



MONTSERRAT

CHAPTER 7.03

MERCHANT SHIPPING (AGREEMENTS) ACT

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

	Page
MERCHANT SHIPPING (AGREEMENTS) ACT	3
Act 3 of 1888 .. in force 31 December 1888	
Amended by Acts 17 of 1932 and 24 of 1956	
Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)	
MERCHANT SHIPPING ACT 1979 (MONTSERRAT) (AMENDMENT) ORDER 1981	7
S.I. 1981 No. 426 .. in force 17 April 1981	
MERCHANT SHIPPING (OIL POLLUTION) (MONTSERRAT) ORDER 1998	33
S.I. 1998 No. 1262 .. in force 19 May 1998	



MONTERRAT

CHAPTER 7.03

MERCHANT SHIPPING (AGREEMENTS) ACT

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

MERCHANT SHIPPING (AGREEMENTS) ACT

Page

3

Act 3 of 1888 .. in force 31 December 1888

Amended by Acts 17 of 1932 and 24 of 1956

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

THE MERCHANT SHIPPING ACT 1979 (MONTERRAT) (AMENDMENT) ORDER 1981

7

S.I. 1981 No. 426 .. in force 17 April 1981

THE MERCHANT SHIPPING (OIL POLLUTION) (MONTERRAT) ORDER 1998

33

S.I. 1998 No. 1262 .. in force 19 May 1998

CHAPTER 7.03

MERCHANT SHIPPING (AGREEMENTS) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Agreements to be made with seamen, containing certain particulars
3. Agreements to be made before, and attested by, shipping master
4. Running agreements may be made
5. Penalty for shipping seamen without agreement duly executed
6. Alteration to be made void unless attested
7. Penalty for falsifying agreement
8. Seamen not to be bound to produce agreement
9. Copy of agreement to be made accessible to crew
10. Recovery of penalties
11. Fees to be paid upon agreement

CHAPTER 7.03

MERCHANT SHIPPING (AGREEMENTS) ACT

(Acts 3 of 1888, 17 of 1932, 24 of 1956 and 9 of 2011)

Commencement

[31 December 1888]

Short title

1. This Act may be cited as the Merchant Shipping (Agreements) Act.

Agreements to be made with seamen, containing certain particulars

2. (1) The master of every British ship, (including any ship which belongs to Montserrat and trades to ports outside Montserrat) shall enter into an agreement with every seaman whom he carries to sea from any port in Montserrat as one of his crew, in the manner hereinafter mentioned, and every such agreement shall be in the form sanctioned by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof; that is to say—

- (a) the nature and, as far as practicable, the duration of the intended voyage or engagement;
- (b) the number and description of the crew, specifying how many are engaged as sailors;
- (c) the amount of wages which each seaman is to receive;
- (d) a scale of the provisions which are to be furnished to each seaman in cases where it is agreed that the provisions are to be furnished;
- (e) any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt.

(2) Every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seamen, in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law.

Agreements to be made before, and attested by, shipping master

3. The following rules shall be observed with respect to agreements; that is to say—

- (a) every agreement shall be signed by each seaman in the presence of the shipping master, or other officer appointed for the purpose;
- (b) such shipping master, or other officer as aforesaid, shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest such signature; and in case any such attestation is not made, the burden of proving that the seaman was duly engaged, as hereby required, shall lie upon the master;
- (c) when the crew is first engaged, the agreement shall be signed in duplicate, and one copy shall be retained by the shipping master, or other officer as aforesaid, and the other copy shall be delivered to the master.

Running agreements may be made

4. Agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond six months, or the first arrival of the ship at a port in Montserrat after the expiration of six months, or the discharge of cargo consequent upon such arrival.

Penalty for shipping seamen without agreement duly executed

5. If, in any case, a master carries any seaman to sea without entering into an agreement with him as is by this Act required, he shall, for each such offence, incur a penalty of \$24:

Provided that, this shall not apply to any case in which a seaman already engaged is not on board at the time appointed for a vessel's departure, and the master engages another seaman to supply his place after the shipping master's office hours, and reports the fact in writing to the shipping master, and, on his return to the island, engages the seaman with the forms by this Act required.

