STATUTORY INSTRUMENTS

1980 No. 1519

MERCHANT SHIPPING

The Merchant Shipping Act 1979

(Turks and Caicos Islands) Order 1980

Made - - - - 13*th October* 1980

Laid before Parliament - 21*st October* 1980

Coming into Operation - 1*st December* 1980

At the Court at Buckingham Palace, the 13th day of October, 1980

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 19(2) and 47(1) of the Merchant Shipping Act 1979 (a) and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Merchant Shipping Act 1979 (Turks and Caicos Islands) Order 1980 and shall come into operation on 1st December 1980.

2. The provisions of sections 17, 18, 19(1), 50, 51 and 52 of, and Schedules 4 and 5 and Part I of Schedule 7 to the Merchant Shipping Act 1979, modified as in the Schedule hereto, shall extend to the Turks and Caicos Islands.

3. Save as is expressly provided otherwise therein, any reference in the Schedule to this Order to any enactment of the United Kingdom shall be construed as a reference to that enactment as applying or extended to the Turks and Caicos Islands.

N. E. Leigh,

Clerk of the Privy Council.

(a) 1979 c. 39.

SCHEDULE TO THE ORDER *Article 2.*

THE MERCHANT SHIPPING ACT 1979

Liability of shipowners and salvors

17.—(1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 as set out in Part I of Schedule 4 to this Act (hereafter in this section and in Part II of that Schedule referred to as "the Convention") shall have the force of law in the Turks and Caicos Islands. Limitatic of liabili

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

18.—(1) Subject to subsection (3) of this section, the owner of a British ship shall not be liable for any loss or damage in the following cases, namely— Exclusio of liabili

(*a*) where any property on board the ship is lost or damaged by reason of fire on board the ship; or

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

(2) Subject to subsection (3) of this section, where the loss or damage arises from anything done or omitted by any person in his capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, the preceding subsection shall also exclude the liability of—

(*a*) the master, member of the crew or servant; and

(*b*) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he is.

(3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in article 4 of the Convention in Part I of Schedule 4 to this Act.

(4) In this section "owner", in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

19.—(1) The enactments mentioned in Schedule 5 to this Act shall have effect with the amendments there specified (which are consequential on sections 17 and 18 of this Act). Provisio supple-mentary to ss. 17 and 18.

Supplemental

Interpretation and repeals.

50.—(1) This Act shall be construed as one with the Merchant Shipping Acts 1894 to 1977.

(1A) Nothing in sections 17 and 18 of, or Schedule 4 to, this Act shall apply in relation to any liability arising out of an occurrence which took place before the coming into force of those sections, and section 19(1) of, and Schedule 5 to, this Act shall not affect the operation of any enactment in relation to such an occurrence.

(4) The enactments mentioned in the first and second columns of Part I of Schedule 7 to this Act are hereby repealed to the extent specified in the third column of that Part of that Schedule; but nothing in that Part of that Schedule shall affect the operation of any enactment in relation to such an occurrence as mentioned in subsection (1A) of this section.

Fees.

51.—(2) The Financial Secretary shall be entitled to charge a reasonable fee for any certificate given by or on behalf of the Financial Secretary in pursuance of any provision contained in paragraph 7 of Part II of Schedule 4 to this Act.

Citation and commencement.

52.—(1) This Act may be cited as the Merchant Shipping Act 1979 and this Act and the Merchant Shipping Acts 1894 to 1977 may be cited together as the Merchant Shipping Acts 1894 to 1979.

(2) This Act shall come into force on such day as the Governor may appoint by order, and different days may be appointed in pursuance of this subsection for different provisions of this Act or for different purposes of the same provision.

Sections 17, 18, 19(1).

SCHEDULE 4 TO THE ACT

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976

PART I

TEXT OF CONVENTION

CHAPTER I. THE RIGHT OF LIMITATION

ARTICLE 1

Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term "shipowner" shall mean the owner, charterer, manager or operator of a seagoing ship.

3. Salvor shall mean any person rendering services in direct connexion with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(*d*), (*e*) and (*f*).

4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.

