).

The text of paragraphs 2 and 3 of Article 4, paragraph 1 of Article 13 and paragraphs 1, 2 and 3 of Article 15 of the Supplementary Fund Protocol is set out in Schedule 5ZA.

(2) For the purpose of giving effect to paragraphs 2 and 3 of Article 4 of the

Supplementary Fund Protocol a court giving judgment against the Supplementary Fund in proceedings under section 176A shall notify the Supplementary 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 Supplementary 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.

(3) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (2) 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 date, namely the date referred to in paragraph 2(b) of Article 4 of the Supplementary Fund Protocol, or

(ii) if no sum has been so fixed for the relevant date, the last day before that date for which a sum has been so fixed; and

(b) a certificate given by or on behalf of the Treasury stating—

(i) that a particular sum in sterling has been so fixed for the relevant date, or

(ii) that no sum has been so fixed for the relevant date 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 date,

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

(4) Any document purporting to be such a certificate as is mentioned in subsection (3)(b) shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Jurisdiction and effect of judgements

177.- (1) *Paragraph 2(d) of Schedule 1 to the High Court Act 1991 (an Act of Tynwald)* (Admiralty jurisdiction in claims for damage done by ships) shall be construed as extending to any claim in respect of a liability falling on the Fund *or the Supplementary Fund* under this Chapter.

(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—

(a) *the notice shall be deemed to have been given to the Supplementary Fund as well; and*

(b) *any judgment given in the proceedings shall, after it has become final and enforceable, become binding on the Fund and the Supplementary Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund or the Supplementary Fund even if it has not intervened in the proceedings.*

(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 *Isle of Man*, subsection (2) above shall, for the purpose of proceedings under this Chapter, apply with any necessary modifications to a judgement in proceedings under that law of the said country.

(4) *Subject to subsections (5) and (6), Part 1 of the Judgments (Reciprocal Enforcement)(Isle of Man) Act 1968¹⁰ shall apply, whether or not it would so apply apart from this subsection, to—*

(a) *any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 175; and*

(b) *any judgment given by a court in a Supplementary Fund Protocol country to enforce a claim in respect of liability incurred under any provision corresponding to section 176A,*

and in its application to such a judgment the said Part 1 shall have effect with the omission of sections 4(2) and (3).

(5) *No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part 1 of the Act of 1968 gives leave to enforce it; and that leave shall not be given unless and until—*

(a) *in the case of a judgment within subsection (4)(a), the Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 4 and 5 of Article 4 of*

¹⁰ Vol XX p.452

the Fund Convention (as set out in Part 1 of Schedule 5 to this Act) or that it is to be reduced to a specified amount; or

(b) in the case of a judgment within subsection (4)(b), the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (as set out in Schedule 5ZA to this Act) or that it is to be reduced to a specified amount.

(6) Where the court is so notified that a claim is to be reduced to a specified amount, the judgment shall be enforceable only for the reduced amount.

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 *Isle of Man* unless -

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

not later than three years after the claim against the Fund arose.

In this subsection "third party notice" means a notice of the kind described in 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 *Isle of Man* 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 rose.

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

(4) For the purposes of this section—

(a) a person who commences an action to enforce a claim against the Fund in relation to any damage shall be deemed to have also commenced an action to enforce any claim he may have against the Supplementary Fund in relation to that damage; and

(b) a person who gives a third party notice to the Fund in relation to any damage as mentioned in subsection (1)(b) shall be deemed to have also given a notice to the Supplementary Fund in relation to that damage.

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.

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

(2) In respect of any sum paid by a public authority in the *Isle of Man* as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund *or the Supplementary 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.

(3) Subsections (1) and (2) apply in relation to the Supplementary Fund as they apply in relation to the Fund (with the substitution for references to the Director, any organ or an official of the Fund of references to the Director, any organ or an official of the Supplementary Fund).

Tynwald Procedure

180A. Any Order or Regulations made under this Act shall be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which the Order or Regulations are laid or at the next following sitting resolves that the Order or Regulations shall be annulled, they shall cease to have effect.

Interpretation

181.- (1) In this Chapter, unless the context otherwise requires-

"body corporate" includes a limited liability company organised under the Limited Liability Companies Act 1996 (an Act of Tynwald)¹¹;

"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 preventative measures, and
- (c) further damage caused by preventative 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;

¹¹ 1996 c. 19

"preventative 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 *or a Supplementary Fund Protocol country (as the case may be)*.

Transitory text of this Chapter and power to make transitional provisions

182.- (1) *Omitted.*

(2) The *Department of Trade and Industry* may by Order make such provision as appears to it to be appropriate in connection with the implementation of any transitional provisions contained in the 1992 Protocol or the Conventions which they amend; and any such Order may in particular provide, in relation to occurrences of any description specified in the Order -

- (a) *for specified provisions of this Chapter, or in the Merchant Shipping Act 1974 (as extended to the Isle of Man), to have effect;*
- (b) for any such provisions to have effect subject to specified modifications.

(3) In subsection (2) above -

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

"specified" means specified in the Order.

CHAPTER V

CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES

Introductory

182A (1) In this Chapter, unless the context otherwise requires, “the Convention” means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996.

(2) The text of the Convention, excluding the annexes, is set out in Schedule 5A.

(3) In interpreting the definition of “hazardous and noxious substances” in Article 1, paragraph 5 of the Convention, any reference in that paragraph to a particular convention or code as amended shall be taken to be a reference to that convention or code as amended from time to time (whether before or after the commencement of this Chapter).

Power to give effect to Convention.

182B. (1) The *Department of Trade and Industry* may by Order make such provision as it considers appropriate for the purpose of giving effect *in the Island* to -

- (a) the Convention on or after its ratification by the United Kingdom; or
- (b) any revision of the Convention which appears to the *Department of Trade and Industry* to have been agreed to by the Government of the United Kingdom.

(2) The power conferred by subsection (1) above to make provision for the purpose of giving effect to the Convention or an agreement revising the Convention includes power to provide for the provision to come into force even though the Convention or the agreement has not come into force.

(3) Without prejudice to the generality of subsection (1) above, an Order under that subsection may include provision -

- (a) requiring contributions to be paid in accordance with the Convention to the International Hazardous and Noxious Substances Fund established under the Convention;
- (b) for applying for the purpose mentioned in subsection (1) above any enactment or instrument relating to the pollution of the sea or other waters (including provisions creating offences) with such modifications, if any, as may be prescribed by the Order;

- (c) making such modifications of any enactment or instrument *of Parliament or Tynwald* (including, where the Order is made under paragraph (b) of that subsection, modifications of Schedule 5A and section 182C) as appear to the *Department of Trade and Industry* to be appropriate for the purpose specified in that subsection;
 - (d) with respect to the application of the Order to the Crown;
 - (e) for detaining any ship in respect of which a contravention of a provision made by or under the Order is suspected to have occurred and, in relation to such a ship, for applying section 74 of the Merchant Shipping Registration Act 1991 (an Act of Tynwald) with such modifications, if any, as are prescribed by the Order;
 - (f) for a certificate issued by or on behalf of the *Department of Trade and Industry* and stating that at a particular time a particular substance was, or was not, a hazardous or noxious substance for the purposes of the Convention to be conclusive evidence of that matter.
- (4) An order under subsection (1) above may -
- (a) make different provision for different circumstances;
 - (b) make provision for references in the Order to any specified document to operate as references to that document as revised or re-issued from time to time;
 - (c) provide for the delegation of functions exercisable by virtue of the Order;
 - (d) include such incidental, supplemental and transitional provisions as appear to *the Department of Trade and Industry* to be expedient for the purposes of the Order; and
 - (e) authorise the making of regulations for the purposes of this section (except the purposes of subsection (3)(a), (b) and (c) above).