Alteration to be made void unless attested

6. Every erasure, interlineation, or alteration in any such agreement shall be wholly inoperative, unless proved to have been made with the consent of all the parties interested in such erasure, interlineation, or alteration by the written attestation of a shipping master, or other officer as aforesaid.

Penalty for falsifying agreement

7. Every person who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, or makes, or assists in making, or procures to be made, any false entry in, or delivers, assists in delivering, or procures to be delivered, a false copy of any agreement, shall for each such offence be deemed guilty of a misdemeanour.

Seamen not to be bound to produce agreement

8. Any seaman may bring forward evidence to prove the contents of any agreement, or otherwise to support his case, without producing, or giving notice to produce, the agreement or any copy thereof.

Copy of agreement to be made accessible to crew

9. The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, omitting the signatures, to be placed or posted up in such part of the ship as to be accessible to the crew, and, in default, shall, for each offence, incur a penalty of \$24.

Recovery of penalties

10. All penalties under this Act shall be recoverable on summary conviction.

Fees to be paid upon agreement

11. The fees payable to the shipping master under the provisions of this Act shall be such as may, from time to time, be fixed by the Governor

acting on the advice of Cabinet*, save and except that, for the engagement of seamen separately, the fee shall be 24 cents for each.

(Amended by Act 9 of 2011)

* See the 1941 Order at page 483 of Volume 6 of the 1962 Revised Edition.

S.I. 1981 NO. 426

MERCHANT SHIPPING

**The Merchant Shipping Act 1979 (Montserrat)
(Amendment) Order 1981**

<i>Made</i>	<i>18th March 1981</i>
<i>Laid before Parliament</i>	<i>26th March 1981</i>
<i>Coming into Operation</i>	<i>17th April 1981</i>

At the Court at Buckingham Palace, the 18th day of March 1981

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 47(1) of the Merchant Shipping Act 1979^(a) and of 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 (Montserrat) (Amendment) Order 1981 and shall come into operation on 17th April 1981.

2. The Merchant Shipping Act 1979 (Montserrat) Order 1980^(b) is hereby amended by adding between the words “**contained in**” and “**paragraph 4**” in section 51(2) of the Merchant Shipping Act 1979, as set out in the Schedule to the said Order, the words “section 5(2A) of the Merchant Shipping (Oil Pollution) Act 1971 (1971 c. 59; S.I. 1975/2170 as amended by S.I. 1981/219) or section 4(13) of the Merchant Shipping Act 1974 (1974 c. 43; S.I. 1975/2170 as amended by S.I. 1981/219) or”.

N. E. de Leigh,

Clerk of the Privy Council

^(a) 1979 c. 39.

^(b) S.I. 1980/1515

SCHEDULE TO THE ORDER*(Article 2)***THE MERCHANT SHIPPING ACT 1979***Carriage of passengers and luggage by sea***Scheduled convention to have force of law**

14. (1) The provisions of the Convention relating to the Carriage of Passengers and their Luggage by Sea as set out in Part I of Schedule 3 to this Act (hereafter in this section and in Parts II and III of that Schedule referred to as “the Convention”) shall have the force of law in Montserrat.

(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.

(3) On and after the date when this subsection and Part III of Schedule 3 to this Act come into force Parts I and II of that Schedule shall have effect with the modifications specified in the said Part III.

(6) Nothing in subsection (1), (2) or (3) of this section shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the said subsection (1), (2) or (3) comes into force.

(7) This section shall bind the Crown.

*Liability of shipowners and salvors***Limitation of liability**

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 Montserrat.

(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.

Exclusion of liability

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—

- (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.

Provisions supplementary to ss. 17 and 18

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).

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 Ministry of Finance shall be entitled to charge a reasonable fee for any certificate given by or on behalf of the Ministry of Finance in pursuance of any provision contained in section 5(2A) of the Merchant Shipping (Oil Pollution) Act 1971 as amended, or paragraph 4 of Part III of Schedule 3 or paragraph 7 of Part II of Schedule 4 to this Act. (*Amended by S.I. 1981 No. 426*)

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.

