



# Merchant Shipping and Maritime Security Act 1997

CHAPTER 28





# Merchant Shipping and Maritime Security Act 1997

## CHAPTER 28

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## Section

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# Merchant Shipping and Maritime Security Act 1997

## 1997 CHAPTER 28

An Act to amend the Merchant Shipping Act 1995; to extend the powers of fire authorities to use fire brigades and equipment at sea; to make further provision about the protection of wrecks; to amend Part III of the Aviation and Maritime Security Act 1990; to make provision about piracy; to provide for the continuing application to the International Oil Pollution Compensation Fund of section 1 of the International Organisations Act 1968; to make provision about the International Tribunal for the Law of the Sea; and for connected purposes. [19th March 1997]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Extension of powers to deal with emergencies at sea*

1. In the Merchant Shipping Act 1995 (in this Act referred to as “the 1995 Act”), after section 100 there is inserted—

Temporary  
exclusion zones.  
1995 c. 21.

#### *“Temporary exclusion zones*

Power to  
establish  
temporary  
exclusion zones.

100A.—(1) Subsection (2) below applies where a ship, structure or other thing—

- (a) is in United Kingdom waters or a part of the sea specified by virtue of section 129(2)(b); and
- (b) is wrecked, damaged or in distress;

and in this section and section 100B “the relevant casualty” means that ship, structure or other thing.

(2) If it appears to the Secretary of State—

- (a) that significant harm will or may occur as a direct or indirect result of the relevant casualty being wrecked, damaged or in distress, and
- (b) that if access to an area around the relevant casualty were restricted in accordance with section 100B, significant harm, or the risk of such harm, would be prevented or reduced,

he may by direction identify an area to which access is so restricted (“a temporary exclusion zone”).

(3) In this section “significant harm” means—

- (a) significant pollution in the United Kingdom, in United Kingdom waters or in a part of the sea specified by virtue of section 129(2)(b); or
- (b) significant damage to persons or property.

(4) A temporary exclusion zone may not include any area which is neither within United Kingdom waters nor within a part of the sea specified by virtue of section 129(2)(b).

(5) If it appears to the Secretary of State at any time after a temporary exclusion zone is established that the zone is larger than is needed for the purpose of preventing or reducing significant harm, or the risk of such harm, he shall by direction vary the direction establishing the zone accordingly.

(6) Subject to subsections (4) and (5) above, a temporary exclusion zone may be identified by reference to the position of the relevant casualty from time to time.

(7) If it appears to the Secretary of State at any time after a temporary exclusion zone is established that the zone is not needed for the purpose of preventing or reducing significant harm, or the risk of such harm, he shall by direction revoke the direction establishing the zone.

(8) Where the Secretary of State gives a direction under this section, he shall—

- (a) as soon as practicable, publish it in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it; and
- (b) within the period of 24 hours from the giving of the direction, send a copy of it to the International Maritime Organization.

(9) Subsection (2) above does not apply where an order under section 2 of the Protection of Wrecks Act 1973 has effect in relation to the relevant casualty.

1973 c. 33.

Temporary  
exclusion zones:  
offences

100B.—(1) If a direction establishing a temporary exclusion zone contains a statement of a description mentioned in subsection (2) below, then, subject to subsection (4) below, no ship shall enter or remain in the zone.

(2) The statement is one to the effect that the direction is given for the purpose of preventing or reducing significant pollution, or the risk of significant pollution, in the United Kingdom, in United Kingdom waters or in a part of the sea specified by virtue of section 129(2)(b).

(3) If a direction establishing a temporary exclusion zone does not contain a statement of a description mentioned in subsection (2) above, then, subject to subsections (4) and (5) below—

- (a) no ship shall enter or remain in any part of the zone that is in United Kingdom waters; and
- (b) no United Kingdom ship shall enter or remain in any part of the zone that is in a part of the sea specified by virtue of section 129(2)(b).

(4) A ship may enter or remain in a temporary exclusion zone or a part of such a zone if it does so—

- (a) in accordance with the direction establishing the zone;
- (b) with the consent of the Secretary of State; or
- (c) in accordance with regulations made by the Secretary of State for the purposes of this section.

(5) A qualifying foreign ship may enter a temporary exclusion zone or a part of such a zone if in doing so it is exercising the right of transit passage through straits used for international navigation.

(6) If a ship enters or remains in a temporary exclusion zone or a part of such a zone in contravention of subsection (1) or (3) above then, subject to subsection (7) below, its owner and its master shall each be guilty of an offence and liable—

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

(7) It shall be a defence for a person charged with an offence under this section to prove that the existence or area of the temporary exclusion zone was not, and would not on reasonable enquiry have become, known to the master.”

2.—(1) Section 137 of the 1995 Act (powers of Secretary of State to give directions and take other action where a shipping accident threatens pollution on a large scale in the United Kingdom or in United Kingdom waters) is amended in accordance with subsections (2) to (4).

Powers of intervention where shipping accident threatens pollution.

(2) In subsection (1)(b) for “cause pollution on a large scale in the United Kingdom or United Kingdom waters” there is substituted “cause significant pollution in the United Kingdom, United Kingdom waters or a part of the sea specified by virtue of section 129(2)(b)”.

- (3) In subsection (2)—
- (a) after sub-paragraph (b) there is inserted—
    - “(bb) to any pilot of the ship, or”; and
  - (b) at the end there is inserted “or
  - (d) where the ship is in waters which are regulated or managed by a harbour authority—
    - (i) to the harbour master, or
    - (ii) to the harbour authority.”
- (4) In subsection (9)—
- (a) for the definition of “accident” there is substituted—
 

““accident” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;”; and
  - (b) after the definition of “owner” there is inserted—
 

““pilot” means any person not belonging to a ship who has the conduct of the ship;”.
- (5) In section 141 of the 1995 Act (application of sections 137 to 140 etc. to certain ships which are outside United Kingdom waters), in subsections (1)(b) and (3), for “outside United Kingdom waters” there is substituted “neither within United Kingdom waters nor within a part of the sea specified by virtue of section 129(2)(b)”.
- (6) Nothing in this section affects—
- (a) any Order in Council which, immediately before the commencement of this section, has effect under section 141(1) of the 1995 Act; or
  - (b) any Order in Council or instrument which, immediately before the commencement of this section, has effect under any other provision of the 1995 Act and which applies section 137 of the 1995 Act.

Powers of intervention in cases of pollution by substances other than oil.

3.—(1) After section 138 of the 1995 Act there is inserted—

“Application of sections 137 and 138 to pollution by substances other than oil.

138A.—(1) In sections 137 and 138, any reference to oil pollution includes a reference to pollution by any other substance which—

- (a) is prescribed by the Secretary of State by order for the purposes of this section, or
- (b) although not so prescribed, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

(2) Accordingly, any reference in those sections to oil includes a reference to any substance falling within subsection (1)(a) or (b) above.”

(2) Nothing in this section affects—



- (a) so much of any Order in Council as, immediately before the commencement of this section, has effect under section 141(1) of the 1995 Act; or
- (b) any Order in Council or instrument which, immediately before the commencement of this section, has effect under any other provision of the 1995 Act and which applies sections 137 and 138 of the 1995 Act.

4. In section 3 of the Fire Services Act 1947 (supplementary powers of fire authorities), in subsection (1), after paragraph (d) there is inserted—  
 “(dd) to employ the fire brigade maintained by them, or use any equipment so maintained, at sea (whether or not within the territorial sea of the United Kingdom);”.

Powers of fire authorities.  
1947 c. 41.

*Pollution control and marine safety*

5. In Part VI of the 1995 Act (prevention of pollution), after Chapter I there is inserted—

Waste reception facilities at harbours.

“CHAPTER IA

WASTE RECEPTION FACILITIES AT HARBOURS

General.

130A.—(1) The Secretary of State may by regulations make such provision as he considers appropriate in relation to—

- (a) the provision at harbours in the United Kingdom of facilities for the reception of waste from ships (in this Chapter referred to as “waste reception facilities”); and
- (b) the use of waste reception facilities provided at such harbours.

(2) In making the regulations, the Secretary of State shall take into account the need to give effect to provisions—

- (a) which are contained in any international agreement mentioned in section 128(1) which has been ratified by the United Kingdom; and
- (b) which relate to waste reception facilities.

(3) Sections 130B to 130D make further provision with respect to the regulations that may be made under this section.

Waste management plans.

130B.—(1) The regulations may make provision requiring a harbour authority for a harbour in the United Kingdom—

- (a) in such circumstances as may be prescribed, to prepare a plan with respect to the provision and use of waste reception facilities at the harbour; and
- (b) to submit the plan to the Secretary of State for approval.

(2) The regulations may make provision requiring a person—

- (a) if directed to do so by the Secretary of State, to prepare a plan with respect to the provision and use of waste reception facilities at any terminals operated by him within a harbour which is in the United Kingdom and is specified in the direction; and
- (b) to submit the plan to the Secretary of State for approval.