Power of the *Department of Trade and Industry* to make orders.

182C. (1) The *Department of Trade and Industry* may by order make such amendments of Schedule 5A [...] as appear to it to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 48 of the Convention.

(2) In subsection (1) above, “a relevant limit” means any of the limits for the time being specified in article 9, paragraph 1 and article 14, paragraph 5 of the Convention.

PART VII LIABILITY OF SHIPOWNERS AND OTHERS

Carriage of Passengers and luggage by Sea

Scheduled Convention to have force of law

183. (1) The provisions of the Convention relating to the Carriage of Passengers and their Luggage by Sea as set out in Part I of Schedule 6 (hereinafter in this section and in Part II of that Schedule referred to as "the Convention") shall have the force of law in the *Isle of Man*.

(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) and (4) *(omit)*

(5) Nothing in subsection (1) or (2) above [...] shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the said subsection (1) or (2) above [...] comes into force.

(6) This section shall bind the Crown [...].

(7) *(Omit)*

Liability of liability of shipowners etc. and salvors for maritime claims

Limitation of liability for maritime claims

185. (1) The provisions of the Convention on the 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 *Isle of Man*.

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

(2A) and (2B) *(Omit)*

(2C) The *Department of Trade and Industry* may by order make such amendments of Parts I and II of Schedule 7 as appear to *it* to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 8 of the 1996 Protocol.

(2D) In subsection (2C) above a "relevant limit" means any of the limits for the time being specified in either of the following provisions of the Convention -

(a) article 6, paragraph 1, and

(b) article 7, paragraph 1.

(2E) No modification made by virtue of subsection [...] (2C) above shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the modification comes into force.

(3) The provisions having the force of law under this section shall apply in relation to Her Majesty's ships as they apply in relation to other ships.

(4) The provisions having the force of law under this section shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any property of, a person who is on board the ship in question or employed in connection with that ship or with the salvage operations in question if -

- (a) he is so on board or employed under a contract of service governed by the law of *the Isle of Man*; and
- (b) the liability arises from an occurrence which took place after the commencement of this Act.

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

(5) *(Omit).*

Exclusion of liability

186- (1) Subject to subsection (3) below, the owner of a *Manx* ship shall not be liable for any loss or damage in the following cases, namely-

- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or
- (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to subsection (3) below, where the loss or damage arises from anything done or omitted by any person in his capacity as 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.

Multiple fault : apportionment, liability and contribution

Damage or loss: apportionment of liability

187. (1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault.

(2) If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(3) This section applies to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, this section applies to the charterers or other persons for the time being so responsible instead of the owners.

(4) Nothing in this section shall operate as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.

(5) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(6) In this section "freight" includes passage money and hire.

(7) In this section references to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault recoverable at law by way of damages.

Loss of Life or personal injuries: joint and several liability

188. (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.

(2) Subsection (3) of section 187 applies also to this section.

(3) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

(4) Subsection (7) of section 187 applies also for the interpretation of this section.

Loss of Life or personal injuries: right of contribution

189. (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault.

(2) Subsection (3) of section 187 applies also to this section.

(3) Nothing in this section authorises the recovery of any amount which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reasons, have been recovered in the first instance as damages by the persons entitled to sue therefor.

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

Time limit for proceedings against owners or ship

Time Limit for proceedings against owners or ship

190. (1) This section applies to any proceedings to enforce any claim or lien against a ship or her owners -

- (a) in respect of any damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or
- (b) for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship.

(2) The extent of the fault is immaterial for the purposes of this section.

(3) Subject to subsections (5) and (6) below, no proceedings to which this section applies shall be brought after the period of two years from the date when -

- (a) the damage or loss or injury was caused or
- (b) the loss of life or injury was suffered.

(4) Subject to subsections (5) and (6) below, no proceedings under any of sections 187 to 189 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury shall be brought after the period of one year from the date of payment.

(5) Any court having jurisdiction in such proceedings may, in accordance with rules of court, extend any such period allowed for bringing proceedings to such extent and on such conditions as it thinks fit.

(6) Any such court, if satisfied that there has not been during any period allowed for bringing proceedings any reasonable opportunity of arresting the defendant ship within

- (a) the jurisdiction of the court, or
- (b) the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business,

shall extend the period allowed for bringing proceedings to an extent sufficient to give such reasonable opportunity.

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

Limitation of liability

191. (1) This section applies in relation to the following authorities and persons, that is to say, a harbour authority or a conservancy authority and the owners of any dock or canal.

(2) The liability of any authority or person to which this section applies for any loss or damage caused to any vessel or vessels, or to any goods, merchandise, or other things whatsoever on board any ship shall be limited in accordance with subsection (5) below by reference to the tonnage of the largest *Manx* ship which, at the time of such loss or damage is, or within the preceding five years has been, within the area over which the authority or person discharges any functions.

(3) The limitation of liability under this section relates to the whole of any losses and damages which may arise on any one distinct occasion, although such losses and damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any general or local or private Act, and notwithstanding anything contained in such an Act.

(4) This section does not exclude the liability of an authority or person to which it applies for any loss or damage resulting from any such personal act or omission of the authority or person as is mentioned in Article 4 of the Convention set out in Part I of Schedule 7.

(5) The limit of liability shall be ascertained by applying to the ship by reference to which the liability is to be determined the method of calculation specified in paragraph 1(b) of Article 6 of the Convention set out in Part I of Schedule 7 read with paragraphs 5 (1) and (2) of Part II of that Schedule.

(6) Articles 11 and 12 of that Convention and paragraphs 8 and 9 of Part II of that Schedule shall apply for the purposes of this section.

(7) For the purposes of subsection (2) above a ship shall not be treated as having been within the area over which a harbour authority or a conservancy authority discharges any functions, by reason only that it has been built or fitted out within the area, or that it has taken shelter within or passed through the area on a voyage between two places both situated outside that area, or that it has loaded or unloaded mails or passengers within that area.

(8) Nothing in this section imposes any liability for any loss or damage where no liability exists apart from this section.

(9) In this section -

“dock” includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing-place, and jetties; and.

“owners of any dock or canal” includes any authority or person having the control and management of any dock or canal, as the case may be.

Application to Crown and its ships

Application to Crown and its ships

192. (1) Sections 185, 186, 187, 188, 189 and 190 (except subsection (6)) apply in the case of Her Majesty’s ships as they apply in relation to other ships and section 191 applies to the Crown in its capacity as an authority or person specified in subsection (1).

(2) In this section “Her Majesty’s ships” means -

- (a) ships of which the beneficial interest is vested in Her Majesty;
- (b) ships which are registered as Government ships;
- (c) ships which are for the time being demised or sub-demised to or in the exclusive possession of the Crown;

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

(3) *(Omit).*

Regulations requiring insurance or security

Compulsory insurance or security

192A (1) Subject to subsections (2) and (3) below, the *Department of Trade and Industry* may make regulations requiring that, in such cases as may be prescribed by the regulations, while a ship is in *Manx* waters, there must be in force in respect of the ship -

- (a) a contract of insurance insuring such person or persons as may be specified by the regulations against such liabilities as may be so specified and satisfying such other requirements as may be so specified, or
- (b) such other security relating to those liabilities as satisfies requirements specified by or under the regulations.

