STATUTORY INSTRUMENTS

1975 No. 2174

MERCHANT SHIPPING

The Merchant Shipping (Oil Pollution) (Tuvalu) Order 1975

Made - - - -	*19th December* 1975
Laid before Parliament	*14th January* 1976
Coming into Operation	*3rd February* 1976

At the Court at Buckingham Palace, the 19th day of December 1975

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 18(1) of the Merchant Shipping (Oil Pollution) Act 1971(**a**), by section 20(1) of the Merchant Shipping Act 1974(**b**) 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 (Oil Pollution) (Tuvalu) Order 1975 and shall come into operation on 3rd February 1976.

2. The Interpretation Act 1889(**c**) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

3. The provisions of the Merchant Shipping (Oil Pollution) Act 1971 (except sections 17 and 18 thereof), subject to the exemptions, modifications and adaptations as set out in Schedule 1 hereto, shall extend to Tuvalu.

4. The provisions of Part I and sections 22, 23 and 24 of, and Schedule 1 to the Merchant Shipping Act 1974, subject to the exceptions, modifications and adaptations as set out in Schedule 2 hereto, shall extend to Tuvalu.

5. Save as is expressly provided otherwise therein, any reference in the Schedules to this Order to any enactment of the United Kingdom shall be construed as a reference to that enactment as applying or extended to Tuvalu.

N. E. Leigh

(a) 1971 c. 59. (b) 1974 c. 43. (c) 1889 c. 63.

SCHEDULE 1 TO THE ORDER ARTICLE 3

THE MERCHANT SHIPPING (OIL POLLUTION) ACT, 1971

Liability for oil pollution.

1.—(1) Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by the ship (whether as part of the cargo or otherwise) is discharged or escapes from the ship, the owner of the ship shall be liable, except as otherwise provided by this Act,—

(*a*) for any damage caused in the area of Solomon Islands by contamination resulting from the discharge or escape ; and

(*b*) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or reducing any such damage in the area of Solomon Islands ; and

(*c*) for any damage caused in the area of Solomon Islands by any measure so taken.

(2) Where a person incurs a liability under subsection (1) of this section he shall also be liable for any damage or cost for which he would be liable under that subsection if the references therein to the area of Solomon Islands included the area of any other Convention country.

(3) Where persistent oil is discharged or escapes from two or more ships and—

(*a*) a liability is incurred under this section by the owner of each of them ; but

(*b*) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable ;

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

(4) For the purposes of this Act, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one ; but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape.

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

Exceptions from liability under s. 1.

2. The owner of a ship from which persistent oil has been discharged or has escaped shall not incur any liability under section 1 of this Act if he proves that the discharge or escape —

(*a*) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon ; or

(*b*) was due wholly to anything done or left undone by another person, not being a servant or agent of the owner, with intent to do damage ; or

(*c*) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

(a) 1945 c. 28.

Restriction of liability for oil pollution.

3. Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by the ship is discharged or escapes then, whether or not the owner incurs a liability under section 1 of this Act,—

(*a*) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned therein ; and

(*b*) no servant or agent of the owner nor any person performing salvage operations with the agreement of the owner shall be liable for any such damage or cost.

Limitation of liability under s. 1.

4. (1) Where the owner of a ship incurs a liability under section 1 of this Act by reason of a discharge or escape which occurred without his actual fault or privity—

(*a*) section 503 of the Merchant Shipping Act 1894(a) (limitation of liability) shall not apply in relation to that liability ; but

(*b*) he may limit that liability in accordance with the provisions of this Act, and if he does so his liability (that is to say, the aggregate of his liabilities under section 1 resulting from the discharge or escape) shall not exceed 2,000 gold francs for each ton of the ship's tonnage nor (where that tonnage would result in a greater amount) 210 million gold francs.