(3) For the purposes of this Chapter—

- (a) “terminal” means any terminal, jetty, pier, floating structure or other works within a harbour at which ships can obtain shelter or ship and unship goods or passengers; and
- (b) a person operates a terminal if activities at the terminal are under his control.

(4) In the following provisions of this section, “waste management plan” means a plan of a description mentioned in subsection (1) or (2) above.

(5) The regulations may make provision with respect to the form and content of waste management plans and may in particular require such plans to include—

- (a) proposals as to the information to be provided about waste reception facilities to those who are expected to use them;
- (b) proposals designed to ensure that adequate provision will be made for the disposal of waste deposited in waste reception facilities; and
- (c) proposals about how costs incurred in establishing and running waste reception facilities will be recovered.

(6) The regulations may require a person preparing a waste management plan to have regard to such matters as the Secretary of State may prescribe or in a particular case direct.

(7) The regulations may make provision as to the procedures to be followed in connection with waste management plans and may in particular—

- (a) require a person preparing a waste management plan to consult such persons as the Secretary of State may prescribe or in a particular case direct;
- (b) enable the Secretary of State to approve waste management plans with or without modification or to reject such plans;

- (c) enable the Secretary of State, if he is satisfied that a person who is required to prepare a waste management plan is not taking any steps necessary in connection with the preparation of the plan, to prepare such a plan;
- (d) require harbour authorities and persons operating terminals to implement waste management plans once approved, or to take such steps as the Secretary of State may in a particular case direct for the purpose of securing that approved plans are implemented;
- (e) enable waste management plans, in such circumstances as may be prescribed, to be withdrawn, altered or replaced.

Charges for and use of waste reception facilities.

130C.—(1) The regulations may make provision enabling a statutory harbour authority, on levying ship, passenger and goods dues, to impose charges for the purpose of recovering the whole or a part of the costs of the provision by or on behalf of the authority of waste reception facilities at the harbour.

(2) The regulations may make provision requiring the master of a ship—

- (a) if reasonably required to do so by a Departmental officer, or
- (b) in such other circumstances as may be prescribed,

to deposit any waste carried by the ship, or any prescribed description of such waste, in waste reception facilities provided at a harbour in the United Kingdom.

(3) The regulations may make provision—

- (a) for the reference to arbitration of questions as to whether requirements made under regulations made in pursuance of subsection (2)(a) above were reasonable, and
- (b) for compensation to be payable by the Secretary of State where a requirement is found to have been unreasonable.

(4) The regulations may make—

- (a) provision prohibiting the imposition by persons providing waste reception facilities at harbours in the United Kingdom of charges for the depositing of waste, or any prescribed description of waste, in the facilities; or
- (b) provision authorising the imposition by such persons of such charges subject to such restrictions as may be prescribed.

(5) The regulations may provide for charges to be imposed by virtue of subsection (4)(b) above—

- (a) even though the charges are for the depositing of waste in compliance with a requirement imposed by virtue of subsection (2) above; and
- (b) even though charges are also imposed by virtue of subsection (1) above.

(6) Subsections (7) to (9) below apply if the regulations make provision enabling a statutory harbour authority to impose charges of a description mentioned in subsection (1) above.

(7) The regulations may require information about the charges to be published in a way that is designed to bring the charges to the notice of persons likely to be affected.

(8) The regulations may provide for the charges to be reduced at the instance of the Secretary of State following the making of an objection by a person of a prescribed description.

(9) Regulations made by virtue of subsection (8) above may in particular make provision which corresponds to that made by section 31(3) to (12) of the Harbours Act 1964.

(10) The regulations may make provision as to the recovery of any charges imposed by virtue of this section.

1964 c. 40.

Supplementary.

130D.—(1) The regulations may provide that where a person contravenes a requirement under the regulations he is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(2) The regulations may—

- (a) provide for exemptions from any provision of the regulations;
- (b) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time;
- (c) make different provision for different cases;
- (d) include such incidental, supplemental and transitional provision as appears to the Secretary of State to be expedient.

(3) Regulations under section 130A which contain any provision of a description mentioned in section 130C (whether or not they also contain other provision) shall not be made unless a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of each House of Parliament.

(4) A statutory instrument containing regulations under section 130A to which subsection (3) above does

not apply (including regulations which revoke provision of a description mentioned in section 130C but do not contain any other provision made by virtue of section 130C) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation of Chapter IA.

130E. In this Chapter—

“prescribe” means prescribe by regulations;

“ship, passenger and goods dues” has the same meaning—

(a) in relation to Great Britain, as in the Harbours Act 1964; and

1964 c. 40.

(b) in relation to Northern Ireland, as in the Harbours Act (Northern Ireland) 1970;

1970 c. 1 (N.I.).

“waste reception facilities” has the meaning given by section 130A(1).”

6. In section 293 of the 1995 Act (functions of Secretary of State in relation to marine pollution), after subsection (4) there is inserted—

Indemnities in connection with counter-pollution measures.

“(4A) Where under subsection (1) above the Secretary of State agrees that another person shall take any measures to prevent, reduce or minimise the effects of marine pollution, he may agree to indemnify that other person in respect of liabilities incurred by that person in connection with the taking of the measures.”

7.—(1) In section 131(3)(a) of the 1995 Act (fine on summary conviction of offence of discharging oil into certain United Kingdom waters), for “£50,000” there is substituted “£250,000”.

Increased penalty for causing pollution, etc.

(2) Subsection (1) applies in relation to fines imposed in respect of offences committed after the commencement of this section.

(3) In section 144(4)(c)(i) and (ii) of the 1995 Act (security for release of ship in case where offence under section 131 suspected) for “£55,000”, in both places where it occurs, there is substituted “£255,000”.

(4) Subsection (3) applies in relation to ships detained after the commencement of this section.

(5) Nothing in this section affects any Order in Council or instrument which is in force immediately before the commencement of this section and which—

(a) applies section 131(3) of the 1995 Act; or

(b) makes provision corresponding to that made in connection with offences under section 131 by section 144(4) of the 1995 Act.

(6) Subsection (7) applies where immediately before the commencement of this section there is in force any Order in Council made under section 128(1) of the 1995 Act that confers power by any instrument made under the Order—

(a) to apply section 131(3) of the 1995 Act; or

(b) to make provision corresponding to that made in connection with offences under section 131 by section 144(4) of the 1995 Act.

(7) The power conferred by the Order in Council shall be construed as a power to apply section 131(3) as amended by subsection (1) or (as the case may be) to make provision corresponding to that made by section 144(4) as amended by subsection (3).

Safety regulations. **8.**—(1) Section 85 of the 1995 Act (safety and health on ships) is amended as mentioned in subsections (2) to (5).

(2) In subsection (1), for paragraphs (b) and (c) and the words following paragraph (c) there is substituted—

“(b) for securing the safety of other ships and persons on them while they are within United Kingdom waters and for protecting the health of persons on ships other than United Kingdom ships while they are within United Kingdom waters.”

(3) After subsection (1) there is inserted—

“(1A) Except as provided by subsection (1B) below, safety regulations 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; or

(b) persons on such a ship while it is exercising any such right.

(1B) Safety regulations shall apply in relation to a qualifying foreign ship, and persons on such a ship, even though the ship is exercising a right mentioned in subsection (1A)(a) above, to the extent that the safety regulations give effect to any provisions of an international agreement ratified by the United Kingdom so far as it relates to the safety of ships or persons on them or to the protection of the health of persons on ships.”

(4) In subsection (3)—

(a) the words from “and regulations” to “relates to safety” are omitted; and

(b) for “paragraph (a), (b) or (c)” there is substituted “paragraph (a) or (b)”.

(5) In subsection (4) for “subsection (1)(a)” there is substituted “subsection (1)”.

(6) Section 86(5) and (6) of the 1995 Act (under which certain safety regulations are subject to affirmative resolution procedure) shall cease to have effect.

Inspection and detention of ships.

**9.** Schedule 1 (amendments of the 1995 Act relating to the inspection and detention of ships) shall have effect.

Power to require ships to be moved.

**10.**—(1) After section 100B of the 1995 Act (which is inserted by section 1 of this Act) there is inserted—

*“Power to require ships to be moved*

Power to require ships to be moved.

100C.—(1) The powers conferred by this section shall be exercisable where a ship in United Kingdom waters—

- (a) is not a qualifying foreign ship, or
- (b) is such a ship but appears to the Secretary of State to be exercising neither of the following rights—
  - (i) the right of innocent passage, and
  - (ii) the right of transit passage through straits used for international navigation.

(2) Subject to subsection (3) below, the Secretary of State may, for any one or more of the purposes specified in subsection (4) below, give directions to any of the persons specified in subsection (5) below requiring—

- (a) that the ship is to be moved, or is to be removed from a specified area or locality or from United Kingdom waters, or
- (b) that the ship is not to be moved to a specified place or area within United Kingdom waters, or over a specified route within United Kingdom waters.