(2) Regulations under this section shall not apply in relation to -

- (a) a qualifying foreign ship while it is exercising -
 - (i) the right of innocent passage, or
 - (ii) the right of transit passage through straits used for international navigation,
- (b) any warship, or
- (c) any ship for the time being used by the government of any State for other than commercial purposes.

(3) Regulations under this section may not require insurance or security to be maintained in respect of a ship in relation to any liability in any case where an obligation to maintain insurance or security in respect of that ship in relation to that liability is imposed by section 163 or by or under an *Order* under section 182B.

(4) Regulations under this section may require that, where a person is obliged to have in force in respect of a ship a contract of insurance or other security, such documentary evidence as may be specified by or under the regulations of the existence of the contract of insurance or other security must be carried in the ship and produced on demand, by such persons as may be specified in the regulations, to such persons as may be so specified.

(5) Regulations under this section may provide -

- (a) that in such cases as are prescribed a ship which contravenes the regulations shall be liable to be detained and that *section 74 of the Merchant Shipping Registration Act 1991 (an Act of Tynwald)*¹² shall

¹² 1991 c. 15

have effect with such modifications (if any) as are prescribed by the regulations, in relation to the ship,

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

PART XII - LEGAL PROCEEDINGS

Prosecution of offences

Time limit for summary offences

274. (1) Subject to subsections (2) and (3) below, no person shall be convicted of an offence under this Act in summary proceedings unless -

- (a) the proceedings were commenced within six months beginning with the date on which the offence was committed; or
- (b) in a case where the accused happens during that period to be out of the *Isle of Man*, the proceedings were commenced within two months after he first happens to arrive within the *Isle of Man* and before the expiration of three years beginning with the date on which the offence was committed.

(2) Nothing in subsection (1) above shall apply in relation to any indictable offence.

(3) Subsection (1) above shall not prevent a conviction for an offence in summary proceedings begun before the expiration of three years beginning with the date on which the offence was committed and before -

- (a) the expiration of the period of six months beginning with the day when evidence which the *Attorney General* considers is sufficient to justify a prosecution for the offence came to his knowledge; or
- (b) the expiration of two months beginning with the day when the accused was first present in the *Isle of Man* after the expiration of the period mentioned in paragraph (a) above if throughout that period the accused was absent from the *Isle of Man*.

(4) For the purpose of subsection (3) above -

- (a) a certificate of the *Attorney General* stating that evidence came to his knowledge on a particular day shall be conclusive evidence of that fact; and
- (b) a document purporting to be a certificate of the *Attorney General* and to be signed on his behalf shall be presumed to be such a certificate unless the contrary is proved.

(5) *(Omit).*

Time limit for summary orders

275. No order for the payment of money shall be made under this Act in proceedings before a *court of summary jurisdiction* unless -

- (a) the proceedings were commenced within six months beginning with the date on which the matter of complaint arose; or
- (b) in a case where both or either of the parties to the proceedings happen during that period to be out of the *Isle of Man*, the proceedings were commenced within six months after they both first happen to arrive, or to be at one time, within the *Isle of Man*.

Offences by officers of bodies corporate

277. (1) Where a body corporate is guilty of an offence under this Act or any instrument made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Jurisdiction

Jurisdiction in relation to offences

279. (1) For the purpose of conferring jurisdiction, any offence under this Act shall be deemed to have been committed in any place in *the Isle of Man* where the offender may for the time being be.

(2) For the same purpose, any matter of complaint under this Act shall be deemed to have arisen in any place in *the Isle of Man* where the person complained against may for the time being be.

(3) The jurisdiction under subsections (1) and (2) above shall be in addition to and not in derogation of any jurisdiction or power of a court under any other enactment.

Jurisdiction over ships lying off coasts

280. (1) *A Court in the Isle of Man* shall have jurisdiction as respects offences under this Act over any vessel being on, lying or passing off, the coast *of the Isle of Man* and over all persons on board that vessel or for the time being belonging to it.

(2) The jurisdiction under subsection (1) above shall be in addition to and not in derogation of any jurisdiction *conferred on a court in the Isle of Man*.

Jurisdiction in case of offences on board ship

281. Where any person is charged with having committed any offence under this Act then -

- (a) if he is a British citizen and is charged with having committed it -
 - (i) on board any *Manx ship* on the high seas,
 - (ii) and (iii) *(Omitted)*.
- (b) if he is not a British citizen and is charged with having committed it on board any *Manx ship* on the high seas;

and he is found within the jurisdiction of any court in *the Isle of Man* which would have had jurisdiction in relation to the offence if it had been committed on board a *Manx ship* within the limits of its ordinary jurisdiction to try the offence that court shall have jurisdiction to try the offence as if it had been so committed.

Offences committed by British seamen

282. (1) Any act in relation to property or person done in or at any place (ashore or afloat) outside *the Isle of Man* by any master or seaman who at the time is employed in a *Manx ship*, which if done in *the Isle of Man* would be an offence under the law of *the Isle of Man*, shall -

- (a) be an offence under that law, and
- (b) be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the *appropriate Court in the Isle of Man*.

(2) Subsection (1) above also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done.

- (3) Subsections (1) and (2) above apply to omissions as they apply to acts.

Return of offenders

283 (1) The powers conferred on a British consular officer by subsection (2) below are exercisable in the event of any complaint being made to him -

- (a) that any offence against property or persons has been committed at any place (ashore or afloat) outside the *British Islands* by any master or seamen who at the time when the offence was committed, or within three months before that time, was employed in a *Manx* ship; or
- (b) that any offence on the high seas has been committed by any master or seaman belonging to any *Manx* ship.

(2) Those powers are -

- (a) to inquire into the case upon oath, and
- (b) if the case so requires, to take any steps in his power for the purpose of placing the offender under the necessary restraint and sending him [...] as soon as practicable in safe custody to the *Isle of Man* for proceedings to be taken against him.

(3) The consular officer may, subject to subsections (4) and (5) below, order the master of any *Manx* ship bound for the *Isle of Man* to receive and carry the offender and the witnesses to the *Isle of Man* and the officer shall endorse upon the agreement of the ship such particulars with respect to them as the *Department of Trade and Industry* requires.

(4) A consular officer shall not exercise the power conferred by subsection (3) above unless no more convenient means of transport is available or it is available only at disproportionate expense.

(5) No master of a ship may be required under subsection (3) above to receive more than one offender for every 100 tons of his ship's registered tonnage, or more than one witness for every 50 tons of his ship's registered tonnage.

(6) The master of any ship to whose charge an offender has been committed under subsection (3) above shall, on his ship's arrival in the *Isle of Man* give the offender into the custody of some police officer or constable.

(7) If any master of a ship, when required under subsection (3) above to receive and carry any offender or witness in his ship -

- (a) fails to do so; or
- (b) in the case of an offender, fails to deliver him as required by subsection (6) above;

he shall be liable on summary conviction to a fine not exceeding **£5,000**.

(8) The expense of imprisoning any such offender and of carrying him and witnesses to the *Isle of Man* otherwise than in the ship to which they respectively belong shall be paid out of money provided by *Tynwald*.

(9) References in this section to carrying a person in a ship include affording him subsistence during the voyage.

Special evidential provisions

Depositions of persons abroad admissible

286 (1) If the evidence of any person is required in the course of any legal proceeding before a judge or magistrate in relation to the subject matter of the proceeding and it is proved that that person cannot be found in the *Isle of Man*, any deposition that he may have previously made at a place outside the *Isle of Man* in relation to the same subject matter shall, subject to subsection (2) below, be admissible in evidence in those proceedings.

