

CHAPTER 62

An Act to amend Part VIII of the Merchant Shipping Act, 1894, and section two of the Merchant Shipping (Liability of Shipowners and others) Act, 1900; and for purposes connected therewith.

[1st August, 1958]

BE 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:—

Increase in liability of shipowners and others. 57 & 58 Vict. c. 60. 63 & 64 Vict. c. 32.

1.—(1) In ascertaining the limits set to the liability of any persons by section five hundred and three of the Merchant Shipping Act, 1894, or section two of the Merchant Shipping (Liability of Shipowners and others) Act, 1900, there shall be substituted—

(*a*) for the amount of fifteen pounds mentioned in the said section five hundred and three, an amount equivalent to three thousand one hundred gold francs;

(*b*) for each of the amounts of eight pounds mentioned in the said sections, an amount equivalent to one thousand gold francs;

and the number by which the amount substituted by paragraph (*a*) of this subsection is to be multiplied shall be three hundred in any case where the tonnage concerned is less than three hundred tons.

(2) For the purposes of this section a gold franc shall be taken to be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred.

(3) The Minister of Transport and Civil Aviation may from time to time by order made by statutory instrument specify the amounts which for the purposes of this section are to be taken as equivalent to three thousand one hundred and one thousand gold francs respectively.

(4) Where money has been paid into court (or, in Scotland, consigned in court) in respect of any liability to which a limit is set as aforesaid, the ascertainment of that limit shall not be affected by a subsequent variation of the amounts specified under subsection (3) of this section unless the amount paid or consigned was less than that limit as ascertained in accordance with the order then in force under that subsection.

Amendments as to nature of liability limited by Merchant Shipping Act, 1894, s. 503.

2.—(1) In subsection (1) of section five hundred and three of the Merchant Shipping Act, 1894, the following paragraphs shall be substituted for paragraphs (*c*) and (*d*)—

" (*c*) where any loss of life or personal injury is caused to any person not carried in the ship through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship;

(*d*) where any loss or damage is caused to any property (other than any property mentioned in paragraph (*b*) of this subsection) or any rights are infringed through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship, or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship; "

and for the words " loss of or damage to vessels, goods, merchandise or other things ", both where they occur in paragraph (i) and where they occur in paragraph (ii), there shall be substituted the words " such loss, damage or infringement as is mentioned in paragraphs (*b*) and (*d*) of this subsection ".

(2) For the purposes of the said subsection (1), where any obligation or liability arises—

(*a*) in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned or of anything on board such a ship, or

(*b*) in respect of any damage (however caused) to harbour works, basins or navigable waterways,

the occurrence giving rise to the obligation or liability shall be treated as one of the occurrences mentioned in paragraphs (*b*)

as a servant of the owners or of any such person as is mentioned in subsection (1) of this section,—

(*a*) the persons whose liability is excluded or limited as aforesaid shall also include the master, member of the crew or servant, and, in a case where the master or member of the crew is the servant of a person whose liability would not be excluded or limited apart from this paragraph, the person whose servant he is; and

(*b*) the liability of the master, member of the crew or servant himself shall be excluded or limited as aforesaid notwithstanding his actual fault or privity in that capacity, except in the cases mentioned in paragraph (ii) of section five hundred and two of the said Act of 1894.

Unregistered ships and ships in course of completion or construction.

4.—(1) Part VIII of the Merchant Shipping Act, 1894, shall apply 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, and the expression " ship " in the said Part VIII and in this Act shall be construed accordingly.

(2) The said Part VIII shall apply to any British ship notwithstanding that it has not yet been registered.

(3) The tonnage of any ship or structure to which the said Part VIII applies by virtue of this section shall, for the purposes of that Part, be ascertained as provided by subsection (2) of section five hundred and three of the said Act of 1894 with regard to foreign ships.

Release of ship, etc.

5.—(1) Where a ship or other property is arrested in connection with a claim which appears to the court to be founded on a liability to which a limit is set by section five hundred and three of the Merchant Shipping Act, 1894, or security is given to prevent or obtain release from such an arrest, the court may, and in the circumstances mentioned in subsection (3) of this section shall, order the release of the ship, property or security, if the conditions specified in subsection (2) of this section are satisfied; but where the release is ordered the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim (or, in Scotland, to have prorogated that jurisdiction).

(2) The said conditions are—

(*a*) that security which in the opinion of the court is satisfactory (in this section referred to as " guarantee ") has previously been given, whether in the United Kingdom or elsewhere, in respect of the said liability or any other liability incurred on the same occasion and the court is satisfied that, if the claim is established, the

and (*d*) of that subsection, and the obligation or liability as a liability to damages.