(3) The power of the Secretary of State under subsection (2)(a) above to require a ship to be removed from United Kingdom waters is not exercisable in relation to a United Kingdom ship.

(4) The purposes referred to in subsection (2) above are—

- (a) the purpose of securing the safety of the ship or of other ships, of persons on the ship or other ships, or of any other persons or property, or of preventing or reducing any risk to such safety, and
- (b) the purpose of preventing or reducing pollution in the United Kingdom, in United Kingdom waters or in a part of the sea specified by virtue of section 129(2)(b), or of preventing or reducing any risk of such pollution.

(5) The persons referred to in subsection (2) above are—

- (a) the owner of the ship or any person in possession of the ship, or
- (b) the master of the ship.

(6) If in the opinion of the Secretary of State the powers conferred by subsection (2) above are, or have proved to be, inadequate for any of the purposes specified in subsection (4) above, the Secretary of State may for that purpose take any such action as he has power to require to be taken by a direction under this section.

(7) The powers of the Secretary of State under subsection (6) above shall also be exercisable by such persons as may be authorised for the purpose by the Secretary of State.

(8) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.

(9) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (6) or (7) above—

- (a) does not constitute contempt of court; and
- (b) does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.

(10) In this section—

- (a) unless a contrary intention appears, “specified” in relation to a direction under this section, means specified by the direction; and
- (b) the reference in subsection (9) above to the Admiralty Marshal includes a reference to the Admiralty Marshal of the Supreme Court of Northern Ireland.

Offences in relation to section 100C.

100D.—(1) If the person to whom a direction is duly given under section 100C contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.

(2) If a person intentionally obstructs any person who is—

- (a) acting on behalf of the Secretary of State in connection with the giving or service of a direction under section 100C;
- (b) acting in compliance with a direction under that section; or
- (c) acting under section 100C(6) or (7);

he shall be guilty of an offence.

(3) In proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

(4) 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 indictment, to a fine.



Service of directions under section 100C.

100E.—(1) If the Secretary of State is satisfied that a company or other body is not one to which section 695 or section 725 of the Companies Act 1985 (service of notices) applies so as to authorise the service of a direction on that body under either of those sections, he may give a direction under section 100C of this Act to that body, as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship. 1985 c. 6.

(2) For the purpose of giving or serving a direction under section 100C to or on any person on a ship, a person acting on behalf of the Secretary of State shall have the right to go on board the ship.

(3) In the application of subsection (1) above to Northern Ireland, for references to sections 695 and 725 of the Companies Act 1985 there shall be substituted references to Articles 645 and 673 of the Companies (Northern Ireland) Order 1986.” S.I. 1986/1032 (N.I. 6).

11. After section 100E of the 1995 Act (which is inserted by section 10 of this Act) there is inserted— Ships receiving trans-shipped fish.

“Requirements to be met by ships in respect of which trans-shipment licences in force.

100F.—(1) In this section and section 100G “trans-shipment licence” means a licence under section 4A of the Sea Fish Conservation Act 1967 (prohibition of trans-shipment of fish unless authorised by a licence). 1967 c. 84.

(2) The Secretary of State may, for all or any of the purposes specified in subsection (3) below, by regulations prescribe requirements to be met by ships in respect of which trans-shipment licences are in force.

(3) Those purposes are—

- (a) the purpose of securing the safety of ships in respect of which trans-shipment licences are in force and persons on them,
- (b) the purpose of protecting the health of persons on such ships,
- (c) the purpose of securing the safety of any other persons or property, and
- (d) the purpose of preventing or reducing pollution.

(4) The matters with respect to which requirements may be prescribed under subsection (2) above include, in particular, the construction and equipment of ships, the manning of ships, and operational matters.

(5) Without prejudice to the generality of subsection (2) above, regulations under that subsection may apply in relation to a ship in respect of which a trans-shipment licence is in force any requirements contained in—

- (a) safety regulations,
- (b) regulations under section 128, or
- (c) any international agreement,

whether or not those requirements would otherwise apply in relation to that ship.

Failure to comply with prescribed standards in respect of ship in respect of which trans-shipment licence is in force.

100G.—(1) If it appears to the Secretary of State that any requirement of regulations under section 100F(2) or regulations under section 192A is being contravened in respect of a ship in respect of which a trans-shipment licence is in force, he may serve on the master a notice under subsection (2) below.

(2) A notice under this subsection must specify the contravention by reason of which it is given and must—

- (a) prohibit the receiving by the ship of fish trans-shipped from another ship,
- (b) prohibit the processing of fish on the ship, or
- (c) prohibit both such receiving and such processing.

(3) The Secretary of State shall revoke a notice under subsection (2) above if he is satisfied that the contravention specified in it has been remedied.

(4) If a trans-shipment licence ceases to be in force in respect of a ship to which a notice under subsection (2) above relates, the notice is revoked by virtue of this subsection.

(5) If without reasonable excuse the master of a ship causes or permits any prohibition imposed by a notice under subsection (2) above to be contravened in respect of the ship, he shall be liable—

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

(6) The obligation imposed by regulations under section 100F(2) shall not be enforceable except in accordance with this section, but this subsection does not limit the powers conferred by section 258.”

Preparation of plans under International Convention on Oil Pollution Preparedness, Response and Co-operation.

12. In section 128 of the 1995 Act (prevention of pollution from ships etc.) after subsection (3) there is inserted—

“(3A) An order under subsection (1) above in pursuance of paragraph (d) of that subsection may include provision imposing on local authorities responsibilities in relation to the preparation, review and implementation of any plans required by the agreement mentioned in that paragraph.”

#### *Funding of maritime services*

Funding of maritime services.

13. Schedule 2 (funding of maritime services) shall have effect.

#### *Liability and compensation*

Carriage of hazardous and noxious substances.

14.—(1) In Part VI of the 1995 Act (prevention of pollution), after Chapter IV there is inserted—

“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) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to—

- (a) the Convention on or after its ratification by the United Kingdom; or
- (b) any revision of the Convention which appears to Her Majesty in Council 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 (including, where the Order is made under paragraph (b) of that subsection, modifications of Schedule 5A and section 182C) as appear to Her Majesty 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 284 with such modifications, if any, as are prescribed by the Order;
- (f) for a certificate issued by or on behalf of the Secretary of State 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 Her Majesty 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).

(5) A draft of an Order in Council proposed to be made by virtue of this section shall not be submitted to Her Majesty in Council unless it has been approved by a resolution of each House of Parliament.

Power of Secretary of State to make orders.

182C.—(1) The Secretary of State may by order make such amendments of Schedule 5A and any Order in Council under section 182B(1) as appear to him to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 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.”

(2) After Schedule 5 to the 1995 Act there is inserted, as Schedule 5A to that Act, the provision set out in Schedule 3.

Limitation of liability.

15.—(1) In section 185 of the 1995 Act (limitation of liability for maritime claims), after subsection (2) there is inserted—

“(2A) Her Majesty may by Order in Council make such modifications of Parts I and II of Schedule 7 as She considers appropriate in consequence of the revision of the Convention by the Protocol of 1996 amending the Convention (in this section referred to as “the 1996 Protocol”).

(2B) If it appears to Her Majesty in Council that the Government of the United Kingdom has agreed to any further revision of the Convention or to any revision of article 8 of the 1996 Protocol, She may by Order in Council make such modifications of Parts I and II of Schedule 7 and subsections (2C) and (2D) below as She considers appropriate in consequence of the revision.

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

(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 (2A), (2B) or (2C) above shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the modification comes into force.”

(2) After subsection (4) of that section there is inserted—

“(5) A draft of an Order in Council proposed to be made by virtue of subsection (2A) or (2B) above shall not be submitted to Her Majesty in Council unless it has been approved by a resolution of each House of Parliament.”

16. In Part VII of the 1995 Act, after section 192 there is inserted—

Compulsory insurance.

*“Regulations requiring insurance or security*

Compulsory insurance or security

192A.—(1) Subject to subsections (2) and (3) below, the Secretary of State may make regulations requiring that, in such cases as may be prescribed by the regulations, while a ship is in United Kingdom waters, there must be in force in respect of the ship—

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

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

- (a) a qualifying foreign ship while it is exercising—
  - (i) the right of innocent passage, or

(ii) the right of transit passage through straits used for international navigation,

- (b) any warship, or
- (c) any ship for the time being used by the government of any State for other than commercial purposes.

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

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

(5) Regulations under this section may provide—

- (a) that in such cases as are prescribed a ship which contravenes the regulations shall be liable to be detained and that section 284 shall have effect, with such modifications (if any) as are prescribed by the regulations, in relation to the ship,
- (b) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine of an amount not exceeding £50,000, or such less amount as is prescribed by the regulations, and on conviction on indictment by a fine, and
- (c) that any such contravention shall be an offence punishable only on summary conviction by a fine of an amount not exceeding £50,000, or such less amount as is prescribed by the regulations.