(2) For a deposition to be admissible under subsection (1) above in any proceedings, the deposition -

- (a) must have been taken on oath;
- (b) must have been taken before a justice or magistrate in any colony or a British consular officer in any other place;
- (c) must be authenticated by the signature of the justice, magistrate or officer taking it; and
- (d) must, if the proceedings are criminal proceedings, have been taken in the presence of the accused;

and, in a case falling within paragraph (d) above, the deposition shall be certified by the justice, magistrate or officer taking it to have been taken in the presence of the accused.

(3) No proof need be given of the signature or official character of the person appearing to have signed any such deposition and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the accused shall, unless the contrary is proved, be evidence [...] of that fact.

(4) This section also applies to proceedings before any person authorised by law or consent of the parties to receive evidence.

(5) Nothing in this section affects the admissibility in evidence of depositions under any other enactment or the practice of any court.

Admissibility in evidence and inspection of certain documents

287. (1) The following documents shall be admissible in evidence and, when in the custody of the *Department of Trade and Industry* shall be open to public inspection -

- (a) documents purporting to be submissions to or decisions by superintendents or proper officers under *section 6 of the Masters and Seamen Act*;
- (b) the official logbook of any ship kept under *section 51(1) of the Masters and Seamen Act*;
- (c) crew agreements, lists of crews made under *section 52 of the Masters and Seamen Act* and notices given under that Act of additions to or changes in crew agreements and lists of crews;
- (d) returns or reports under *section 54 of the Masters and Seamen Act*;
- (e) *Omit.*

(2) *Omit.*

(3) *In this section “the Masters and Seamen Act” means the Merchant Shipping (Masters and Seamen) Act 1979 (an Act of Tynwald)*¹³

Admissibility of documents in evidence

288. (1) Where a document is by this Act declared to be admissible in evidence the document shall on its production from proper custody -

- (a) be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence; and
- (b) subject to all just exceptions, be evidence *[...]* of the matters stated in the document.

(2) A copy of, or extract from, any document so made admissible in evidence shall, subject to subsection (3) below, also be admissible in evidence *[...]* of the matters stated in the document.

¹³ 1979 c. 14

(3) A copy of, or extract from, a document shall not be admissible by virtue of subsection (2) above unless -

- (a) it is proved to be an examined copy or extract; or
- (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted;

and that officer shall furnish the certified copy or extract to any person who applies for it at a reasonable time and pays such reasonable price as the *Department of Trade and Industry* determines.

(4) A person shall, on payment of such reasonable price as the *Department of Trade and Industry* determines be entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Act.

(5) If any officer having duties of certification under subsection (3) above in relation to any document intentionally certifies any document as being a true copy or extract knowing that the copy or extract is not a true copy or extract he shall be liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding **£5,000**
- (b) on conviction on *information*, to imprisonment for a term not exceeding two years or a fine or both.

(6), (7) and (8) *Omit.*

Inspection and admissibility in evidence of copies of certain documents

289. (1) Where under any *statutory provision* a document is open to public inspection when in the custody of the *Department of Trade and Industry* -

- (a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original; but
- (b) the original shall nevertheless be made available for public inspection if the copy or other reproduction is illegible.

(2) Where the *Department of Trade and Industry* destroys any document which has sent to it under or by virtue of any *statutory provision* and keeps a copy or other reproduction of that document, then -

- (a) any *statutory provision* providing for that document to be admissible in evidence or open to public inspection, and
- (b) in the case of a document falling within subsection (1) above, that subsection,

shall apply to the copy or other reproduction as if it were the original.

(3) For the purposes of this section, and of section 299(2) in its application to documents in the custody of the *Department of Trade and Industry*, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original.

Proof etc. of exemptions

290. (1) Where any exception, exemption, excuse or qualification applies in relation to an offence under this Act -

- (a) it may be proved by the defendant, but
- (b) need not be specified or negatived in any information or complaint;

and, if so specified or negatived, shall not require to be proved by the informant or complainant.

(2) This section applies in relation to an offence whether or not the exception, exemption, excuse or qualification is contained in the section creating the offence.

(3) *Omit*

Subordinate legislation

Regulations, rules, orders etc.

306. *No Regulations, rules, or orders made by the Department of Trade and Industry under this Act shall come into operation unless they have been approved by Tynwald.*

Application of Act to certain descriptions of ships etc.

Application of Act to hovercraft

310. The enactment's and instruments with respect to which provision may be made by *Order* under section 1(1)(h) of the Hovercraft Act 1968 *as it has effect in the Isle of Man*¹⁴ shall include this Act (except Parts I and II) and any instrument made thereunder.

¹⁴ 1967 c. 64. Applied to the Isle of Man by GC 263/86

Application of Act to certain structures

311. (1) The *Department of Trade and Industry* may by order provide that a thing designed or adapted for use at sea and described in the order is or is not to be treated as a ship for the purposes of any specified provision of this Act or of an instrument made thereunder.

- (2) An order under this section may -
- (a) make different provision in relation to different occasions;
 - (b) if it provides that a thing is to be treated as a ship for the purposes of a specified provision, provide that the provision shall have effect in relation to the thing with such modifications as are specified.

Final provisions

Definitions

313. (1) In this Act, unless the context otherwise requires -

“the Attorney General” means Her Majesty’s Attorney General for the Isle of Man;

“British connection” (Definition omitted);

“British citizen”, “British Dependent Territories citizen”, “British Overseas citizen” and “Commonwealth citizen” have the same meaning as in the British Nationality Act 1981¹⁵;

“British ship” has the meaning given in section 1(1);

“commissioned military officer” means a commissioned officer in Her Majesty’s land forces on full pay;

“conservancy authority” includes all persons entrusted with the function of conserving, maintaining or improving the navigation of a tidal water (as defined in section 255);

“consular officer”, in relation to a foreign country, means the officer recognised by Her Majesty as a consular officer of that foreign country;

“contravention” includes failure to comply (and “failure” includes refusal);

“Departmental inspector” and “Departmental officer” (Definitions omitted);

¹⁵ 1981 c. 61.

“fishing vessel” means a vessel for the time being used (or, in the context of an application for registration, intended to be used) for, or in connection with fishing for sea fish other than a vessel used (or intended to be used) for fishing otherwise than for profit; and for the purposes of this definition “sea fish” includes shellfish, salmon and migratory trout (as defined by section 44 of the Fisheries Act 1981¹⁶);

“foreign”, in relation to a ship, means that it is neither a *Manx* ship nor a small ship (as defined in section 1(2)) which is a British ship;

“Government ship” has the meaning given in section 308;

“harbour” *has the same meaning as in section 1(1) of the Harbours (Isle of Man) act 1961 (an Act of Tynwald)*¹⁷

“harbour authority” means, in relation to a harbour *in the Isle of Man, the Department of Transport*;

“*IMO ship identification number*” *has the same meaning as in IMO Resolution A.600(15).*

“*Manx ship*” *has the meaning given in section 1 of the Merchant Shipping Registration Act 1991 (an Act of Tynwald)* ;

“master” includes every person (except a pilot) having command or charge of a ship and in relation to a fishing vessel, means the skipper;

“Minister of the Crown” *(Definition omitted).*

“port” includes place;

“proper officer” means a consular officer appointed by Her Majesty’s Government in the United Kingdom and, in relation to a port in a country outside the United Kingdom which is not a foreign country, also any officer exercising in that port functions similar to those of a superintendent;

“qualifying foreign ship” has the meaning given in section 313A;

“the register”, “registered”, and “registration regulations” *(Definitions omitted)*;

“relevant British possession” means -

- (a) the Isle of Man;
- (b) any of the Channels Islands; and
- (c) any colony;

¹⁶ 1981 c. 29

¹⁷ Vol. XIX p.538. ;

“safety regulations” means regulations under *sections 1 and 2 of the Merchant Shipping Act 1985 (an Act of Tynwald)*¹⁸;

“seaman” includes every person (except masters and pilots) employed or engaged in any capacity on board any ship;

“ship” includes every description of vessel used in navigation;

“statutory harbour authority” (*Definition omitted*);

“*superintendent*” means a superintendent within the meaning of section 68 of the *Merchant Shipping (Masters and Seamen) Act 1979 (an Act of Tynwald)*;

“Surveyor of ships” (*Definition omitted*);

“the tonnage regulations” means regulations under *section 44 of the Merchant Shipping Registration Act 1991 (an Act of Tynwald)*;

“United Kingdom ship” (*Definition omitted*).