(3) The application of the said section five hundred and three to any liability shall not be excluded by reason only that the occurrence giving rise to the liability was not due to the negligence of any person.

(4) Nothing in the said section five hundred and three shall apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any property or infringement of any right of, a person who is on board or employed in connection with the ship under a contract of service with all or any of the persons whose liabilities are limited by that section, if that contract is governed by the law of any country outside the United Kingdom and that law either does not set any limit to that liability or sets a limit exceeding that set to it by that section.

(5) Paragraph (*a*) of subsection (2) of this section shall not come into force until such day as the Minister of Transport and Civil Aviation may by order made by statutory instrument appoint.

(6) The Minister of Transport and Civil Aviation may by order make provision 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 accordance with paragraph (*a*) of subsection (2) of this section, of amounts recoverable by them in respect of the obligations and liabilities mentioned in that paragraph, 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; and any such order may contain such incidental and supplementary provisions as appear to the Minister to be necessary or expedient.

(7) The power to make an order under subsection (6) of this section shall include power to vary or revoke any such order by a subsequent order and any such power shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Extension to other persons of provisions applying to shipowners.

3.—(1) The persons whose liability in connection with a ship is excluded or limited by Part VIII of the Merchant Shipping Act, 1894, shall include any charterer and any person interested in or in possession of the ship, and, in particular, any manager or operator of the ship.

(2) In relation to a claim arising from the act or omission of any person in his capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment

amount for which the guarantee was given or such part thereof as corresponds to the claim will be actually available to the claimant; and

(*b*) that either the guarantee is for an amount not less than the said limit or further security is given which, together with the guarantee, is for an amount not less than that limit.

(3) The circumstances mentioned in subsection (1) of this section are that the guarantee was given in a port which, in relation to the claim, is the relevant port (or, as the case may be, a relevant port) and that that port is in a Convention country.

(4) For the purposes of this section—

(*a*) a guarantee given by the giving of security in more than one country shall be deemed to have been given in the country in which security was last given;

(*b*) any question whether the amount of any security is (either by itself or together with any other amount) not less than any limit set by section five hundred and three of the Merchant Shipping Act, 1894, shall be decided as at the time at which the security is given;

(*c*) where part only of the amount for which a guarantee was given will be available to a claimant that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in subsection (1) of this section.

(5) In this section—

"Convention country" means any country in respect of which the Convention is in force (including any country to which the Convention extends by virtue of Article 14 thereof);

"relevant port"—

(*a*) in relation to any claim, means the port where the event giving rise to the claim occurred or, if that event did not occur in a port, the first port of call after the event occurred; and

(*b*) in relation to a claim for loss of life or personal injury or for damage to cargo, includes the port of disembarkation or discharge.

"the Convention" means the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships signed in Brussels on the tenth day of October, nineteen hundred and fifty-seven.

(6) If Her Majesty by Order in Council declares that any country specified in the Order is a Convention country within

the meaning of this section, the Order shall, while in force, be conclusive evidence that the country is a Convention country; but any Order in Council under this section may be varied or revoked by a subsequent Order in Council.

(7) In the application of this section to Scotland the references to arrest shall be construed as referring to arrestment on the dependence of an action or in rem and for the references to release from arrest or to the ordering of such a release there shall be substituted references to the recall of an arrestment.

Restriction on enforcement after giving of security.

6.—(1) No judgment or decree for a claim founded on a liability to which a limit is set by section five hundred and three of the Merchant Shipping Act, 1894, shall be enforced, except so far as it is for costs (or, in Scotland, expenses), if security for an amount not less than the said limit has been given, whether in the United Kingdom or elsewhere, in respect of the liability or any other liability incurred on the same occasion and the court is of opinion that the security is satisfactory and is satisfied that the amount for which it was given or such part thereof as corresponds to the claim will be actually available to the person in whose favour the judgment or decree was given or made.

(2) For the purposes of this section—

(*a*) any question whether the amount of any security is not less than any limit set by section five hundred and three of the Merchant Shipping Act, 1894, shall be decided as at the time at which the security is given;

(*b*) where part only of the amount for which security has been given will be available to the person in whose favour the judgment or decree was given or made that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in subsection (1) of this section.

Distribution of limitation fund.

7.—(1) In making any distribution in accordance with section five hundred and four of the Merchant Shipping Act, 1894, the court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the United Kingdom.

(2) No lien or other right in respect of any ship or property shall affect the proportions in which under the said section five hundred and four any amount is distributed amongst several claimants.