(6) Regulations under this section may—

- (a) make different provision for different cases,
- (b) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time, and
- (c) include such incidental, supplemental and transitional provision as appears to the Secretary of State to be expedient for the purposes of the regulations.”

*Miscellaneous amendments of Merchant Shipping Act 1995*

**17.** In section 56 of the 1995 Act (financial assistance for training), after subsection (3) there is inserted—

Financial assistance for training.

“(4) In providing assistance in accordance with this section the Secretary of State shall have regard to the maintenance and development of the United Kingdom’s merchant fleet and marine related business and for that purpose shall—

- (a) keep under review all aspects of that fleet and business; and
- (b) seek the advice of those who appear to him to have experience of that fleet or business.

(5) In this section, “marine related business” means any trade, business or other activity concerned with the manufacture of, or the provision of goods and services for, or the operation or use of, ships and includes maritime educational establishments, marine classification societies, marine equipment suppliers, marine surveyors, marine and naval architects, marine insurance companies, protection and indemnity clubs, providers of maritime financial or legal services, the operators of ports and harbours and shipbrokers.”

**18.—**(1) In section 80 of the 1995 Act (discharge books), in subsection (1) for paragraph (a) there is substituted—

Discharge books.

“(a) for the issue of discharge books—

(i) to persons who are or have been employed in United Kingdom ships; or

(ii) to persons who are or have been employed in other ships but are not aliens within the meaning of the British Nationality Act 1981;

1981 c. 61.

(aa) for requiring the persons mentioned in paragraph (a) above to apply for discharge books;

(ab) for the form of discharge books and the particulars (if any) that they are to contain with respect to their holders;”.

(2) In the words after paragraph (d) of that subsection, for “paragraph (a)” there is substituted “paragraph (a), (aa) or (ab)”.

**19.—**(1) In section 197 of the 1995 Act (powers of general lighthouse authority), in subsection (7), after “sell” there is inserted “or lease”.

Powers of general lighthouse authorities.

(2) After that subsection there is inserted—

“(8) Where it appears to a general lighthouse authority that any asset of theirs which is held in connection with the discharge of their functions under section 195 has spare capacity, they may, with the consent of the Secretary of State, enter into an agreement for the purpose of exploiting that spare capacity.

(9) For the purposes of subsection (8) above an asset has spare capacity if—

- (a) during any period there are times (or there is a time) when it is not needed in connection with the discharge of the general lighthouse authority’s functions under section 195;

(b) there is any period when it is not being used to its full capacity in connection with the discharge of those functions; or

(c) it has ceased to be used in connection with the discharge of those functions but it is not for the time being expedient to realise the asset.

(10) Any consent under subsection (8) above may be given—

(a) unconditionally or subject to conditions; and

(b) in relation to a particular case or in relation to such description of cases as may be specified in the consent.

(11) A general lighthouse authority shall send to the Secretary of State a copy of every agreement entered into by them by virtue of subsection (8) above.”

Disclosure of information to general lighthouse authorities.

**20.** Before section 223 of the 1995 Act there is inserted—

“Disclosure of information to general lighthouse authorities.

222A.—(1) No obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise) shall prevent a Minister of the Crown or a Northern Ireland department from disclosing—

(a) to a general lighthouse authority, or

(b) to a person appointed by a general lighthouse authority to collect general light dues,

information for the purpose of enabling or assisting the authority to discharge their functions under this Part.

(2) Information obtained by any person by virtue of subsection (1) above shall not be disclosed by him to any other person except where the disclosure is made—

(a) to a general lighthouse authority or a person appointed by such an authority to collect general light dues; or

(b) for the purposes of any legal proceedings arising out of this Part.”

Certain duties not to apply to RNLI.

**21.**—(1) In section 233 of the 1995 Act (powers of receiver in case of vessel in distress), at the beginning of subsection (1) there is inserted “Subject to subsection (1A) below,”.

(2) After that subsection there is inserted—

“(1A) The receiver may not under subsection (1) above impose any requirement on the master or other person having the charge of a vessel owned or operated by the Royal National Lifeboat Institution.”

Disposal of unclaimed wreck.

**22.**—(1) Section 240 of the 1995 Act (immediate sale of wreck in certain cases) is amended as follows.

(2) After subsection (1) there is inserted—

“(1A) The receiver may also sell any wreck in his possession before the end of the year referred to in section 239(1) if—



- (a) in his opinion it is unlikely that any owner will establish a claim to the wreck within that year; and
- (b) no statement has been given to the receiver under section 242(1) in relation to the place where the wreck was found.”

(3) At the beginning of subsection (2) there is inserted “Subject to subsection (3) below”, and after that subsection there is inserted—

“(3) Where the receiver sells any wreck in a case falling within subsection (1A) above, he may make to the salvors an advance payment, of such amount as he thinks fit and subject to such conditions as he thinks fit, on account of any salvage that may become payable to them in accordance with section 243(5).”

23. In section 298 of the 1995 Act (duty of Registrar General to record and preserve documents transmitted to him), for subsection (4) there is substituted—

Retention of documents by Registrar General.

“(4) The Registrar General of Shipping and Seamen shall retain documents transmitted to him under subsection (3) above for such period as the Secretary of State may direct.”

*Protection of wrecks*

24.—(1) The Secretary of State may by order made by statutory instrument make such provision as he considers appropriate for the purpose of giving effect to any international agreement—

Implementation of international agreements relating to protection of wrecks.

- (a) to which the United Kingdom is, or at the time when the order takes effect will be, a party, and
- (b) which relates to the protection of wrecks outside United Kingdom waters.

(2) Without prejudice to the generality of subsection (1), an order under this section may include—

- (a) provision designating a wreck, or an area in which a wreck is situated, for the purposes of the order,
- (b) provision prohibiting or restricting access to that wreck or area or interference with that wreck,
- (c) provision for the granting of licences by the Secretary of State,
- (d) provision authorising a person authorised by the Secretary of State in accordance with the order to board and search—
  - (i) any ship which is in United Kingdom waters, and
  - (ii) any United Kingdom ship which is in international waters,
- (e) provision authorising such a person to seize anything found in the course of a search authorised under the order,
- (f) provision that, subject to subsection (3), a contravention of a requirement imposed by the order shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum or on conviction on indictment by a fine, and
- (g) such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate for the purposes of the order.

(3) No person shall be guilty of an offence under an order under subsection (1) unless—

(a) the acts or omissions which constitute the offence are committed in the United Kingdom, in United Kingdom waters or on board a United Kingdom ship, or

(b) in a case where those acts or omissions are committed in international waters but not on board a United Kingdom ship, that person is—

(i) a British citizen, a British Dependent Territories citizen or a British Overseas citizen,

1981 c. 61.

(ii) a person who under the British Nationality Act 1981 is a British subject,

(iii) a British National (Overseas) (within the meaning of that Act),

(iv) a British protected person (within the meaning of that Act), or

1985 c. 6.

S.I. 1986/1032

(N.I. 6).

(v) a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986.

(4) In subsection (3), “United Kingdom ship” means a ship which—

(a) is registered in the United Kingdom; or

(b) is not registered under the law of any country but is wholly owned by persons each of whom is a person mentioned in paragraph (b)(i) to (v) of that subsection.

(5) Subject to subsection (3), any offence under an order under subsection (1) shall, for the purpose only of conferring jurisdiction on any court, be deemed to have been committed in any place where the offender may for the time being be.

(6) No proceedings for an offence under any order under subsection (1) shall be instituted—

(a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(7) A statutory instrument containing an order under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) In this section—

“international waters” means any part of the sea outside the seaward limits of the territorial sea of any country or territory;

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

“United Kingdom waters” means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom;

“wreck” means the wreck of any ship other than a ship which, at the time it sank or was stranded, was in service with, or used for the purposes of, any of the armed forces of the United Kingdom or any other country or territory.

*Maritime security, etc.*

**25.** Schedule 4 (amendments of Part III of the Aviation and Maritime Security Act 1990, which relates to the protection of ships and harbour areas against acts of violence) shall have effect.

Amendments of Aviation and Maritime Security Act 1990.

**26.—(1)** For the avoidance of doubt it is hereby declared that for the purposes of any proceedings before a court in the United Kingdom in respect of piracy, the provisions of the United Nations Convention on the Law of the Sea 1982 that are set out in Schedule 5 shall be treated as constituting part of the law of nations.

1990 c. 31.  
Piracy.

(2) For the purposes of those provisions the high seas shall (in accordance with paragraph 2 of Article 58 of that Convention) be taken to include all waters beyond the territorial sea of the United Kingdom or of any other state.