SCHEDULE 3 TO THE ACT

(Sections 14, 51(2))

**CONVENTION RELATING TO THE CARRIAGE OF
PASSENGERS AND THEIR LUGGAGE BY SEA****PART I****TEXT OF CONVENTION****Article 1****DEFINITIONS**

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

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

- (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and
 - (b) live animals;
6. “**cabin luggage**” means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;
7. “**loss of or damage to luggage**” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;
8. “**carriage**” covers the following periods—
- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for the purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;
 - (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
 - (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent onshore or on board until the time of its re-delivery by the carrier or his servant or agent;
9. “**international carriage**” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

Article 2

APPLICATION

1. This Convention shall apply to any international carriage if—
- (a) the ship is flying the flag of or is registered in a State Party to this Convention; or

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

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

Article 3

LIABILITY OF THE CARRIER

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

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

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

Article 4

PERFORMING CARRIER

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

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

3. Any special agreement under which the carrier assumed obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.
4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.
5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

Article 5

VALUABLES

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

Article 6

CONTRIBUTORY FAULT

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

Article 7

LIMIT OF LIABILITY FOR PERSONAL INJURY

1. The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 700,000 francs per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.
2. Notwithstanding paragraph 1 of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher *per capita* limit of liability.

Article 8

LIMIT OF LIABILITY FOR LOSS OF OR DAMAGE TO LUGGAGE

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 12,500 francs per passenger, per carriage.
2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 50,000 francs per vehicle, per carriage.
3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 18,000 francs per passenger, per carriage.
4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 1,750 francs in the case of damage to a vehicle and not exceeding 200 francs per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

Article 9

MONETARY UNIT AND CONVERSION

1. The franc mentioned in this Convention shall be deemed to refer to a unit consisting of 65.5 milligrams of gold of millesimal fineness 900.
2. The amounts referred to in Articles 7 and 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the official value of that currency, by reference to the unit defined in paragraph 1 of this Article, on the date of the judgment or the date agreed upon by the parties.

Article 10

SUPPLEMENTARY PROVISIONS ON LIMITS OF LIABILITY

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

Article 11

DEFENCES AND LIMITS FOR CARRIERS' SERVANTS

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled

to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

Article 12

AGGREGATION OF CLAIMS

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

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

Article 13

LOSS OF RIGHT TO LIMIT LIABILITY

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

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

Article 14

BASIS FOR CLAIMS

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

Article 15

NOTICE OF LOSS OR DAMAGE TO LUGGAGE

1. The passenger shall give written notice to the carrier or his agent—
 - (a) in the case of apparent damage to luggage—
 - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
 - (ii) for all other luggage, before or at the time of its re-delivery;
 - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.
3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

Article 16

TIME-BAR FOR ACTIONS

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.
2. The limitation period shall be calculated as follows—
 - (a) in the case of personal injury, from the date of disembarkation of the passenger;
 - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that, this period shall not exceed three years from the date of disembarkation;
 - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.
3. The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

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

Article 17

COMPETENT JURISDICTION

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

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

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

Article 18

INVALIDITY OF CONTRACTUAL PROVISIONS

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

Article 19

OTHER CONVENTIONS ON LIMITATION OF LIABILITY

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

Article 20

NUCLEAR DAMAGE

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

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

Article 21

COMMERCIAL CARRIAGE BY PUBLIC AUTHORITIES

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

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

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

Provisions adapting or supplementing specified articles of the Convention

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

3. The reference to the law of the court in Article 6 shall be construed as a reference to the law of Montserrat.

4. The Governor may by order provide that, in relation to a carrier whose principal place of business is in Montserrat, paragraph 1 of Article 7 shall have effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the order (which shall not be lower than the limit specified

in that paragraph at the passing of this Act or, if paragraph 1 of Part III of this Schedule has come into force, specified in paragraph 1 of Article 7 as amended by paragraph 1 of that Part).

5. The values which in pursuance of Article 9 shall be considered as the official values in Montserrat of the amounts in francs for the time being specified in Articles 7 and 8 shall be such amounts in East Caribbean dollars as the Governor may from time to time by order specify.