(2) For the purposes of this section the tonnage of a ship shall be ascertained as follows—

(*a*) if the ship is a British ship (whether registered in Solomon Islands or elsewhere) or a ship to which an Order under section 84 of the Merchant Shipping Act 1894 applies, its tonnage shall be taken to be its registered tonnage increased, where a deduction has been made for engine room space in arriving at that tonnage, by the amount of that deduction ;

(*b*) if the ship is not such a ship as is mentioned in the preceding paragraph and it is possible to ascertain what would be its registered tonnage if it were registered in Solomon Islands, that paragraph shall apply (with the necessary modifications) as if the ship were so registered ;

(*c*) if the ship is not such a ship as is mentioned in paragraph (*a*) of this subsection and is of a description with respect to which no provision is for the time being made by regulations under section 1 of the Merchant Shipping Act 1965(b) (tonnage regulations) its tonnage shall be taken to be 40 per cent. of the weight (expressed in tons of 2,240 lbs.) of oil which the ship is capable of carrying ;

(*d*) if the tonnage of the ship cannot be ascertained in accordance with the preceding paragraphs the Chief Marine Officer shall, if so directed by the court, certify what, on the evidence specified in the direction, would in his opinion be the tonnage of the ship if ascertained in accordance with those paragraphs, and the tonnage stated in his certificate shall be taken to be the tonnage of the ship.

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

(4) The Governor may from time to time by order specify the amounts which for the purposes of this section are to be taken as equivalent to 2,000 gold francs and 210 million gold francs respectively.

(5) Where the amounts specified by an order under the preceding subsection are varied by a subsequent order the variation shall not affect the limit of any liability under section 1 of this Act if, before the variation

(a) 1894 c. 60. (b) 1965 c. 47; S.I. 1971/383 (1971 I, p. 1175).

accordance with the order then in force) has been paid into court in proceedings for the limitation of that liability in accordance with this Act.

Limitation actions.

5.—(1) Where the owner of a ship has or is alleged to have incurred a liability under section 1 of this Act he may apply to the court for the limitation of that liability to an amount determined in accordance with section 4 of this Act.

(2) If on such an application the court finds that the applicant has incurred such a liability and is entitled to limit it, the court shall, after determining the limit of the liability and directing payment into court of the amount of that limit,—

(*a*) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings ; and

(*b*) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

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

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

(*a*) by the owner or the person referred to in section 12 of this Act as " the insurer " ; or

(*b*) by a person who has or is alleged to have incurred a liability, otherwise than under section 1 of this Act, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of the Merchant Shipping (Liability of Shipowners and Others) Act 1958(**a**) ;

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

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

(6) 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 Tuvalu.

Restriction on enforcement of claims after establishment of limitation fund.

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

(*a*) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest ; and

(*b*) no judgment or decree for any such claim shall be enforced, except so far as it is for costs ;

if the sum paid into court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 5 of this Act had been taken.

(**a**) 1958 c. 62; S.I. 1963/1632 (1963 III, p.3082).

Concurrent liabilities of owners and others.

7. Where, as a result of any discharge or escape of persistent oil from a ship, the owner of the ship incurs a liability under section 1 of this Act and any other person incurs a liability, otherwise than under that section, for any such damage or costs as is mentioned in subsection (1) of that section, then, if—

(*a*) the owner has been found, in proceedings under section 5 of this Act, to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount; and

(*b*) the other person is entitled to limit his liability in connection with the ship by virtue of the Merchant Shipping (Liability of Shipowners and Others) Act 1958;

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

Establishment of limitation fund outside Solomon Islands.

8. Where the events resulting in the liability of any person under section 1 of this Act also resulted in a corresponding liability under the law of another Convention country sections 6 and 7 of this Act shall apply as if the references to sections 1 and 5 of this Act included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability.

Extinguishment of claims.

9. No action to enforce a claim in respect of a liability incurred under section 1 of this Act shall be entertained by any court in Tuvalu unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape by reason of which the liability was incurred.

Compulsory insurance against liability for pollution.

10.—(1) Subject to the provisions of this Act relating to Government ships, subsection (2) of this section shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of persistent oil of a description specified in regulations made by the Commissioner.

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

(3) The certificate must be—

(*a*) if the ship is registered in Tuvalu, a certificate issued by the Commissioner;

(*b*) if the ship is registered in a Convention country other than Tuvalu, a certificate issued by or under the authority of the government of the other Convention country; and

(*c*) if the ship is registered in a country which is not a Convention country, a certificate recognised for the purposes of this paragraph by regulations made under this section.