(3) The Tokyo Convention Act 1967 (so far as unrepealed) shall cease to have effect.

1967 c. 52.

(4) Her Majesty may by Order in Council direct that subsections (1) to (3) and Schedule 5 shall extend to the Isle of Man, any of the Channel Islands or any colony with such modifications, if any, as appear to Her to be appropriate.

(5) In section 39 of the Aviation Security Act 1982 (extension of 1982 Act outside United Kingdom), for subsection (2) (application of power in 1967 Act to section 5 of 1982 Act) there is substituted—

1982 c. 36.

“(2) Subsection (4) of section 26 of the Merchant Shipping and Maritime Security Act 1997 (power to extend provisions about piracy to Isle of Man, Channel Islands and colonies) shall apply to section 5 of this Act as it applies to the provisions mentioned in that subsection.”

(6) Nothing in this section affects the operation of any Order in Council made under section 8 of the Tokyo Convention Act 1967; but any such Order may be revoked as if made under subsection (4).

*International bodies concerned with maritime matters*

**27.—(1)** In this section “the 1971 Fund” means the International Oil Pollution Compensation Fund established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18th December 1971.

Application of s. 1 of International Organisations Act 1968 to International Oil Pollution Compensation Fund.

(2) The termination of the membership of Her Majesty’s Government in the United Kingdom of the 1971 Fund shall not affect the application to that Fund of section 1 of the International Organisations Act 1968.

1968 c. 68.

**28.—(1)** In this section “the Tribunal” means the International Tribunal for the Law of the Sea established in accordance with Annex VI of the United Nations Convention on the Law of the Sea.

International Tribunal for the Law of the Sea.

(2) Except in so far as in any particular case any privilege or immunity is waived by the Tribunal, the members of the Tribunal shall enjoy, when engaged on the business of the Tribunal, the like privileges and immunities as, in accordance with the 1961 Convention Articles, are accorded to the head of a diplomatic mission.

- (3) In subsection (2)—  
 “the 1961 Convention Articles” means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the Diplomatic Privileges Act 1964;  
 “head of a diplomatic mission” shall be construed in accordance with those Articles.
- (4) The members of the Tribunal and the registrar of the Tribunal shall have exemption from income tax in respect of emoluments received by them as members or as the registrar.
- (5) Subsection (4) shall be taken to have come into force on 15th September 1996.
- (6) If in any proceedings a question arises whether a person is or is not entitled to any privilege or immunity by virtue of this section, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact.
- (7) Subsections (1) to (5) shall cease to have effect on the coming into force of the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996 (which makes provision corresponding to subsections (1) to (4) but does not come into force until the United Nations Convention on the Law of the Sea enters into force in respect of the United Kingdom).
- Supplementary*
- Minor and consequential amendments, etc.      **29.**—(1) Schedule 6 (minor and consequential amendments) shall have effect.  
 (2) Schedule 7 (repeals and revocations) shall have effect.
- Extent and application.      **30.**—(1) This Act, except section 4, extends to Northern Ireland.  
 (2) The provisions capable of being—  
 (a) extended to the Isle of Man, any of the Channel Islands or any colony under section 315 of the 1995 Act, or  
 (b) applied in relation to any of those places under section 141 or under or by virtue of any other provision of the 1995 Act,  
 include the amendments of that Act made by this Act.
- 1990 c. 31.      (3) The provisions capable of being extended to the Isle of Man, any of the Channel Islands or any colony under section 51 of the Aviation and Maritime Security Act 1990 include the amendments of that Act made by this Act.  
 (4) Her Majesty may by Order in Council direct that section 24 shall, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, extend to the Isle of Man, any of the Channel Islands or any colony.
- Short title, interpretation and commencement.      **31.**—(1) This Act may be cited as the Merchant Shipping and Maritime Security Act 1997.  
 (2) In this Act “the 1995 Act” means the Merchant Shipping Act 1995.

(3) Subject to subsection (4), this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different purposes.

(4) Sections 5, 8, 11, 12, 13, 16, 24, 28 and 30, this section and Schedule 2 and paragraph 16 of Schedule 6 shall come into force on the day on which this Act is passed.

## SCHEDULES

Section 9.

## SCHEDULE 1

AMENDMENTS OF MERCHANT SHIPPING ACT 1995 RELATING TO INSPECTION AND  
DETENTION OF SHIPS*Meaning of "dangerously unsafe ship"*

1.—(1) Section 94 of the 1995 Act (meaning of "dangerously unsafe ship") is amended as follows.

(2) In subsection (1), after "ship", where first occurring, there is inserted "in port".

(3) After subsection (1) there is inserted—

"(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."

*Power to detain dangerously unsafe ship*

2.—(1) Section 95 of the 1995 Act (power to detain dangerously unsafe ship) is amended as follows.

(2) For subsection (1) there is substituted—

"(1) Where a ship which is—

- (a) in a port in the United Kingdom, or
- (b) at sea in United Kingdom waters,

appears to a relevant inspector to be a dangerously unsafe ship, the ship may be detained."

(3) At the beginning of subsection (2) there is inserted "Subject to subsection (2A) below", and after that subsection there is inserted—

"(2A) The power of detention conferred by subsection (1)(b) is not exercisable in relation to a qualifying foreign ship while the ship is exercising—

- (a) the right of innocent passage, or
- (b) the right of transit passage through straits used for international navigation."

(4) In subsection (3)(c), for "prohibit the ship from going to sea" there is substituted "require the ship to comply with the terms of the notice".

*Fishing vessel without appropriate certificate*

3. In section 125 of the 1995 Act (prohibition on fishing vessel going to sea without appropriate certificate), in subsection (3) (which confers a power of detention), for "the fishing vessel may be detained" there is substituted "the fishing vessel, if in United Kingdom waters, may be detained".

*Power to inspect ships and their equipment*

4.—(1) Section 258 of the 1995 Act (powers to inspect ships and their equipment, etc.) is amended as follows.

(2) In subsection (1)—

- (a) for the words from the beginning to “Chapter) or” there is substituted “For the purposes of seeing that the provisions of this Act other than sections 131 to 141 and sections 143 to 151 and the provisions of regulations and rules made under this Act (other than those sections) are complied with or”,
- (b) after “go on board a ship” there is inserted “in the United Kingdom or in United Kingdom waters”, and
- (c) the words “other than Chapter II of Part VI” and “(other than that Chapter)”, in the second place where they occur, are omitted.

(3) After subsection (1) there is inserted—

“(1A) The powers conferred by subsection (1) above are not exercisable in relation to a qualifying foreign ship while the ship is exercising—

- (a) the right of innocent passage, or
- (b) the right of transit passage through straits used for international navigation.”.

(4) In subsection (2), for “the United Kingdom” there is substituted “United Kingdom waters”.

*Enforcing detention of ships*

5.—(1) Section 284 of the 1995 Act (enforcing detention of ship) is amended as follows.

(2) In subsection (1), for paragraph (b) there is substituted—

“(b) any officer of a Minister of the Crown or Northern Ireland department who is authorised by the Secretary of State, either generally or in a particular case, to exercise powers under this section,”.

(3) After subsection (1) there is inserted—

“(1A) A notice of detention may—

- (a) include a direction that the ship—
  - (i) must remain in a particular place, or
  - (ii) must be moved to a particular anchorage or berth, and
- (b) if it includes such a direction, may specify circumstances relating to safety or the prevention of pollution in which the master may move his ship from that place, anchorage or berth.”

(4) For subsection (2) there is substituted—

“(2) If a ship as respects which notice of detention has been served on the master proceeds to sea, otherwise than in accordance with such a notice, before it is released by a competent authority, the master of the ship shall be guilty of an offence.

(2A) If a ship as respects which notice of detention has been served on the master fails to comply with a direction given under subsection (1A)(a) above, the master of the ship shall be guilty of an offence.

(2B) A person guilty of an offence under subsection (2) or (2A) above shall be liable—

- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment, to a fine.”

## SCH. 1

- (5) In subsection (3), after “subsection (2)” there is inserted “or (2A)”.
- (6) In subsection (4)—
- (a) after “subsection (2) above” there is inserted “or failing to comply with a direction given under subsection (1A)(a) above”,
  - (b) for “takes to sea” there is substituted “carries away without his consent”, and
  - (c) in paragraph (i), for “taken to sea” there is substituted “carried away”.
- (7) Any reference to section 284 of the 1995 Act, or to provisions of that section—
- (a) in any safety regulations within the meaning of the 1995 Act made before commencement,
  - (b) in any Order in Council having effect under section 128 or 129 of the 1995 Act and made before commencement, or
  - (c) in any regulations having effect under such an Order and made before commencement,
- shall have effect as a reference to section 284, or those provisions, as amended by this paragraph.
- (8) In sub-paragraph (7) above “commencement” means the commencement of this paragraph.