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

7. Article 16 shall apply to an arbitration as it applies to an action in the court.

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

Other provisions adapting or supplementing the Convention

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

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

11. The Governor may by order make provision—

- (a) for requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner specified in the order, notice of such of the provisions of Part I of this Schedule as are so specified;
- (b) for a person who fails to comply with a requirement imposed on him by the order to be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding 3,000 East Caribbean dollars.

*Application of ss. 502 and 503 of Merchant Shipping Act 1894^(a)
and sections 17 and 18 of this Act*

12. Nothing in section 502 of the Merchant Shipping Act 1894 or section 18 of this Act (which among other things limit a shipowner's liability for the loss or damage of goods in certain cases) shall relieve a person of any liability imposed on him by the Convention.

13. It is hereby declared that nothing in the Convention affects the operation of section 503 of the Merchant Shipping Act 1894 or section 17 of this Act (which limit a shipowner's liability in certain cases of loss of life, injury or damage).

Part III

MODIFICATIONS OF PARTS I AND II IN CONSEQUENCE OF PROTOCOL OF 19TH NOVEMBER 1976

1. In Part I of this Schedule, in Article 7 of the Convention, for the words "700,000 francs" or any other words which, by virtue of paragraph 4 of Part II of this Schedule, are specified in that article in the place of those words there shall be substituted the words "46,666 units of account".

2. In the said Part I, in Article 8 of the Convention, for the word "francs" wherever it occurs there shall be substituted the words "units of account" and for the figures "12,500", "50,000", "18,000", "1,750" and "200" there shall be substituted respectively the figures "833", "3,333", "1,200", "117" and "13".

3. In the said Part I for Article 9 there shall be substituted the following—

Article 9

UNIT OF ACCOUNT AND CONVERSION

The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 7 and 8 shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgment or the date agreed upon by the Parties.

4. In Part II of this Schedule for paragraph 5 there shall be substituted the following—

5. (1) For the purposes of Articles 7 to 9 the Ministry of Finance may specify in East Caribbean dollars the respective amounts which are to be taken as equivalent for a particular day to the sums expressed in special drawing rights in those articles.

(2) A certificate given by or on behalf of the Ministry of Finance in pursuance of paragraph (1) above shall be conclusive evidence of those matters for the purposes of Articles 7 to 9 of the Convention; and a document purporting to be such a

^(a) 1894 c. 60.

certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

SCHEDULE 4 TO THE ACT*(Sections 17, 18, 19(1))***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 minimize 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 wherever 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^(a).

(2) The claims excluded from the Convention by paragraph (c) of Article 3 are claims made by virtue of any of sections 7 to 11 of the Nuclear Installations Act 1965^(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.

(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.

^(a) 1958 c. 62; S.I. 1964/1658.

^(a) 1971 c. 59; S.I. 1975/2170.

^(b) 1965 c. 57; S.I. 1972/127.

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 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.

Units of Account

7. (1) For the purposes of Articles 6 and 7 the Ministry of Finance may specify in East Caribbean dollars the respective amounts which are to be taken as equivalent for a particular day to the sums expressed in special drawing rights in those articles.

(2) A certificate given by or on behalf of the Ministry of Finance in pursuance of paragraph (1) above 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 Ministry of Finance, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of Article 11.

(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 West Indies Associated States Supreme Court, or any other court to which the jurisdiction exercised by that court in respect of Montserrat may be transferred.

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.

(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.

^(a) 1900 c. 32.

The Merchant Shipping (Oil Pollution) Act 1971

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.”

S.I. 1998 NO. 1262

MERCHANT SHIPPING

The Merchant Shipping (Oil Pollution) (Montserrat) Order 1998

Made

19th May 1998

Coming into force

19th May 1998

At the Court at Buckingham Palace, the 19th day of May 1998

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 315(2) of the Merchant Shipping Act 1995⁽¹⁾ 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:—

Citation and commencement

1. This Order may be cited as the Merchant Shipping (Oil Pollution) (Montserrat) Order 1998 and shall come into force on 20th May 1998.

Implementation of the Liability and Fund Conventions

2. Sections 152 to 170⁽²⁾ and 172 to 181 of, and Schedule 5 to, the Merchant Shipping Act 1995, subject to the exceptions, adaptations and modifications specified in the Schedule to this Order, shall extend to Montserrat, and any instrument made, or to be made, under section 152(2), 157(2), 157(4), 172(2) or 176(5) shall also extend to Montserrat.