(4) The Commissioner may by regulations provide that certificates in respect of ships registered in any, or any specified, country which is not a Convention country shall, in such circumstances as may be specified in the regulations, be recognised for the purposes of subsection (3)(*c*) of this section if issued by or under the authority of the government of the country

designated in the regulations in that behalf; and the country that may be so designated may be either or both of the following, that is to say—

(*a*) the country in which the ship is registered; and

(*b*) any country specified in the regulations for the purposes of this paragraph.

(5) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of customs.

(6) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2) of this section, the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding 60,000 dollars.

(7) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (5) of this section the master shall be liable on summary conviction to a fine not exceeding 700 dollars.

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

Issue of certificate by Governor.

11.—(1) Subject to subsection (2) of this section, if the Commissioner is satisfied, on an application for such a certificate as is mentioned in section (10) of this Act in respect of a ship registered in Tuvalu, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirement of Article VII of the Convention, the Commissioner shall issue such a certificate to the owner.

(2) If the Commissioner is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 1 of this Act in all circumstances, he may refuse the certificate.

(3) The Commissioner may make regulations—

(*a*) prescribing the fee to be paid on an application for a certificate to be issued by him under this section; and

(*b*) providing for the cancellation and delivery up of such a certificate in such circumstances as may be prescribed by the regulations.

(4) If a person required by regulations under subsection (3)(*b*) of this section to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding 350 dollars.

(5) The Commissioner shall send a copy of any certificate issued by him under this section in respect of a ship registered in Tuvalu to the Registrar General of Shipping and Seamen, and the Registrar shall make the copy available for public inspection.

Rights of third parties against insurers.

12.—(1) Where it is alleged that the owner of a ship has incurred a liability under section 1 of this Act as a result of any discharge or escape of oil occurring while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 10 of this Act related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as "the insurer").

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape was due to the wilful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape occurred without the owner's actual fault or privity.

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

Jurisdiction of Tuvalu courts and registration of foreign judgments.

13.—(1) Paragraph (*d*) of section 1(1) of the Administration of Justice Act 1956 as applied in Tuvalu by the Admiralty Jurisdiction Order 1975(**a**) (Admiralty jurisdiction in claims for damage done by ships) shall be construed as extending to any claim in respect of a liability incurred under this Act.

(2) Where any persistent oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the area of Tuvalu and no measures are reasonably taken to prevent or reduce such damage in that area, no court in Tuvalu shall entertain an action (whether *in rem* or *in personam*) to enforce a claim arising from—

(*a*) any damage caused in the area of another Convention country by contamination resulting from the discharge or escape ;

(*b*) any cost incurred in taking measures to prevent or reduce such damage in the area of another Convention country ; or

(*c*) any damage caused by any measures so taken.

(3) The Foreign Judgments (Reciprocal Enforcement) Ordinance 1965(**b**) shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 1 of this Act ; and in its application to such a judgment that Ordinance shall have effect with the omission of subsections (2) and (3) of section 6 of that Ordinance.

Government ships.

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

(2) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with subsection (2) of section 10 of this Act if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Convention will be met up to the limit prescribed by Article V thereof.

(3) Every Convention State shall, for the purposes of any proceedings brought in a court in Tuvalu to enforce a claim in respect of a liability incurred under section 1 of this Act, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on ; but nothing in this subsection shall authorise the issue of execution, against the property of any State.

Liability for cost of preventive measures where s. 1 does not apply.

15.—(1) Where,—

(*a*) after an escape or discharge of persistent oil from a ship, measures are reasonably taken for the purpose of preventing or reducing damage

(**a**) S.I. 1975/1509 (1975 III p.5030).

(**b**) Laws of Gilbert and Ellice Islands Colony No. 1 of 1965.

in the area of Tuvalu which may be caused by contamination resulting from the discharge or escape ; and

(*b*) any person incurs, or might but for the measures have incurred, a liability, otherwise than under section 1 of this Act, for any such damage ;

then, notwithstanding that subsection (1)(*b*) of that section does not apply, he shall be liable for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty.

(2) For the purposes of section 503 of the Merchant Shipping Act 1894(**a**) (limitation of liability) any liability incurred under this section shall be deemed to be a liability to damages in respect of such loss, damage or infringement as is mentioned in subsection (1)(*d*) of that section.