6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.

7. The act of invoking limitation of liability shall not constitute an admission of liability.

ARTICLE 2

Claims subject to limitation

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

(*a*) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

(*b*) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

(*c*) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;

(*d*) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

(*e*) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

(*f*) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

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

ARTICLE 3

Claims excepted from limitation

The rules of this Convention shall not apply to:

(*a*) claims for salvage or contribution in general average;

(*b*) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29th November 1969 or of any amendment or Protocol thereto which is in force;

(*c*) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(*d*) claims against the shipowner of a nuclear ship for nuclear damage;

(*e*) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

ARTICLE 4

Conduct barring limitation

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

ARTICLE 5

Counterclaims

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

CHAPTER II. LIMITS OF LIABILITY

ARTICLE 6

The general limits

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

(*a*) in respect of claims for loss of life or personal injury,

(i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons,

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

for each ton from 501 to 3,000 tons, 500 Units of Account;
for each ton from 3,001 to 30,000 tons, 333 Units of Account;
for each ton from 30,001 to 70,000 tons, 250 Units of Account; and
for each ton in excess of 70,000 tons, 167 Units of Account,

(*b*) in respect of any other claims,

(i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons,

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

for each ton from 501 to 30,000 tons, 167 Units of Account;
for each ton from 30,001 to 70,000 tons, 125 Units of Account; and
for each ton in excess of 70,000 tons, 83 Units of Account.

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

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

ARTICLE 7

The limit for passenger claims

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

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

(*a*) under a contract of passenger carriage, or

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

ARTICLE 8

Unit of Account

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

ARTICLE 9

Aggregation of claims

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

(*a*) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or

(*b*) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or

(*c*) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

ARTICLE 10

Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III. THE LIMITATION FUND

ARTICLE 11

Constitution of the fund

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

3. A fund constituted by one of the persons mentioned in paragraph 1(*a*), (*b*) or (*c*) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(*a*), (*b*) or (*c*) or paragraph 2, respectively.

ARTICLE 12

Distribution of the fund

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent

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

ARTICLE 13

Bar to other actions

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

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

(*a*) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or

(*b*) at the port of disembarkation in respect of claims for loss of life or personal injury; or

(*c*) at the port of discharge in respect of damage to cargo; or

(*d*) in the State where the arrest is made.

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

ARTICLE 14

Governing law

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

CHAPTER IV. SCOPE OF APPLICATION

ARTICLE 15

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

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

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

Right to limit liability

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

Claims subject to limitation

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

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

(3) If immediately before the coming into force of section 17 of this Act an order is in force under section 2(6) of the Merchant Shipping (Liability of Shipowners and Others) Act 1958 (**a**) (which contains provisions corresponding to those of this paragraph) that order shall have effect as if made under this paragraph.

Claims excluded from limitation

4.—(1) The claims excluded from the Convention by paragraph (*b*) of article 3 are claims in respect of any liability incurred under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 (**b**).

The general limits

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

(*a*) paragraph (*a*)(i) referred to 166,667 Units of Account; and

(*b*) paragraph (*b*)(i) referred to 83,333 Units of Account.

(**a**) 1958 c. 62; S.I. 1964/1658. (**b**) 1971 c. 59; S.I. 1976/223.

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

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

Limit for passenger claims

6.—(1) In the case of a passenger steamer within the meaning of Part III of the Merchant Shipping Act 1894 (**a**) the ship's certificate mentioned in paragraph 1 of article 7 shall be the passenger steamer's certificate issued under section 274 of that Act.

(2) In paragraph 2 of Article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of a death of a person under the Fatal Accidents Ordinance 1970 (**b**).

Units of Account

7.—(1) For the purpose of converting the amounts mentioned in articles 6 and 7 from special drawing rights into United States dollars one special drawing right shall be treated as equal to such a sum in United States dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

(*a*) the relevant date under paragraph 1 of article 8; or

(*b*) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

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

(*a*) that a particular sum in United States dollars has been fixed as mentioned in the preceding sub-paragraph for a particular date; or

(*b*) that no sum has been so fixed for that date and that a particular sum in United States dollars has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

shall be conclusive evidence of those matters for the purposes of those articles; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Constitution of fund

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

(**a**) 1894 c. 60. (**b**) Laws of the Turks and Caicos Islands, No. 12 of 1970.