*Powers of detention under provisions relating to load lines*

- 6.—(1) Schedule 3 to the 1995 Act (load lines) is amended as follows.
- (2) In paragraph 3 (compliance with load line rules by United Kingdom ships) in sub-paragraph (3)—
- (a) after “sub-paragraph (1) above” there is inserted “proceeds or”, and
  - (b) after “sub-paragraph (1)(a) and (b) above” there is inserted “and which is in United Kingdom waters”.
- (3) In paragraph 13 (compliance with load line rules by other ships)—
- (a) in sub-paragraph (4)—
    - (i) after “this paragraph” there is inserted “proceeds or”, and
    - (ii) after “sub-paragraphs (1)(a) or (b) above” there is inserted “and which is in United Kingdom waters”, and
  - (b) after that sub-paragraph there is inserted—
 

“(4A) The power of detention conferred by sub-paragraph (4) above is not exercisable in relation to a qualifying foreign ship while the ship is exercising—

    - (a) the right of innocent passage, or
    - (b) the right of transit passage through straits used for international navigation.”
- (4) In paragraph 17 (inspection)—
- (a) in sub-paragraphs (1) and (2), for “any port in the United Kingdom” there is substituted “United Kingdom waters”, and
  - (b) after sub-paragraph (2) there is inserted—
 

“(2A) No power of inspection conferred by sub-paragraph (1) or (2) above is exercisable in relation to a qualifying foreign ship while the ship is exercising—

    - (a) the right of innocent passage, or
    - (b) the right of transit passage through straits used for international navigation.”



## SCHEDULE 2

Section 13.

## FUNDING OF MARITIME SERVICES

1. After section 302 of the 1995 Act there is inserted—

“Funding of maritime services. 302A. Schedule 11A (funding of maritime services) shall have effect.”

2. After Schedule 11 to the 1995 Act there is inserted—

## “SCHEDULE 11A

## FUNDING OF MARITIME SERVICES

*Interpretation*

1. In this Schedule—

“general light dues” and “general lighthouse authority” have the same meaning as in Part VIII of this Act;

“prescribe” means prescribe by regulations.

*Charges in respect of maritime matters*

2.—(1) Regulations under this Schedule may make provision imposing charges for the purpose of recovering the whole or a part of the costs incurred by the Secretary of State in connection with his maritime functions.

(2) In sub-paragraph (1) above “maritime functions” means—

(a) functions conferred by or under any provision of this Act apart from Part II or Part VIII,

(b) functions under any international agreement relating to—

(i) the safety of ships,

(ii) the prevention of pollution from ships, or

(iii) living and working conditions on board ships, and

(c) other functions relating to the promotion of the safety of ships.

*Charges relating to expenses payable out of General Lighthouse Fund*

3.—(1) If—

(a) any Community obligation, or

(b) any international agreement made between any three or more countries including the Republic of Ireland and ratified by the United Kingdom,

requires the United Kingdom to provide for any of the costs incurred by general lighthouse authorities in respect of lighthouses, buoys and beacons to be recovered otherwise than by means of the levying of general light dues in accordance with section 205 (as it has effect on the commencement of this Schedule), regulations under this Schedule may make provision imposing charges for the purposes of recovering all or any part of the costs required to be so recovered.

(2) In this paragraph “buoys and beacons” includes equipment which is intended as an aid to the navigation of ships and, subject to that, expressions used in this paragraph and in Part VIII of this Act have the same meaning as in that Part.

## SCH. 2

*Ships in respect of which charges may be imposed*

4.—(1) Regulations under this Schedule may not require a charge to be paid except in respect of—

- (a) a ship which has entered a port in the United Kingdom,
- (b) a ship which is anchored off a port in the United Kingdom, or
- (c) a ship which is anchored within 500 metres of an installation which is in United Kingdom waters or a part of the sea specified by virtue of section 129(2)(b).

(2) Nothing in any regulations under this Schedule shall be construed as requiring a charge to be paid in respect of a qualifying foreign ship which is exercising—

- (a) the right of innocent passage, or
- (b) the right of transit passage through straits used for international navigation,

except to the extent that international law allows such a charge to be imposed.

(3) Subject to sub-paragraphs (1) and (2) above, the regulations may impose a charge in respect of such description of ship as may be prescribed.

(4) In particular—

- (a) regulations may impose a charge in respect of a ship even though no service has been provided or function exercised in the case of that ship; and
- (b) regulations may provide that no charge is imposed in respect of a ship which does not exceed a prescribed tonnage or does not exceed a prescribed length.

(5) For the purposes of sub-paragraph (1)(a) above, the circumstances in which a ship shall be regarded as entering a port in the United Kingdom include circumstances in which the ship enters any United Kingdom waters which are regulated or managed by a harbour authority.

(6) In sub-paragraph (1)(c) above “installation” means an installation which—

- 1971 c. 61. (a) is an offshore installation within the meaning of the Mineral Workings (Offshore Installations) Act 1971; or
- 1987 c. 12. (b) is to be taken to be an installation for the purposes of sections 21 to 23 of the Petroleum Act 1987.

*Persons by whom charges to be paid*

5.—(1) Regulations under this Schedule may not require a charge to be paid in respect of a ship by a person who is not—

- (a) the owner of the ship;
- (b) the person registered as the owner of the ship;
- (c) the operator of the ship;
- (d) the manager of the ship;
- (e) the charterer of the ship; or
- (f) the agent of a person mentioned in any of paragraphs (a) to (e) above.

(2) Subject to sub-paragraph (1) above, charges imposed by the regulations shall be payable by such persons as may be prescribed.

*Amount of charges*

- 6.—(1) Regulations under this Schedule may impose a charge—
- (a) of a fixed amount, or
  - (b) of an amount determined in accordance with the regulations,
- and may impose different charges in relation to ships of different descriptions or in different circumstances.
- (2) Regulations under this Schedule may, in particular, impose in respect of a ship a charge whose amount depends on—
- (a) whether action has been or is being taken with a view to—
    - (i) enforcing international shipping standards in the case of that ship, or
    - (ii) preventing, reducing or minimising the effects of pollution from that ship; and
  - (b) if any such action has been or is being so taken, the nature of the action.
- (3) Regulations under this Schedule may, in particular, impose in respect of a ship a charge whose amount depends on the tonnage or length of the ship.

*Powers to require information*

- 7.—(1) Regulations under this Schedule may include provision requiring any relevant authority or any person who is or may be liable to pay charges under the regulations in respect of a ship, to provide any collecting authority with such information as the collecting authority may reasonably require for the purposes of the regulations.
- (2) In this paragraph—
- “collecting authority” means—
- (a) the Secretary of State,
  - (b) a Departmental officer, and
  - (c) a general lighthouse authority;
- “relevant authority” means—
- (a) a harbour authority,
  - (b) the Commissioners of Customs and Excise, and
  - (c) a conservancy authority.

*Disclosure of information*

- 8.—(1) No obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise) shall prevent a Minister of the Crown or a Northern Ireland department from disclosing—
- (a) to the Secretary of State, or
  - (b) to a person appointed by the Secretary of State to collect charges under regulations made under this Schedule,
- information for the purpose of enabling or assisting the Secretary of State to perform his functions under the regulations.
- (2) Information obtained by any person by virtue of sub-paragraph (1) above shall not be disclosed by him to any other person except where the disclosure is made—
- (a) to a person falling within sub-paragraph (1)(a) or (b) above, or
  - (b) for the purposes of any legal proceedings arising out of the regulations.

## SCH. 2

*Collection and recovery, etc.*

- 9.—(1) Regulations under this Schedule may make provision—
- (a) with respect to the collection and recovery of charges; and
  - (b) for charges which fall due under the regulations but which are not paid to carry interest.

(2) Regulations made under this Schedule by virtue of sub-paragraph (1) above may in particular confer on general lighthouse authorities functions relating to the collection and recovery of charges.

10. Regulations under this Schedule may make provision for appeals against decisions that charges are due in respect of ships.

*Distress*

11. Regulations under this Schedule may make provision in respect of England and Wales and Northern Ireland—

- (a) for authorising distress to be levied on any ship in respect of which the owner or master has failed to pay charges due under the regulations, and on any goods, equipment or other thing belonging to, or on board, the ship,
- (b) for the disposal of any ship, goods, equipment or other thing on which distress is levied in accordance with the regulations, and
- (c) for the imposition and recovery of costs, charges, expenses and fees in connection with anything done under regulations made by virtue of paragraph (a) or (b) above.