(2) In this Act -

(a) “*Manx* waters” means the sea or other waters within the seaward limits of the territorial sea of the *Isle of Man*; and

(b) (*Omit*).

(2A) In this Act “right of innocent passage”, “right of transit passage” and “straits used for international navigation” shall be construed in accordance with the United Nations Convention on the Law of the Sea 1982¹⁹.

(3) A vessel for the time being used (or intended to be used) wholly for the purpose of conveying persons wishing to fish for pleasure is not a fishing vessel.

¹⁸ 1985 c. 3.

¹⁹ Cmnd 8941

Meaning of “qualifying foreign ship”

- 313A. (1) In this Act “qualifying foreign ship means any ship other than -
- (a) a British ship, or
 - (b) a ship which is not registered under *the Merchant Shipping Registration Act 1991 (an Act of Tynwald)* and which (although not by virtue of *section 1(1)(c) of that Act* a *Manx* ship) -
 - (i) is wholly owned by persons *qualified by virtue of section 2(1) of the Merchant Shipping Registration Act 1991 (an Act of Tynwald) to be the owners of Manx ships*
 - (ii) is not registered under the law of a country outside the *Isle of Man*.
- (2) *(Omit).*

Short title and commencement.

- 316.- (1) This Act may be cited as the Merchant Shipping Act 1995.
- (2) *Omitted.*

SCHEDULES

Section 176

SCHEDULE 5

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 **203 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 **203 million** units of account.

(c) The maximum amount of compensation referred to in sub-paragraphs (a) and (c) shall be **300.74 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.

PART II

TRANSITORY PROVISION

Article 4 - paragraphs 4, 5 and 6

4. (a) Except as otherwise provided in sub-paragraph (b) 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 caused in the territory of the Contracting States, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to Article 5, paragraph 1, of this Convention, shall not exceed 30 million special drawing rights.

(b) 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 30 million special drawing rights.

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 the Liability Convention and this Convention shall be the same for all claimants.

6. The Assembly of the Fund (hereinafter referred to as "the Assembly") may, having regard to the experience of incidents which have occurred and in particular the amount of damage resulting therefrom and to changes in the monetary values, decide that the amount of 30 million special drawing rights referred to in paragraph 4, sub-paragraph (a) and (b), shall be changed; provided, however, that this amount shall in no case exceed 60 million special drawing rights or be lower than 30 million special drawing rights. The changed amount shall apply to incidents which occur after the date of the decision effecting the change.

SCHEDULE 5ZA

SUPPLEMENTARY FUND LIABILITY

Article 4—paragraphs 1, 2 and 3

1. *The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.*

2. —

(a) *The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.*

(b) *The amount of 750 million units of account mentioned in paragraph 2(a) 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 determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.*

3. *Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, 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 Protocol shall be the same for all claimants.*

Article 13—paragraph 1

1. *Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.*

Article 15—paragraphs 1, 2 and 3

1. *If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.*

2. *No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance*

with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report."

SCHEDULE 5A

TEXT OF INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA

The States parties to the present Convention,

Conscious of the dangers posed by the world-wide carriage by sea of hazardous and noxious substances,

Convinced of the need to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of such substances,

Desiring to adopt uniform international rules and procedures for determining questions of liability and compensation in respect of such damage,

Considering that the economic consequences of damage caused by the carriage by sea of hazardous and noxious substances should be shared by the shipping industry and the cargo interests involved,

Have agreed as follows:

Chapter I

General Provisions

Definitions

Article 1

For the purposes of this Convention:

1. “Ship” means any seagoing vessel and seaborne craft, of any type whatsoever.
2. “Person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
3. “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. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, “owner” shall mean such company.
4. “Receiver” means either:
 - (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or

- (b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).
5. “Hazardous and noxious substances” (HNS) means:
- (a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
- (i) oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
 - (ii) noxious liquid substances carried in bulk referred to in appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category A, B, C or D in accordance with regulation 3(4) of the said Annex II;
 - (iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code;
 - (iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;
 - (v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
 - (vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed cup test);
 - (vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and
- (b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

6. “Damage” means:
- (a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;
 - (b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;
 - (c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
 - (d) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.

In this paragraph, “caused by those substances” means caused by the hazardous or noxious nature of the substances.

7. “Preventive measures” means any reasonable measures taken by any person after an incident has occurred to prevent or minimise damage.

8. “Incident” means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

9. “Carriage by sea” means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.

10. “Contributing cargo” means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

11. The “HNS Fund” means the International Hazardous and Noxious Substances Fund established under article 13.

12. “Unit of account” means the Special Drawing Right as defined by the International Monetary Fund.

13. “State of the ship's registry” means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.

14. “Terminal” means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.

15. “Director” means the Director of the HNS Fund.

16. “Organization” means the International Maritime Organization.

17. “Secretary-General” means the Secretary-General of the Organization.

Annexes

Article 2

The Annexes to this Convention shall constitute an integral part of this Convention.
Scope of application

Article 3

This Convention shall apply exclusively:

- (a) to any damage caused in the territory, including the territorial sea, of a State Party;
- (b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and
- (d) to preventive measures, wherever taken.

Article 4

1. This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.

2. This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.
3. This Convention shall not apply:
 - (a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and
 - (b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.
4. Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.
5. A State Party may decide to apply this Convention to its warships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.
6. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 38 and shall waive all defences based on its status as a sovereign State.

Article 5

1. A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships:
 - (a) which do not exceed 200 gross tonnage; and
 - (b) which carry hazardous and noxious substances only in packaged form; and
 - (c) while they are engaged on voyages between ports or facilities of that State.
2. Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1(a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.
3. Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.
4. A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.
5. Where a State has made a declaration under paragraph 1 or 2 and has not withdrawn it, hazardous and noxious substances carried on board ships covered by that paragraph shall not

be considered to be contributing cargo for the purpose of application of articles 18, 20, article 21, paragraph 5 and article 43.

6. The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:

- (a) the damage as defined in article 1, paragraph 6(a), (b) or (c) was caused in:
 - (i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or
 - (ii) the exclusive economic zone, or area mentioned in article 3(b), of the State or States referred to in (i);
- (b) the damage includes measures taken to prevent or minimise such damage.

Duties of State Parties

Article 6

Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.

CHAPTER II

LIABILITY

Liability of the owner

Article 7

1. Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2. No liability shall attach to the owner if the owner proves that:

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or

- (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either
 - (i) has caused the damage, wholly or partly; or
 - (ii) has led the owner not to obtain insurance in accordance with article 12;

provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3. If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

4. No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5. Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures; and
- (f) the servants or agents of persons mentioned in (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

6. Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

Incidents involving two or more ships

Article 8

1. Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.