Saving for recourse actions.

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

Meaning of " the Convention," " Convention country " and " Convention State ".

19.—(1) In this Act—

" the Convention " means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels in 1969 ;

" Convention country " means a country in respect of which the Convention is in force ; and

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

(2) If Her Majesty by Order in Council made under this subsection as it applies in the United Kingdom declares that any State specified in the Order is a party to the Convention in respect of any country so specified the Order shall, while in force, be conclusive evidence that that State is a party to the Convention in respect of that country.

Interpretation of other expressions.

20.—(1) In this Act—

" damage " includes loss ;

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

" the court " means the High Court of Tuvalu ;

" dollars " means Australian dollars.

(2) In relation to any damage or cost resulting from the discharge or escape or any oil carried in a ship references in this Act to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape.

(3) References in this Act to the area of any country including the territorial sea of that country.

Construction and commencement.

21.—(2) This Act shall be construed as one with the Merchant Shipping Acts 1894 to 1967.

(3) This Act shall come into force on such day as the Commissioner may appoint by notice published by exhibition at the Public Office of the Commissioner, and different days may be so appointed for different provisions of this Act.

(a) 1894 c. 60.

ARTICLE 4 SCHEDULE 2 TO THE ORDER

THE MERCHANT SHIPPING ACT 1974

PART I

THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

Interpretation of Part I.

1.—(1) In this Part of this Act—

(*a*) the "Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage opened for signature in Brussels on 29th November 1969;

(*b*) the "Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18th December 1971;

(*c*) "the Fund" means the International Fund established by the Fund Convention; and

(*d*) "Fund Convention country" means a country in respect of which the Fund Convention is in force.

(2) If Her Majesty by Order in Council made under this subsection as it applies in the United Kingdom declares that any State specified in the Order is a party to the Fund Convention in respect of any country so specified the Order shall, while in force, be conclusive evidence that that State is a party to the Convention in respect of that country.

(3) In this Part of this Act, unless the context otherwise requires—

the "Act of 1971" means the Merchant Shipping (Oil Pollution) Act 1971(a),

"damage" includes loss,

"discharge or escape", in relation to pollution damage, means the discharge or escape of oil carried by the ship,

"guarantor" means any person providing insurance or other financial security to cover the owner's liability of the kind described in section 10 of the Act of 1971,

"oil", except in sections 2 and 3, means persistent hydrocarbon mineral oil,

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

"pollution damage" means damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever the escape or discharge may occur, and includes the cost of preventive measures and further damage caused by preventive measures,

"preventive measures" means any reasonable measures taken by any person after the occurrence to prevent or minimise pollution damage,

"ship" means any sea-going vessel and any seaborne craft of any type whatsoever carrying oil in bulk as cargo,

"dollars" means Australian dollars.

(4) For the purposes of this Part of this Act a ship's tonnage shall be the net tonnage of the ship with the addition of the amount deducted

(a) 1971 c. 59.

from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage.

If the ship cannot be measured in accordance with the normal rules, its tonnage shall be deemed to be 40 per cent. of the weight in tons (of 2240 lbs.) of oil which the ship is capable of carrying.

(5) For the purposes of this Part of this Act, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.

(6) In this Part of this Act a franc shall be taken to be a unit of 65½ milligrammes of gold of millesimal fineness 900.

(7) The Commissioner may from time to time by notice published by exhibition at the Public Office of the Commissioner specify the amounts which for the purposes of this Part of this Act are to be taken as equivalent to any specified number of francs.

Contributions to Fund

Contributions by importers of oil and others.

2.—(1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in Tuvalu.

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

(3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in Tuvalu after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.

(4) The person liable to pay contributions is—

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

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

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

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

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

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

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

(*a*) be of such amount as may be determined by the Assembly of the Fund under Articles 11 and 12 of the Fund Convention and notified to him by the Fund;

(*b*) be payable in such instalments, becoming due at such times, as may be so notified to him;

and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the said Assembly, until it is paid.

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

Regulations under this subsection—

(*a*) may contain such supplemental or incidental provisions as appear to the Commissioner expedient, and

PART I

(*b*) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding 700 dollars, or such lower limit as may be specified in the regulations.