Minor and consequential amendments and repeals.

8.—(1) In section five hundred and two of the Merchant Shipping Act, 1894, the word " sea-going " shall be omitted.

(2) For subsection (3) of section five hundred and three of the Merchant Shipping Act, 1894, there shall be substituted the following subsection—

" (3) The limits set by this section to the liabilities mentioned therein shall apply to the aggregate of such liabilities which are incurred on any distinct occasion, and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion."

(3) In section five hundred and four of the Merchant Shipping Act, 1894, for the words " in respect of loss of life, personal injury or loss of or damage to vessels or goods " there shall be substituted the words " in respect of any occurrence in respect of which his liability is limited under section five hundred and three of this Act ".

(4) In Part VIII of the Merchant Shipping Act, 1894, the expression " owner " shall be construed as including, where it occurs in section five hundred and two, every person whose liability is excluded by section three of this Act, and elsewhere, except in the second place where it occurs in section five hundred and five, every person whose liability is limited by that section.

(5) In section five of the Crown Proceedings Act, 1947, the following shall be substituted for paragraph (*a*) of subsection (6)—

" (*a*) any structure to which Part VIII of that Act is applied by section four of the Merchant Shipping (Liability of Shipowners and Others) Act, 1958; and "

and in subsection (8) for the reference to the Merchant Shipping (Liability of Shipowners) Act, 1898, there shall be substituted a reference to sections three and four of this Act.

(6) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Saving for occurrences taking place before commencement.

9. Nothing in this Act applies in relation to any liability arising from an occurrence which took place before the commencement of this Act.

Provisions as to Northern Ireland.

10.—(1) This Act extends to Northern Ireland.

(2) In the application of this Act to Northern Ireland the reference in section eight to the Crown Proceedings Act, 1947, is a reference to that Act as it applies in Northern Ireland.

(3) For the purposes of section six of the Government of Ireland Act, 1920 (which relates to the powers of the Parliament

of Northern Ireland to make laws), this Act shall be deemed to have been passed before the day appointed for the purposes of that section.

Application to British possessions, etc.

11.—(1) Her Majesty may by Order in Council direct that the provisions of this Act, and (so far as they do not so extend apart from the Order) the existing limitation enactments, shall extend, with such exceptions, adaptations and modifications as may be specified in the Order, to—

(*a*) the Isle of Man;

(*b*) any of the Channel Islands;

(*c*) any colony, or any country or place outside Her Majesty's dominions in which for the time being Her Majesty has jurisdiction, or any territory consisting partly of one or more colonies and partly of one or more such countries or places.

(2) In this section "the existing limitation enactments" means Part VIII of the Merchant Shipping Act, 1894, section two of the Merchant Shipping (Liability of Shipowners and others) Act, 1900, and any incidental or supplementary provisions of any enactment applying the said Part or section.

Construction, short title and citation.

12.—(1) Any reference in this Act to any other enactment is a reference thereto as amended, and includes references thereto as applied, by or under any subsequent enactment, including, except where the context otherwise requires, this Act.

(2) This Act shall be construed as one with the Merchant Shipping Acts, 1894 to 1954.

(3) This Act may be cited as the Merchant Shipping (Liability of Shipowners and Others) Act, 1958, and this Act and the Merchant Shipping Acts, 1894 to 1954 may be cited together as the Merchant Shipping Acts, 1894 to 1958.

SCHEDULE

Section 8.

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
57 & 58 Vict. c. 60.	The Merchant Shipping Act, 1894.	In section five hundred and two, the word " sea-going ". Section five hundred and eight.
61 & 62 Vict. c. 14.	The Merchant Shipping (Liability of Shipowners) Act, 1898.	The whole Act.
63 & 64 Vict. c. 32.	The Merchant Shipping (Liability of Shipowners and others) Act, 1900.	Section one.
6 Edw. 7. c. 48.	The Merchant Shipping Act, 1906.	Sections seventy and seventy-one.
11 & 12 Geo. 5. c. 28.	The Merchant Shipping Act, 1921.	Subsection (2) of section one.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Merchant Shipping Act, 1894	57 & 58 Vict. c. 60.
Merchant Shipping (Liability of Shipowners) Act, 1898	61 & 62 Vict. c. 14.
Merchant Shipping (Liability of Shipowners and others) Act, 1900	63 & 64 Vict. c. 32.
Government of Ireland Act, 1920	10 & 11 Geo. 5. c. 67.
Crown Proceedings Act, 1947	10 & 11 Geo. 6. c. 44.

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