Revocations

3. The following Orders are hereby revoked—

- (a) The Merchant Shipping (Oil Pollution) (Montserrat) Order 1975⁽³⁾;
- (b) The Merchant Shipping (Oil Pollution) (Montserrat) Order 1981⁽⁴⁾.

N. H. Nicholls

¹ 1995 c. 21.

² Section 158(2) was amended and section 158(2A) was added, by section 29(1) and Schedule 6 paragraph 4 of the Merchant Shipping and maritime Security Act 1997 (1997 c. 28)

³ S.I. 1975/2170

⁴ S.I. 1981/221

Clerk of the Privy Council

SCHEDULE TO THE ORDER THE MERCHANT SHIPPING ACT 1995

(Article 2)

PART VI

PREVENTION OF POLLUTION

CHAPTER III

LIABILITY FOR OIL POLLUTION

PRELIMINARY

Meaning of “the Liability Convention” and related expressions.

152. (1) In this Chapter—

“**the Liability Convention**” means the International Convention on Civil Liability for Oil Pollution Damage 1992;

“**Liability Convention country**” means a country in respect of which the Liability Convention is in force, and includes the United Kingdom and any relevant British possession to which the Liability Convention has been extended; and

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

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

LIABILITY

Liability for oil pollution in case of tankers.

153. (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for any damage caused outside the ship in the territory of Montserrat by contamination resulting from the discharge or escape; and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of Montserrat by contamination resulting from the discharge or escape; and
- (c) for any damage caused in the territory of Montserrat by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of Montserrat; and
- (b) for any damage caused outside the ship in the territory of Montserrat by any measures so taken;

and in this Chapter any such threat is referred to as a relevant threat of contamination.

(3) Subject to subsection (4) below, this section applies to any ship constructed or adapted for carrying oil in bulk as cargo.

(4) Where any ship so constructed or adapted is capable of carrying other cargoes besides oil, this section shall apply to any such ship—

- (a) while it is carrying oil in bulk as cargo; and
- (b) unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil,

but not otherwise.

(5) Where a person incurs a liability under subsection (1) or (2) above he shall also be liable for any damage or cost for which he would be liable under that subsection if the reference in it to the territory of Montserrat included the territory of any other Liability Convention country.

(6) Where—

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships; but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

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

(7) For the purposes of this Chapter—

- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank;
- (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and

- (c) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

(8) If the owner proves that the pollution damage resulted to any extent from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner shall be exonerated to that extent from his liability to such person.

Liability for oil pollution in case of other ships.

154. (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship other than a ship to which section 153 applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for any damage caused outside the ship in the territory of Montserrat by contamination resulting from the discharge or escape; and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of Montserrat by contamination resulting from the discharge or escape; and
- (c) for any damage so caused in the territory of Montserrat by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a ship to which section 153 applies by the contamination which might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of Montserrat; and
- (b) for any damage caused outside the ship in the territory of Montserrat by any measures so taken;

and in the subsequent provisions of this Chapter any such threat is referred to as a relevant threat of contamination.

(3) Where—

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships; but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

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

(4) If an owner proves that the pollution damage resulted to any extent either from an act or omission done with intent to cause damage by the person who suffered

the damage or from the negligence of that person, the owners shall be exonerated to that extent from his liability to such person.

(5) In this section “ship” includes a vessel which is not seagoing.

Exceptions from liability under sections 153 and 154.

155. No liability shall be incurred by the owner of a ship under section 153 or 154 by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or (as the case may be) the threat of contamination—

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the 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.

Restriction of liability for oil pollution.

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

- (a) any oil is discharged or escapes from a ship (whether one to which section 153 or one to which section 154 applies); or
- (b) there arises a relevant threat of contamination,

then, whether or not the owner of the ship in question incurs a liability under section 153 or 154—

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it; and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2) Subsection (1)(ii) above applies to—

- (a) any servant or agent of the owner of the ship;
- (b) any person not falling within paragraph (a) above but employed or engaged in any capacity on board the ship or to perform any service for the ship;
- (c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship;

- (d) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
- (e) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 153 or 154;
- (f) any servant or agent of a person falling within paragraph (c), (d) or (e) above.