2. However, owners shall be entitled to the limits of liability applicable to each of them under article 9.

3. Nothing in this article shall prejudice any right of recourse of an owner against any other owner.

Limitation of liability

Article 9

1. The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

(a) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and

(b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account

for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

2. The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3. The owner shall, for the purpose of benefiting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 30 or, if no action is brought, with any court or other competent authority of any one of the States Parties in which action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

4. Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5. If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7. Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 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 the claim against the fund.

8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise damage shall rank equally with other claims against the fund.

9. (a) The amounts mentioned in paragraph 1 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 constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

(b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

(c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10. For the purpose of this article the ship's tonnage shall be gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the

International Convention on Tonnage Measurement of Ships, 1969.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 10

1. Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

- (a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and
- (b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

Death and injury

Article 11

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.

Compulsory insurance of the owner

Article 12

1. The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention

2. A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain

the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

3. The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.

4. The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

5. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

6. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.

7. Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

8. Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other

defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.

10. A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.

11. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

12. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

Chapter III

COMPENSATION BY THE INTERNATIONAL HAZARDOUS AND NOXIOUS SUBSTANCES FUND (HNS FUND)

Establishment of the HNS Fund

Article 13

1. The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:
 - (a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and
 - (b) to give effect to the related tasks set out in article 15.
2. The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

Compensation

Article 14

1. For the purpose fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of chapter II:
 - (a) because no liability for the damage arises under chapter II;
 - (b) because the owner liable for the damage under; chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under chapter II after having taken all reasonable steps to pursue the available legal remedies;
 - (c) because the damage exceeds the owner's liability under the terms of chapter II.
2. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise damage shall be treated as damage for the purposes of this article.
3. The HNS Fund shall incur no obligation under the preceding paragraphs if:

- (a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or
- (b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

4. If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

- 5. (a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under chapter II for damage within the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.
- (b) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account
- (c) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.
- (d) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.

6. Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, 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. Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.

7. The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with chapter 11. In such cases paragraph 5(d) applies accordingly.

Related tasks of the HNS Fund

Article 15

For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall have the following tasks:

- (a) to consider claims made against the HNS Fund;
- (b) to prepare an estimate in the form of a budget for each calendar year of:

Expenditure:

- (i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and
- (ii) payments to be made by the HNS Fund in the relevant year;

Income:

- (iii) surplus funds from operations in preceding years, including any interest;
 - (iv) initial contributions to be paid in the course of the year;
 - (v) annual contributions if required to balance the budget; and
 - (vi) any other income;
- (c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and
 - (d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

General provisions on contributions

Article 16

1. The HNS Fund shall have a general account, which shall be divided into sectors.
2. The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:

- (a) oil as defined in article 1, paragraph 5(a)(i) (oil account);
- (b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and
- (c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).

3. There shall be initial contributions and, as required, annual contributions to the HNS Fund.

4. Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or article 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.

5. For the purposes of article 18, article 19, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(c), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the limit specified in the respective sub-paragraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.

6. “Associated person” means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

General provisions on annual contributions

Article 17

1. Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.

2. Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph 5 shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received or, in respect of cargoes referred to in article 19, paragraph 1(b), discharged during the preceding calendar year or such other year as the Assembly may decide.

3. The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and article 21, paragraph 5, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing

cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.

4. The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.

5. The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

Annual contributions to the general account

Article 18

1. Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1, which fall within the following sectors:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
- (b) substances referred to in paragraph 2; and
- (c) other substances.

2. Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.

Annual contributions to separate accounts

Article 19

1. Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:

- (a) in the case of the oil account,
 - (i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971,

as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and

- (ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
 - (b) in the case of the LNG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State;
 - (c) in the case of the LPG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG.
2. Subject to paragraph 3, the separate accounts referred to in paragraph 1 above shall become effective at the same time as the general account.
3. The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:
- (a) 350 million tonnes of contributing cargo in respect of the oil account;
 - (b) 20 million tonnes of contributing cargo in respect of the LNG account; and
 - (c) 15 million tonnes of contributing cargo in respect of the LPG account.
4. The Assembly may suspend the operation of a separate account if:
- (a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or
 - (b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten per cent of the most recent levy to that account in accordance with paragraph 1.
5. The Assembly may reinstate the operation of a separate account, which has been suspended in accordance with paragraph 4.
6. Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.

Initial contributions

Article 20

1. In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5 be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received or, in the case of LNG, discharged in that State, during the calendar year preceding that in which this Convention enters into force for that State.
2. The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.
3. Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

Reports

Article 21

1. Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.
2. For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.
3. For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be *prima facie* evidence of the facts stated therein.
4. Where a State Party does not fulfil its obligations to communicate to the Director the information referred to in paragraph 2 and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a State Party.
5. In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State

Party shall, at the time of reporting, either:

- (a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or
- (b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party, for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.

Non-payment of contributions

Article 22

1. The amount of any contribution due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.

2. Where a person who is liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

Optional liability of States Parties for the payment of contributions

Article 23

1. Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 in respect of hazardous and noxious substances received or discharged in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with article 46, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.

3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4. A declaration made in accordance with this article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director's receipt thereof.

5. Any State which is bound by a declaration made under this article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

Organization and administration

Article 24

The HNS Fund shall have an Assembly and a Secretariat headed by the Director.

Assembly

Article 25

The Assembly shall consist of all States Parties to this Convention.

Article 26

The functions of the Assembly shall be:

- (a) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;
- (b) to determine its own rules of procedure, subject to the provisions of this Convention;
- (c) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in article 13, paragraph 1(a), and the related tasks of the HNS Fund listed in article 15;
- (d) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
- (e) to adopt the annual budget prepared in accordance with article 15(b);
- (f) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;
- (g) to appoint auditors and approve the accounts of the HNS Fund;
- (h) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with article 14 and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;
- (i) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the

members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

- (j) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;
- (k) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;
- (l) to supervise the proper execution of this Convention and of its own decisions;
- (m) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and
- (n) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

Article 27

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.
2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

Article 28

A majority of the members of the Assembly shall constitute a quorum for its meetings.

Secretariat

Article 29

1. The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.
2. The Director shall be the legal representative of the HNS Fund.

Article 30

1. The Director shall be the chief administrative officer of the HNS Fund. Subject to the instructions given by the Assembly, the Director shall perform those functions, which are

assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.

2. The Director shall in particular :

- (a) appoint the personnel required for the administration of the HNS Fund;
- (b) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;
- (c) collect the contributions due under this Convention while observing in particular the provisions of article 22, paragraph 2;
- (d) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;
- (e) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;
- (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
- (g) prepare, in consultation with the President of the Assembly, and publish a report on the activities of the HNS Fund during the previous calendar year; and
- (h) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies.

Article 31

In the performance of their duties the Director and the staff and experts appointed by the Director shall not seek or receive instructions from any Government or from any authority external to the HNS Fund. They shall refrain from any action which might adversely reflect on their position as international officials. Each State Party on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties.

Finances

Article 32

1. Each State Party shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.

2. Any other expenses incurred in the operation of the HNS Fund shall be borne by the HNS Fund.

Voting

Article 33

The following provisions shall apply to voting in the Assembly :

- (a) each member shall have one vote;
- (b) except as otherwise provided in article 34, decisions of the Assembly shall be made by a majority vote of the members present and voting;
- (c) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and
- (d) for the purpose of this article the phrase “members present” means “members present at the meeting at the time of the vote”, and the phrase “members present and voting” means “members present and casting an affirmative or negative vote”. Members who abstain from voting shall be considered as not voting.