(9) In this and the next following section, unless the context otherwise requires—

"company" means a body incorporated under the law of Tuvalu, or of any other country;

"group" in relation to companies, means a holding company and any subsidiary or commonly controlled entity, subject, in the case of a company incorporated outside Tuvalu, to any necessary modification of this definition;

"importer" means the person by whom or on whose behalf the oil in question is entered for customs purposes on importation, and "import" shall be construed accordingly;

"oil" means crude oil and fuel oil, and

(*a*) "crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—

(i) crude oils from which distillate fractions have been removed, and

(ii) crude oils to which distillate fractions have been added,

(*b*) "fuel oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials" Specification for Number Four Fuel Oil (Designation D 396–69)", or heavier,

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

Power to obtain information.

3.—(1) For the purpose of transmitting to the Fund the names and addresses of the persons who under the last preceding section are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Commissioner may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.

(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by subsection (6) of the last preceding section.

(3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.

(4) In proceedings by the Fund against any person to recover any amount due under the last preceding section, particulars contained in any list transmitted by the Commissioner to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, he shall, unless the disclosure is made—

(*a*) with the consent of the person from whom the information was obtained, or

(*b*) in connection with the execution of this section, or

(c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings,

be liable on summary conviction to a fine not exceeding 700 dollars.

(6) A person who—

(a) refuses or wilfully neglects to comply with a notice under this section, or

(b) in furnishing any information in compliance with a notice under this section makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be liable—

(i) on summary conviction to a fine not exceeding 700 dollars, and

(ii) on conviction on indictment to a fine, or to imprisonment for a term not exceeding twelve months, or to both.

Compensation for persons suffering pollution damage

Liability of the Fund.

4.—(1) The Fund shall be liable for pollution damage in Tuvalu if the person suffering the damage has been unable to obtain full compensation under section 1 of the Act of 1971 (which gives effect to the Liability Convention)—

(a) because the discharge or escape causing the damage—

(i) resulted from an exceptional, inevitable and irresistible phenomenon, or

(ii) was due wholly to anything done or left undone by another person (not being a servant or agent of the owner) with intent to do damage, or

(iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible,

(and because liability is accordingly wholly displaced by section 2 of the Act of 1971), or

(b) because the owner or guarantor liable for the damage cannot meet his obligations in full, or

(c) because the damage exceeds the liability under section 1 of the Act of 1971 as limited—

(i) by section 4 of the Act of 1971, or

(ii) (where the said section 4 is displaced by section 9 of this Act) by section 503 of the Merchant Shipping Act 1894(a).

(2) Subsection (1) above shall apply with the substitution for the words "Tuvalu" of the words "a Fund Convention country" where the incident has caused pollution damage both in Tuvalu and in another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in Tuvalu.

(3) Where the incident has caused pollution damage both in Tuvalu and in another country in respect of which the Liability Convention is in force, references in this section to the provisions of the Act of 1971 shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(a) 1894 c. 60.

PART I

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

(6) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 1 of the Act of 1971.

(7) The Fund shall incur no obligation under this section if—

(*a*) it proves that the pollution damage—

(i) resulted from an act of war, hostilities, civil war or insurrection, or

(ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on Government non-commercial service, or

(*b*) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.

(8) If the Fund proves that the pollution damage resulted wholly or partly—

(*a*) from an act or omission done with intent to cause damage by the person who suffered the damage, or

(*b*) from the negligence of that person,

the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person:

Provided that this subsection shall not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimise pollution damage.

(9) Where the liability under section 1 of the Act of 1971 is limited to any extent by subsection (5) of that section (contributory negligence), the Fund shall be exonerated to the same extent.

(10) The Fund's liability under this section shall be subject to the limits imposed by paragraphs 4, 5 and 6 of Article 4 of the Fund Convention which impose an overall liability on the liabilities of the owner and of the Fund, and the text of which is set out in Schedule 1 to this Act.

(11) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(12) For the purpose of giving effect to the said provisions of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under this section shall notify the Fund, and—

(*a*) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it,

(*b*) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under

the said provisions of Article 4 of the Fund Convention, or that it is to be reduced to a specified amount, and

(*c*) in the latter case the judgment shall be enforceable only for the reduced amount.