*Further powers in relation to General Lighthouse Fund etc*

12. If regulations under this Schedule make any provision by virtue of paragraph 3 above, regulations under this Schedule may also—

- (a) provide for payments which, apart from the regulations, would fall to be made out of the General Lighthouse Fund to be made by the Secretary of State out of money provided by Parliament,
- (b) provide for amounts which, apart from the regulations, would fall to be paid into the General Lighthouse Fund (other than general light dues levied in accordance with section 205) to be paid by the Secretary of State into the Consolidated Fund,
- (c) provide for the payment out of money provided by Parliament into the General Lighthouse Fund of amounts representing the whole or part of any charges imposed by virtue of paragraph 3, and
- (d) make such amendments, repeals or other modifications of any of the provisions of this Act relating to the General Lighthouse Fund or general light dues as appear to the Secretary of State to be necessary or expedient in consequence of, or in connection with, the provision made by virtue of paragraph 3 above or paragraph (a), (b) or (c) above.

13. If regulations under this Schedule make any provision by virtue of paragraph 9(2) above, regulations under this Schedule may also provide for the making by the Secretary of State to each general lighthouse authority out of money provided by Parliament of payments in respect of expenses incurred by that authority in connection with the collection or recovery of charges.

*Supplementary*

14. Regulations under this Schedule may include such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or appropriate.

15. Any sums received in consequence of regulations under this Schedule shall be paid into the Consolidated Fund.

16.—(1) Regulations under this Schedule shall be made by the Secretary of State with the consent of the Treasury.

(2) Regulations shall not be made under this Schedule unless a draft of them has been laid before, and approved by a resolution of, the House of Commons.”

SCHEDULE 3

Section 14(2).

PROVISIONS TO BE INSERTED AS SCHEDULE 5A TO THE MERCHANT SHIPPING ACT 1995

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.

## SCH. 3

## 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 minimize 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.

## SCH. 3

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 minimize 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 benefitting 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 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an 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

## SCH. 3

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 minimize 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 the 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

## SCH. 3

(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 of 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 minimize damage shall be treated as damage for the purposes of this article.

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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 II. 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.

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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 subparagraphs, 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:

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- (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

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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

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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.

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## 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 indirect 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 preventive measures have been taken to prevent or minimize 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 preventive measures to prevent or minimize such damage have been taken, 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:

- (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 a 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 final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that 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.

## SCH. 3

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.

## SCH. 3

## 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.

## SCH. 3

## 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.

## Depositary

## 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 depositary 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.

#### SCHEDULE 4

Section 25.

#### AMENDMENTS OF PART III OF AVIATION AND MARITIME SECURITY ACT 1990

1. Part III of the Aviation and Maritime Security Act 1990 (protection of ships and harbour areas against acts of violence) shall have effect subject to the amendments made by this Schedule. 1990 c. 31.

#### *Meaning of "harbour area"*

2. In section 18 (purposes to which Part III applies), for subsection (3) there is substituted—

“(3) In this Part of this Act “harbour area” means—

(a) the aggregate of—

(i) any harbour in the United Kingdom in respect of which there is a harbour authority within the meaning of the Merchant Shipping Act 1995, and

1995 c. 21.

(ii) any land which is adjacent to such a harbour and which is either land occupied by the harbour authority or land in respect of which the harbour authority has functions of improvement, maintenance or management, or

(b) any hoverport which does not form part of any area which falls within paragraph (a)(i) or (ii) above.”

#### *Designation of restricted zones*

3.—(1) Section 20 (designation of restricted zones of harbour areas) is amended as follows.

(2) After subsection (1) there is inserted—

## SCH. 4

“(1A) A harbour operator may, and shall if so requested in writing by the Secretary of State, apply to the Secretary of State for the designation of the whole or any part of the operating area as a restricted zone for the purposes of this Part of this Act.”

(3) In subsections (2) and (3), after “(1)” there is inserted “or (1A)”.

(4) In subsection (4), for “harbour authority” there is substituted “applicant”.

(5) In subsection (5)—

(a) for “harbour authority” there is substituted “person”,

(b) after “(1)” there is inserted “or (1A)”, and

(c) after “harbour area” there is inserted “or, as the case may be, of the operating area”.

(6) In subsection (6), after “harbour area” there is inserted “or, as the case may be, of an operating area”.

(7) In subsection (7) for “harbour authority” there is substituted “person who made, or was requested to make, the application”.

(8) In subsection (8) after “harbour area” there is inserted “or, as the case may be, of an operating area”.

(9) After subsection (8) there is inserted—

“(9) In this Part of this Act “harbour operator” means a person who—

(a) carries on harbour operations in a harbour area, and

(b) is designated for the purposes of this Part by an order made by the Secretary of State;

and “operating area” means, in relation to that person, so much of the harbour area as is under his control.

(10) An order under subsection (9) above may be revoked by a subsequent order.”

*Power to promote searches*

4.—(1) Section 22 (power to require harbour authorities to promote searches) is amended as follows.

(2) In subsection (1), for “to a harbour authority requiring it to use its best endeavours” there is substituted “to—

(a) a harbour authority, or

(b) a harbour operator,

requiring that person to use his best endeavours”.

(3) After subsection (2) there is inserted—

“(2A) The searches to which this section applies, in relation to an operating area, are searches—

(a) of the operating area or any part of it,

(b) of any ship which at the time when the direction is given or at any subsequent time is in the operating area, and

(c) of persons and property (other than ships) which may at any time be in the operating area.”

(4) After subsection (3) there is inserted—

“(3A) Subsection (3) above applies in relation to a direction under this section to a harbour operator as it applies in relation to a direction to a

harbour authority, but as if the references to the harbour area (or to any part of the harbour area) were references to the operating area (or any part of the operating area).”

5. In section 23 (power to require other persons to promote searches), in subsection (1), “(other than a harbour authority)” is omitted and after that subsection there is inserted—

- “(1A) A direction may not be given under this section to—
- (a) a harbour authority, or
  - (b) a harbour operator.”

*Removal of firearms*

6. In section 26(1) (direction not to require or authorise any person to carry a firearm), at the end of subsection (1) there is inserted “except to the extent necessary for the purpose of removing any firearm found pursuant to a search under section 22 of this Act from the restricted zone and delivering the firearm to a person authorised to carry it”.

*Inspection of ships and harbour areas*

7. In section 36(2) (powers of authorised person on inspection of ships or harbour areas), in paragraph (c), for “or the occupier of the land” there is substituted “the occupier of the land or any harbour operator”.

*False statements*

8. In section 37 (false statements relating to baggage, cargo etc.), in subsection (2) (persons to whom false statements must not be made) after paragraph (a) there is inserted—

- “(aa) a harbour operator.”.

9. In section 38 (false statements in connection with identity documents), in subsection (3) (persons to whom false statements must not be made) after paragraph (a) there is inserted—

- “(aa) a harbour operator.”.

*Unauthorised presence in restricted zone*

10.—(1) Section 39 (unauthorised presence in restricted zone) is amended as follows.

(2) In subsection (1)(a) and (b) for “the harbour authority or a person acting on behalf of the harbour authority” there is substituted “the competent authority, or a person acting on behalf of that authority”.

(3) After subsection (2) there is inserted—

“(2A) A constable or any person acting on behalf of the competent authority may use such force as is reasonable in the circumstances to remove from a restricted zone a person remaining in it in contravention of subsection (1)(b) above.

(2B) For the purposes of this section the competent authority in relation to a restricted zone is—

- (a) if the zone was designated on the application of a harbour authority, that authority; and
- (b) if the zone was designated on the application of a harbour operator, that operator.”

## SCH. 4

*Meaning of "harbour", "harbour authority" etc.*

11.—(1) Section 46 (interpretation of Part III) is amended as follows.

(2) In subsection (1)—

(a) for the definition of "harbour" there is substituted—

1995 c. 21. "“harbour” has the same meaning as in the Merchant Shipping Act 1995;”,

(b) for the definition of "harbour authority" there is substituted—

““harbour authority” means—

(a) a harbour authority within the meaning of the Merchant Shipping Act 1995, or

(b) the manager of any hoverport which does not form part of an area mentioned in section 18(3)(a)(i) or (ii) of this Act;”,

(c) for the definition of "harbour operations" there is substituted—

““harbour operations” means—

(a) the marking or lighting of a harbour or any part of it,

(b) the berthing or dry docking of a ship or the towing or moving of a ship into or out of or within the harbour area,

(c) the transportation, handling or warehousing of goods within the harbour area, or

(d) the embarking, disembarking or movement of passengers within the harbour area;

“harbour operator” has the meaning given by section 20(9) of this Act;”,

(d) after the definition of "naval services" there is inserted—

““operating area” has the meaning given by section 20(9) of this Act;”, and

(e) the definition of "restricted zone" is omitted.

(3) After subsection (2) there is inserted—

“(2A) In this Part of this Act “restricted zone” means an area designated under section 20 of this Act; and references to a restricted zone of a harbour area include references to a restricted zone which is or is part of an operating area.”

Section 26(1).