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

Distribution of fund

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

Bar to other actions

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

Meaning of "court"

11. References in the Convention and the preceding provisions of this Part of this Schedule to the court are references to the Supreme Court of the Turks and Caicos Islands.

Meaning of "ship"

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

Meaning of "State Party"

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

SCHEDULE 5 TO THE ACT

Section 19(1).

LIABILITY OF SHIPOWNERS AND SALVORS: CONSEQUENTIAL AMENDMENTS

The Merchant Shipping (Liability of Shipowners and Others) Act 1900 **(a)**

1.—(1) In section 2(1) of the Merchant Shipping (Liability of Shipowners and Others) Act 1900 for the reference to the actual fault or privity of the owners or authority there shall be substituted a reference to any such personal act or omission of the owners or authority as is mentioned in article 4 of the Convention in Part I of Schedule 4 to this Act.

(a) 1900 c. 32.

(2) The limit of liability under that section shall be ascertained by applying to the ship mentioned in subsection (1) the method of calculation specified in paragraph 1(*b*) of article 6 of the Convention read with paragraph 5(1) and (2) of Part II of that Schedule.

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

The Merchant Shipping (*Oil Pollution*) *Act* 1971 **(a)**

6.—(1) In sections 5(4)(*b*) and 7(*b*) of the Merchant Shipping (Oil Pollution) Act 1971 for the words "the Merchant Shipping (Liability of Shipowners and Others) Act 1958" there shall be substituted the words "the Merchant Shipping Act 1979".

(2) For section 15(2) of that Act there shall be substituted—

"(2) For the purposes of section 17 of the Merchant Shipping Act 1979 (limitation of liability) any liability incurred under this section shall be deemed to be a liability in respect of such damage to property as is mentioned in paragraph 1(*a*) of article 2 of the Convention in Part I of Schedule 4 to that Act."

(a) 1971 c. 59; S.I. 1976/223.

SCHEDULE 7 TO THE ACT

Section 50(4).

ENACTMENTS REPEALED

PART I

ENACTMENTS RELATING TO LIABILITY OF SHIPOWNERS AND SALVORS

Chapter	Short title	Extent of repeal
1894 c. 60.	The Merchant Shipping Act 1894.	Part VIII.
1900 c. 32.	The Merchant Shipping (Liability of Shipowners and Others) Act 1900.	Section 2(2) and (3).
1906 c. 48.	The Merchant Shipping Act 1906.	Section 69.
1911 c. 42.	The Merchant Shipping Act 1911.	Section 1(2).
1921 c. 28.	The Merchant Shipping Act 1921.	In section 1 the words "and VIII".
1958 c. 62.	The Merchant Shipping (Liability of Shipowners and Others) Act 1958.	The whole Act except section 11 so far as applying to the Merchant Shipping (Liability of Shipowners and Others) Act 1900.
1971 c. 59.	The Merchant Shipping (Oil Pollution) Act 1971.	Section 4(1)(*a*). Section 8A.
1974 c. 43.	The Merchant Shipping Act 1974.	Section 4(1)(*c*)(ii) together with the word "or" preceding it. Section 9.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order extends to the Turks and Caicos Islands certain provisions of the Merchant Shipping Act 1979, with the necessary modifications. The extension of sections 17, 18 and 19(1) and Schedules 4 and 5 enables effect to be given to the Convention on Limitation of Liability for Maritime Claims opened for signature in London on 19th November 1976 (Cmnd. 7035). The extension of section 51 enables the Financial Secretary of the Turks and Caicos Islands to charge for certificates issued in pursuance of the provisions of the Act. The Convention lays down uniform rules relating to the liability of ship-owners and salvors in respect of certain maritime claims.

The Act will come into force in respect of the Turks and Caicos Islands on a date to be appointed by the Governor in accordance with section 52(2).

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