Indemnification of shipowners

Indemnification where damage is caused by ship registered in Fund Convention country.

5.—(1) Where a liability is incurred under section 1 of the Act of 1971 in respect of a ship registered in a Fund Convention country the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of the liability which—

(*a*) is in excess of an amount equivalent to 1,500 francs for each ton of the ship's tonnage or of an amount of 125 million francs, whichever is the less, and

(*b*) is not in excess of an amount equivalent to 2,000 francs for each ton of the said tonnage or an amount of 210 million francs, whichever is the less.

(2) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country (but is a country in respect of which the Liability Convention is in force), and the incident has caused pollution damage in Tuvalu as well as in that other country) subsection (1) above shall apply with the omission of the words " under section 1 of the Act of 1971 ".

(3) The Fund shall not incur an obligation under this section where the pollution damage resulted from the wilful misconduct of the owner.

(4) In proceedings to enforce the Fund's obligation under this section the court may exonerate the Fund wholly or partly if it is proved that, as a result of the actual fault or privity of the owner—

(*a*) the ship did not comply with such requirements as the Commissioner may by notice published by exhibition at the Public Office of the Commissioner prescribe for the purposes of this section, and

(*b*) the occurrence or damage was caused wholly or partly by that non-compliance.

(5) The requirements referred to in subsection (4) above are such requirements as appear to the Commissioner appropriate to implement the provisions of—

(*a*) article 5(3) of the Fund Convention (marine safety conventions), and

(*b*) article 5(4) of the Fund Convention (which enables the Assembly of the Fund to substitute new conventions).

(6) An order made under subsection (4) above—

(*a*) may be varied or revoked by a subsequent order so made, or

(*b*) may contain such transitional or other supplemental provisions as appear to the Commissioner to be expedient.

(7) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise the pollution damage shall be treated as included in the owner's liability for the purposes of this section.

Supplemental

Jurisdiction and effect of judgments.

6.—(1) Paragraph (*d*) of section 1(1) of the Administration of Justice Act 1956 as applied in Tuvalu by the Admiralty Jurisdiction (Tuvalu) Order 1975(**a**) (Admiralty jurisdiction in claims for damage done by ships) shall

(**a**) S.I. 1975/1509 (1975 III, p. 5030).

PART I

be construed as extending to any claim in respect of a liability falling on the Fund under this Part of this Act.

(2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 1 of the Act of 1971, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

(3) Where a person incurs a liability under the law of a Fund Convention country corresponding to the Act of 1971 for damage which is partly in the area of Tuvalu, subsection (2) above shall, for the purpose of proceedings under this Part of this Act, apply with any necessary modifications to a judgment in proceedings under that law of the said country.

(4) Subject to subsection (5) below, the Foreign Judgments (Reciprocal Enforcement) Ordinance 1965(a) shall apply, whether or not it would so apply apart from this subsection, to any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 4 or 5 of this Act; and in its application to such a judgment the Ordinance shall have effect with the omission of subsections (2) and (3) of section 6 of the said Ordinance.

(5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part I of the Ordinance of 1965 gives leave to enforce it: and—

(*a*) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention (as set out in Schedule 1 to this Act) or that it is to be reduced to a specified amount; and

(*b*) in the latter case, the judgment shall be enforceable only for the reduced amount.

Extinguishment of claims.

7.—(1) No action to enforce a claim against the Fund under this Part of this Act shall be entertained by a court in Tuvalu unless—

(*a*) the action is commenced, or

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

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

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

(2) No action to enforce a claim against the Fund under this Part of this Act shall be entertained by a court in Tuvalu unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape by reason of which the claim against the Fund arose.

(3) Notwithstanding the preceding provisions of this section, a person's right to bring an action under section 5 of this Act shall not be extinguished before six months from the date when that person first acquired knowledge of the bringing of an action against him under the Act of 1971 (that is to say an action to enforce a liability against which he seeks indemnity), or under the corresponding provisions of the law of any country outside Tuvalu giving effect to the Liability Convention.

(a) Laws of the Gilbert and Ellice Islands Colony No. 1 of 1965.

PART I
Subrogation and rights of recourse.