Article 34

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under article 19, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;
- (b) a decision under article 22, paragraph 2, not to take or continue action against a contributor;
- (c) the appointment of the Director under article 26(d);
- (d) the establishment of subsidiary bodies, under article 26(i), and matters relating to such establishment; and
- (e) a decision under article 51, paragraph 1, that this Convention shall continue to be in force.

Tax exemptions and currency regulations

Article 35

1. The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.

2. When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be

sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.

3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.
4. The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.
5. Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.
6. Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction.

Confidentiality of information

Article 36

Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

Chapter IV

CLAIMS AND ACTIONS

Limitation of actions

Article 37

1. Rights to compensation under chapter II shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.
2. Rights to compensation under chapter III shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.
3. In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.
4. Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

Jurisdiction in respect of action against the owner

Article 38

1. Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(b), of one or more States Parties, or preventative measures have been taken to prevent or minimise damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of any such States Parties.
2. Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(c) have been fulfilled, or preventative measures to prevent or minimise such damage have been taken, actions for compensation may have been brought against the owner or other person providing financial security for the owner's liability only in the courts of:
 - (a) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or
 - (b) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or
 - (c) the State Party where a fund has been constituted in accordance with article 9, paragraph 3.
3. Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant.
4. Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.
5. After a fund under article 9 has been constituted by the owner or by the insurer or other person providing financial security in accordance with article 12, the courts of the State in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.

Jurisdiction in respect of action against the HNS Fund or taken by the HNS Fund

Article 39

1. Subject to the subsequent provisions of this article, any action against the HNS Fund for compensation under article 14 shall be brought only before a court having jurisdiction under article 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.
2. In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of article 38, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.

3. Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.

4. Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 in respect of the same damage.

5. Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.

6. Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

7. Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each Party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become binding upon the HNS Fund in the sense that the facts and findings in the judgement may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

Recognition and enforcement

Article 40

1. Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except :

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2. A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened

3. Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3 shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

Subrogation and recourse

Article 41

1. The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.
2. Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
3. Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

Supersession clause

Article 42

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.

Chapter V

TRANSITIONAL PROVISIONS

Information on contributing cargo

Article 43

When depositing an instrument referred to in article 45, paragraph 3, and annually thereafter until this Convention enters into force for a State, that State shall submit to the Secretary-General data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year in respect of the general account and each separate account.

First session of the Assembly

Article 44

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

Chapter VI
FINAL CLAUSES

Signature, ratification, acceptance, approval and accession

Article 45

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Entry into force

Article 46

1. This Convention shall enter into force eighteen months after the date on which the following conditions are fulfilled:
 - (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
 - (b) the Secretary-General has received information in accordance with article 43 that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c) have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.
2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Convention enters into force in accordance with paragraph 1, whichever is the later.

Revision and amendment

Article 47

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of six States Parties or one-third of the States Parties, whichever is the higher figure.

3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Amendment of limits

Article 48

1. Without prejudice to the provisions of article 47, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1 and article 14, paragraph 5.

2. Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.

4. All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

5. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.

6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5.

7. (a) No amendment of the limits under this article may be considered less than five years from the date this Convention was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.

(b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention increased by six per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention multiplied by three.

8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of

the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

10. All Contracting States shall be bound by the amendment, unless they denounce this Convention in accordance with article 49, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11. When an amendment has been adopted but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.

Denunciation

Article 49

1. This Convention may be denounced by any State Party at any time after the date on which it enters into force for that State Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. Denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Convention relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5 in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

Extraordinary sessions of the Assembly

Article 50

1. Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.

2. The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.

3. If the Assembly, at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from the same date.

Cessation

Article 51

1. This Convention shall cease to be in force:
 - (a) on the date when the number of States Parties falls below 6; or
 - (b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, if the data shows that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Convention shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

2. States which are bound by this Convention on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 52 and shall, for that purpose only, remain bound by this Convention.

Winding up of the HNS Fund

Article 52

1. If this Convention ceases to be in force, the HNS Fund shall nevertheless:
 - (a) meet its obligations in respect of any incident occurring before this Convention ceased to be in force; and
 - (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.
2. The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.
3. For the purposes of this article the HNS Fund shall remain a legal person.

Depository

Article 53

1. This Convention and any amendment adopted under article 48 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

- (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 48, paragraph 2;
 - (iv) any amendment which has been adopted in accordance with article 48, paragraph 5;
 - (v) any amendment deemed to have been accepted under article 48, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that article;
 - (vi) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect; and
 - (vii) any communication called for by any article in this Convention; and
- (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the depository to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Languages

Article 54

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

**CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS
AND THEIR LUGGAGE BY SEA**

PART I

TEXT OF THE CONVENTION

ARTICLE 1

Definitions

In this Convention the following expressions have the meaning hereby assigned to them:

1. (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;
- (b) “performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship who actually performs the whole or a part of the carriage;
2. “contract of carriage” means a contract made by or on behalf of a carrier for the carriage by sea of a passenger and his luggage, as the case may be;
3. “ship” means only a seagoing vessel, excluding an air-cushion vehicle;
4. “passenger” means any person carried in a ship,
 - (a) under a contract of 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 not governed by this Convention;
5. “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding:
 - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and
 - (b) live animals;

6. “cabin luggage” means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;

7. “loss of or damage to luggage” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;

8. “carriage” covers the following periods:

- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for the purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in an marine terminal or station or on a quay or in or on any other port installation;
- (b) with regard to cabin luggage, also the period during which the passenger is in an marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
- (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent ashore or on board until the time of its re-delivery by the carrier or his servant or agent;

9. “international carriage” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

ARTICLE 2

Application

1. This Convention shall apply to any international carriage if:

- (a) the ship is flying the flag of or is registered in a State Party to this Convention,
or
- (b) the contract of carriage has been made in a State Party to this Convention, or
- (c) the place of departure or destination, according to the contract of carriage, is situated in a State Party to this Convention.

2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

ARTICLE 3

Liability of the Carrier

1. The carrier is liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

2. The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.

3. Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger and the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.

ARTICLE 4

Performing carrier

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants or agents acting within the scope of their employment.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

ARTICLE 5

Valuables

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

ARTICLE 6

Contributory fault

If the carrier proves that the death of or personal injury to the passenger or the loss of or damage to his luggage was caused by or contributed to by the fault or neglect of the passenger, the Court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

ARTICLE 7

Limit of liability for personal injury

1. The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 46,666 units of account per carriage. Where, in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.
2. Notwithstanding paragraph 1 of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher *per capita* limit of liability.

ARTICLE 8

Limit of liability for loss of or damage to luggage

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 833 units of account per passenger, per carriage.
2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 3,333 units of account per vehicle, per carriage.
3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 1,200 units of account per passenger, per carriage.
4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 117 units of account in the case of damage to a vehicle and not

exceeding 13 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

ARTICLE 9

Monetary unit and conversion

The unit of account mentioned in this Convention is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in Articles 7 and 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency on the date of the judgement or the date agreed upon by the Parties.

ARTICLE 10

Supplementary provisions on limits of liability

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.
2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

ARTICLE 11

Defences and limits for carriers' servants

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

ARTICLE 12

Aggregation of claims

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.
2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier, and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

ARTICLE 13

Loss of right to limit liability

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

ARTICLE 14

Basis for claims

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier otherwise than in accordance with this Convention.