## SCHEDULE 5

## PROVISIONS OF UNITED NATIONS CONVENTION ON THE LAW OF THE SEA TO BE TREATED AS PART OF THE LAW OF NATIONS

## ARTICLE 101

*Definition of piracy*

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed—

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

ARTICLE 102

*Piracy by a warship, government ship or government aircraft whose crew has mutinied*

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

ARTICLE 103

*Definition of a pirate ship or aircraft*

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

SCHEDULE 6

Section 29(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Hovercraft Act 1968 (c. 59)*

1. In section 1(1)(i)(ii) of the Hovercraft Act 1968 (power to apply sections 185 and 186 of the 1995 Act in relation to the carriage of property by hovercraft), before “sections 185 and 186” there is inserted “and”.

*The Supreme Court Act 1981 (c. 54)*

2. In section 20 of the Supreme Court Act 1981 (Admiralty jurisdiction of High Court), in subsection (5)(b) for “International Oil Compensation Fund 1984” there is substituted “International Oil Pollution Compensation Fund 1992”.

*The Merchant Shipping Act 1995 (c. 21)*

3.—(1) Section 128 of the 1995 Act (prevention of pollution from ships) is amended as follows.

(2) In subsection (3)(h) for “section 143(6), 144” there is substituted “sections 143(6), 144”.

(3) In subsection (4)(f) (instruments made under Orders in Council under section 128(1)) the words “and apply the Statutory Instruments Act 1946 to instruments made under the Order” are omitted.

4.—(1) With respect to applications made after the commencement of this paragraph, section 158 of the 1995 Act (limitation actions), including that section as set out in Schedule 4 to that Act, is amended as follows.

(2) In subsection (2)—

(a) for the words “and is entitled to limit it” there is substituted “but has not found that he is not entitled to limit it”, and

## SCH. 6

(b) for “the limit of the liability” there is substituted “the limit which would apply to the applicant’s liability if he were entitled to limit it”.

(3) After subsection (2) there is inserted—

“(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.”

5. In section 170 of the 1995 Act (interpretation of provisions implementing the International Convention on Civil Liability for Oil Pollution Damage 1992), in subsection (4)(a) (territory of United Kingdom to include any area within the British fishery limits) for “within the British fishery limits set by or under the Fishery Limits Act 1976;” there is substituted “specified by virtue of section 129(2)(b)”.

6. In section 193 of the 1995 Act (general and local lighthouse authorities)—

(a) in subsection (2)(a), for “harbour authority” there is substituted “statutory harbour authority”, and

(b) in subsection (4)(b), for the words “harbour authority”, where they first occur, there is substituted “statutory harbour authority”.

7. In section 197 of the 1995 Act (general powers of general lighthouse authority), in subsection (2), for “harbour authority” there is substituted “statutory harbour authority”.

8. In section 201 of the 1995 Act (powers of harbour authorities), in subsection (1), for “harbour authority” there is substituted “statutory harbour authority”.

9. Section 202 of and Schedule 9 to the 1995 Act (transfer of local lighthouses from general lighthouse authorities to harbour authorities) (which are spent) are omitted.

10. In section 203 of the 1995 Act (individual transfers of local lighthouses to harbour authorities), for the words “harbour authority”, where they first occur, there is substituted “statutory harbour authority”.

11. In section 204 of the 1995 Act (surrender of local lighthouses), in subsection (2), for “harbour authority” there is substituted “statutory harbour authority”.

12. In section 205 of the 1995 Act (light dues leviable by general lighthouse authorities), in subsection (9), for the words from “to Her Majesty’s Paymaster-General” to the end there is substituted “to the Secretary of State or as he directs, and in such manner as he directs.”

13. In section 210 of the 1995 Act (light dues leviable by local lighthouse authorities), in subsections (1) and (2) for the words “harbour authority” there is substituted “statutory harbour authority”.

14. In section 232 (duty of receiver where vessel in distress), in subsection (2), for “(4)” there is substituted “(3)”.

15. In section 256 (appointment of inspectors and surveyors), in subsection (7), for “section “ there is substituted “subsection”.

16. In section 261 (improvement notices), in subsection (4)(a), after “130” there is inserted “130A”.

17. In section 293 (functions of Secretary of State in relation to marine pollution), in subsection (2), before sub-paragraph (a), there is inserted—

“(za) the preparation, review and implementation of a national plan setting out arrangements for responding to incidents which cause or may cause marine pollution with a view to preventing such pollution or reducing or minimising its effects;”.

18.—(1) Section 306 of the 1995 Act (regulations, rules and orders, etc.) is amended as follows.

(2) For subsection (1) (powers which are exercisable by statutory instrument) there is substituted—

“(1) Subject to subsection (1A) below, any power of the Secretary of State to make regulations, orders or rules under this Act shall be exercisable by statutory instrument.

(1A) Subsection (1) above does not apply to—

- (a) rules made under section 91; or
- (b) any instrument made under section 128(4)(f) other than an instrument containing regulations.”

(3) For subsection (2) (statutory instruments containing regulations, orders or rules to be subject to negative resolution procedure, except in specified cases) there is substituted—

“(2) Subject to subsection (2A) below—

- (a) any statutory instrument containing regulations under this Act (including such an instrument made by virtue of section 128(4)(f) or 182B(4)(e)), and
- (b) any statutory instrument containing an order or rules made under this Act,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2A) Subsection (2) above does not apply to—

- (a) regulations made under section 130A, 259(8) or 260(3) or Schedule 11A;
- (b) commencement orders;
- (c) any order made under section 216(2), 223(3), paragraph 8 of Part II of Schedule 7, or any provision of Schedule 14.”

(4) In subsection (3) (which provides that all Orders in Council apart from those specified are to be subject to negative resolution procedure)—

- (a) after “172(2)” there is inserted “182B(1)”, and
- (b) after “184” there is inserted “185(2A) or (2B)”.

(5) In subsection (4)(a) (duty to consult before making certain regulations), for “under section 108” there is substituted “section 108 or 130A”.

19.—(1) Section 313 of the 1995 Act (interpretation) is amended as follows.

(2) In subsection (1) (definitions)—

## SCH. 6

- (a) for the definition of “harbour authority” there is substituted—  
 ““harbour authority” means, in relation to a harbour—  
 (a) the person who is the statutory harbour authority for the harbour, or  
 (b) if there is no statutory harbour authority for the harbour, the person (if any) who is the proprietor of the harbour or who is entrusted with the function of managing, maintaining or improving the harbour;”,
- (b) after the definition of “master” there is inserted—  
 1975 c. 26. ““Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;”,
- (c) after the definition of “proper officer” there is inserted—  
 ““qualifying foreign ship” has the meaning given in section 313A;”,  
 and
- (d) after the definition of “ship” there is inserted—  
 ““statutory harbour authority” means—  
 (a) in relation to Great Britain, a harbour authority within the meaning of the Harbours Act 1964; and  
 1964 c. 40. (b) in relation to Northern Ireland, a harbour authority within the meaning of the Harbours Act (Northern Ireland) 1970.”  
 1970 c. 1 (N.I.).
- (3) After subsection (2) there is inserted—  
 “(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 1982.”
20. After section 313 of the 1995 Act there is inserted—
- “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 Part II and which (although not by virtue of section 1(1)(d) a British ship)—  
 (i) is wholly owned by persons falling within subsection (2) below, and  
 (ii) is not registered under the law of a country outside the United Kingdom.
- (2) The following persons fall within this subsection, namely—  
 (a) British citizens,  
 (b) British Dependent Territories citizens,  
 (c) British Overseas citizens,  
 1981 c. 61. (d) persons who under the British Nationality Act 1981 are British subjects,  
 (e) British Nationals (Overseas) (within the meaning of that Act),  
 (f) British protected persons (within the meaning of that Act), or



- (g) bodies corporate incorporated in the United Kingdom or in any relevant British possession and having their principal place of business in the United Kingdom or in any relevant British possession.”

SCHEDULE 7

Section 29(2).

REPEALS AND REVOCATIONS

PART I

REPEALS

Chapter	Short title	Extent of repeal
1967 c. 52.	The Tokyo Convention Act 1967.	The whole Act so far as unrepealed.
1982 c. 36.	The Aviation Security Act 1982.	In section 39(4), “(2)”.
1990 c. 31.	The Aviation and Maritime Security Act 1990.	In section 23(1), the words “(other than a harbour authority)”. In section 46(1), the definition of “restricted zone”.
1995 c. 21.	The Merchant Shipping Act 1995.	In section 85(3) the words from “and regulations” to “relates to safety”. Section 86(5) and (6). In section 128(4)(f) the words “and apply the Statutory Instruments Act 1946 to instruments made under the Order”. Section 202. In section 258(1), the words “other than Chapter II of Part VI”, where secondly occurring, and the words “(other than that Chapter)”, where secondly occurring. Schedule 9.

PART II  
REVOCATIONS

Number	Title	Extent of revocation
S.I. 1980/1093.	The Merchant Shipping (Prevention of Pollution) (Intervention) Order 1980.	Articles 1(2)(b), 3, 4 and 6.

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