8.—(1) In respect of any sum paid under section 4(1)(*b*) of this Act (default by owner or guarantor on liability for pollution damage) the Fund shall acquire by subrogation the rights of the recipient against the owner or guarantor.

(2) The right of the Fund under subsection (1) above is subject to any obligation of the Fund under section 5 of this Act to indemnify the owner or guarantor for any part of the liability on which he has defaulted.

(3) In respect of any sum paid—

(*a*) under paragraph (*a*) or paragraph (*c*) of section 4(1); or

(*b*) under section 5,

the Fund shall acquire by subrogation any rights of recourse or subrogation which the owner or guarantor or any other person has in respect of his liability for the damage in question.

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

Modification of limitation of liability under Act of 1971.

9. In the Act of 1971 after section 8 there shall be inserted the following section—

Cases excluded from sections 4 to 8.

"8A.—(1) Sections 4 to 8 of this Act shall not apply to a ship which at the time of the discharge or escape was registered in a country—

(*a*) which was not a Convention country, and

(*b*) which was a country in respect of which the 1957 Convention was in force.

(2) In this section 'the 1957 Convention' means the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships signed in Brussels on 10th October 1957.

(3) If Her Majesty by Order in Council made under this subsection as it applies in the United Kingdom declares that any country—

(*a*) is not a Convention country within the meaning of this Act, and

(*b*) is a country in respect of which the 1957 Convention is in force,

or that it was such a country at a time specified in the Order, the Order shall, while in force, be conclusive evidence of the facts stated in the Order."

PART V

SUPPLEMENTAL

PART V
Offences by bodies corporate.

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

In this section "director", in relation to a body corporate established by or under any enactment for the purpose of carrying on under public

PART V

ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

Construction and interpretation.

23.—(1) This Act shall be construed as one with the Merchant Shipping Acts 1894 to 1971, and without prejudice to the generality of this provision, references in those Acts to the Merchant Shipping Acts shall be construed as including references to this Act.

(2) References in this Act to the area of any country include the territorial sea of that country, and references to pollution damage in Tuvalu shall be construed accordingly.

(4) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment.

Commencement.

24.—(1) This Act shall come into force on such day as the Commissioner may appoint by notice published by exhibition at the Public Office of the Commissioner and different days may be so appointed for different provisions, or for different purposes.

(2) An order under subsection (1) above may make such transitional provision as appears to the Commissioner to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions, or any provisions of this Act then in force, as appear to him to be necessary or expedient in consequence of the partial operation of this Act (whether before or after the day appointed).

Sections 4(10), 6(5).

SCHEDULE 1 TO THE ACT

OVERALL LIMIT ON LIABILITY OF FUND

Article 4—*paragraphs* 4, 5 *and* 6

4.(*a*) Except as otherwise provided in sub-paragraph (*b*) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage caused in the territory of the Contracting States, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to Article 5, paragraph 1, of this Convention, shall not exceed 450 million francs.

(*b*) The aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 450 million francs.

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

6. The Assembly of the Fund may, having regard to the experience of incidents which have occurred and in particular the amount of damage resulting therefrom and to changes in the monetary values, decide that the amount of 450 million francs referred to in paragraph 4, sub-paragraphs (*a*) and (*b*), shall be changed ; provided, however, that this amount shall in no

case exceed 900 million francs or be lower than 450 million francs. The changed amount shall apply to incidents which occur after the date of the decision effecting the change.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order extends to Tuvalu the provisions of the Merchant Shipping (Oil Pollution) Act 1971, with the necessary adaptations, enabling effect to be given to the International Convention on Civil Liability for Oil Pollution Damage opened for signature in Brussels on 29th November 1969 (Cmnd. 4403). The Order also extends the provisions of Parts I and V of, and of Schedule 1 to the Merchant Shipping Act 1974, with the necessary adaptations, enabling effect to be given to 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 (Cmnd. 5061). The 1969 Convention provides uniform rules and procedures for determining questions of liability and for awarding compensation when damage is caused by pollution resulting from the escape or discharge of oil from ships. The 1971 Convention sets up an international fund to provide a supplementary system for compensation and indemnification for such damage.

SI 1975/2174
ISBN 0-11-052174-9