ARTICLE 15

Notice of loss or damage to luggage

1. The passenger shall give written notice to the carrier or his agent :

(a) in the case of apparent damage to luggage :

(i) for cabin luggage, before or at the time of disembarkation of the passenger,

(ii) for all other luggage, before or at the time of its re- delivery;

(b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

ARTICLE 16

Time-bar for actions

1. Any action for damages arising out of the death of or personal injury to the passenger and the loss of or damage to luggage shall be time-barred after a period of two years.

2. The limitation period shall be calculated as follows:

- (a) in the case of personal injury, from the date of disembarkation of the passenger;
- (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
- (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

3. The law of the Court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

ARTICLE 17

Competent jurisdiction

1. Any action arising under this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention :

- (a) the court of the place of permanent residence or principal place of business of the defendant, or
- (b) the court of the place of departure or that of the destination according to the contract of carriage, or
- (c) the court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or

- (d) a court of the State where the contract of carriage was made if the defendant has a place of business and is subject to jurisdiction in that State.

2. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

ARTICLE 18

Invalidity of contractual provisions

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in paragraph 4 of Article 8, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in paragraph 1 of Article 17, shall be null and void, but the nullity of that provision shall not render void the contract of carriage, which shall remain subject to the provisions of this Convention.

ARTICLE 19

Other conventions on limitation of liability

The Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships.

ARTICLE 20

Nuclear damage

No liability shall arise under this Convention for damage caused by a nuclear incident :

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions

ARTICLE 21

Commercial carriage by public authorities

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of Article 1.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered and any expression to which a meaning is assigned by article 1 of the Convention has that meaning.

Provisions adapting or supplementing specified articles of the Convention

2. For the purposes of paragraph 2 of article 2, provisions of such an international convention as is mentioned in that paragraph which apart from this paragraph do not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.

3. The reference to the law of the court in article 6 shall be construed as a reference to *Law Reform (Contributory Negligence) Act 1946 (an Act of Tynwald)*²⁰.

4. The *Department of Trade and Industry* may by order provide that, in relation to a carrier whose principal place of business is in the *Isle of Man*, paragraph 1 of article 7 shall have effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the order (which shall not be lower than 46,666 units of account).

5. (1) For the purpose of converting from special drawing rights into sterling the amounts mentioned in articles 7 and 8 of the Convention in respect of which a judgement is given, 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 day on which the judgement is given; or
- (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Treasury stating -

- (a) that a particular sum in sterling has been fixed as mentioned in subparagraph (1) above for a particular day; or

²⁰ Vol. XVI p. 518

- (b) that no sum has been so fixed for that day and 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 particular day,

shall be conclusive evidence of those matters for the purposes of articles 7 to 9 of the Convention; 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.

6. It is hereby declared that by virtue of article 12 the limitations on liability there mentioned in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them which may be brought whether in the *Isle of Man* or elsewhere.

7. Article 16 shall apply to an arbitration as it applies to an action; [...].

8. The court before which proceedings are brought in pursuance of article 17 to enforce a liability which is limited by virtue of article 12 may at any stage of the proceedings make such orders as appear to the court to be just and equitable in view of the provisions of article 12 and of any other proceedings which have been or are likely to be begun in the *Isle of Man* or elsewhere to enforce the liability in whole or in part; and without prejudice to the generality of the preceding provisions of this paragraph such a court shall, where the liability is or may be partly enforceable in other proceedings in the *Isle of Man* or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court or to make any part of its award conditional on the results of any other proceedings.

Other provisions adapting or supplementing the Convention

9. Any reference in the Convention to a contract of carriage excludes a contract of carriage which is not for reward.

10. If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Convention in respect of a particular country the Order shall, subject to the provisions of any subsequent Order made by virtue of this paragraph, be conclusive evidence that the State is a party to the Convention in respect of that country.

11. The *Department of Trade and Industry* may by Order make provision -

- (a) for requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner specified in the order, notice of such of the provisions of Part I of this Schedule as are so specified;
- (b) for a person who fails to comply with a requirement imposed on him by the order to be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding **£2,500**.

Application of sections 185 and 186 of this Act

12. It is hereby declared that nothing in the Convention affects the operation of section 185 of this Act (which limits a shipowner's liability in certain cases of loss of life, injury or damage).

13. Nothing in section 186 of this Act (which among other things limits a shipowner's liability of the loss or damage of goods in certain cases) shall relieve a person of any liability imposed on him by the Convention.

Section 185

SCHEDULE 7

[Inserted by the Merchant Shipping (Convention on the Limitation of Liability for Maritime Claims) (Application) Order 2000 SD 386/00]

PART I

TEXT OF CONVENTION

CHAPTER 1.

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 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, including, if applicable, any claim for special compensation under article 14 of the International Convention on Salvage 1989, as amended, 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) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 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 2,001 to 30,000 tons, 800 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 600 Units of Account,
 - and for each ton in excess of 70,000 tons, 400 Units of Account,
- (b) in respect of any other claims,
 - (i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 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 2,001 to 30,000 tons, 400 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 300 Units of Account;
 - and for each ton in excess of 70,000 tons, 200 Units of Account.

2. Where the amount calculated in accordance with paragraph (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 175,000 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.

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 paragraphs (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 person 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

1. 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.

2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

- (a) according to the law of that State, ships intended for navigation on inland waterways;
- (b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

3bis. Notwithstanding the limit of liability prescribed in paragraph 1 of article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

ARTICLE 18

Reservations

1. Any State may at the time of signature ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

- (a) to exclude the application of article 2, paragraphs 1 (d) and (c);
- (b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or Protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

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

Right to limit liability

2. Subject to paragraph 6 below, 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

2A. Paragraph 1(a) of article 2 shall have effect as if the reference to “loss of life or personal injury” did not include a reference to loss of life or personal injury to passengers of seagoing ships.

3. *[Omitted]*.

Claims excluded from limitation

4. (1) Claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, or any amendment of or Protocol to that Convention, which arise from occurrences which take place after the coming into force of the first **Order** made by the **Department of Trade and Industry** under section 182B of this Act shall be excluded from the Convention.

(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.

(3) The claims excluded from the Convention by paragraph (c) of article 3 are claims made by virtue of any of sections 7 to 11 of the Nuclear Installations Act 1965 *as that Act has effect in the Isle of Man*.

The general limits

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

- (a) paragraph 1 (a)(i) referred to 1,000,000 Units of Account; and
- (b) paragraph 1 (b)(i) referred to 500,000 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 **Department of Trade and Industry**.

(3) Any order under this paragraph shall, so far as appears to the **Department of Trade and Industry** to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.

Limit for passenger claims

6. (1) Article 7 shall not apply in respect of any seagoing ship; and shall have effect in respect of any ship which is not seagoing as if in paragraph 1 of that article-

- (a) after “thereof” there were inserted “in respect of each passenger”,
and
- (b) the words from “multiplied” onwards were omitted.

(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 under the *Fatal Accidents Act 1981 (An Act of Tynwald)*.

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 Treasury stating-

- (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.

7A. Where an action is brought in the Isle of Man, the reference in paragraph 3 of article 10 to the national law of the State Party shall be construed as a reference to the law of the Isle of Man.

Constitution of fund

8.- (1) The *Deemsters* 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) *[Omitted]*.

(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.

10A. In article 14, the reference to the law of the State Party shall, where the fund is constituted in the Isle of Man, be construed as a reference to the law of the Isle of Man.

Meaning of “Court”

11. References in the Convention and the preceding provisions of this Part of this Schedule to the court are **references to the High Court of Justice of the Isle of Man.**

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 as amended by the 1996 Protocol 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 as amended by the 1996 Protocol.