(3) The liability of the owner of a ship under section 153 or 154 for any impairment of the environment shall be taken to be a liability only in respect of—

- (a) any resulting loss of profits; and
- (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

LIMITATION OF LIABILITY

Limitation of liability under section 153.

157. (1) Where, as a result of any occurrence, the owner of a ship incurs liability under section 153 by reason of a discharge or escape or by reason of any relevant threat of contamination, then (subject to subsection (3) below)—

- (a) he may limit that liability in accordance with the provisions of this Chapter; and
- (b) if he does so, his liability (being the aggregate of his liabilities under section 153 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subsection (1) above, “the relevant amount” means—

- (a) in relation to a ship not exceeding 5,000 tons, three million special drawing rights;
- (b) in relation to a ship exceeding 5,000 tons, three million special drawing rights together with an additional 420 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 59.7 million special drawing rights,

but the Secretary of State may by order make such amendments of paragraphs (a) and (b) above as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in paragraph 1 of Article V of the Liability Convention.

(3) Subsection (1) above shall not apply in a case where it is proved that the discharge or escape, or (as the case may be) the relevant threat of contamination, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in section 153 or recklessly and in the knowledge that any such damage or cost would probably result.

(4) For the purposes of this section a ship's tonnage shall be its gross tonnage calculated in such a manner as may be prescribed by an order made by the Secretary of State.

(5) ...

Limitation actions.

158. (1) Where the owner of a ship has or is alleged to have incurred a liability under section 153 he may apply to the court for the limitation of that liability to an amount determined in accordance with section 157.

(2) If on such an application the court finds that the applicant has incurred such a liability but has not found that he is not entitled to limit it, the court shall, after determining the limit which would apply to the applicant's liability if he were entitled to limit it, and directing payment into court of the amount of that limit—

- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
- (b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

(2A) Where—

- (a) a distribution is made under subsection (2)(b) above without the court having found that the applicant is entitled to limit his liability; and
- (b) the court subsequently finds that the applicant is not so entitled,

the making of the distribution is not to be regarded as affecting the applicant's liability in excess of the amount distributed.

(3) A payment into court of the amount of a limit determined in pursuance of this section shall be made in dollars; and

- (a) for the purpose of converting such an amount from special drawing rights into dollars one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
 - (i) the day on which the determination is made; or
 - (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
- (b) a certificate given by or on behalf of the Ministry of Finance stating—
 - (i) that a particular sum in dollars has been so fixed for the day on which the determination was made; or
 - (ii) that no sum has been so fixed for that day and that a particular sum in dollars has been so fixed for a day which is the last day

for which a sum has been so fixed before the day on which the determination was made,

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

- (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

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

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

- (a) by the owner or the persons referred to in section 165 as “the insurer”;
or
- (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 153, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of section 17 or 18 of the Merchant Shipping Act 1979 as extended to Montserrat⁵)

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

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

(7) The court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside Montserrat.

(8) No lien or other right in respect of any ship or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2)(b) above.

Restriction on enforcement after establishment of limitation fund.

159. (1) Where the court has found that a person who has incurred a liability under section 153 is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount—

⁵ Sections 17 and 18 of the Merchant Shipping Act 1979 were extended to Montserrat by the Merchant Shipping Act 1979 (Montserrat) Order 1980 (S.I. 1989/1515)

- (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 158 had been taken.

Concurrent liabilities of owners and others.

160. (1) Where, as a result of any discharge or escape of oil from a ship or as a result of any relevant threat of contamination, the owner of the ship incurs a liability under section 153 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) or (2) of that section then, if—

- (a) the owner has been found, in proceedings under section 158 to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount; and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of section 17 or 18 of the Merchant Shipping Act 1979 as extended to Montserrat;

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 Montserrat.

161. Where the events resulting in the liability of any person under section 153 also resulted in a corresponding liability under the law of another Liability Convention country sections 159 and 160 shall apply as if the references to sections 153 and 158 included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability.

Extinguishment of claims.

162. No action to enforce a claim in respect of a liability incurred under section 153 or 154 shall be entertained by any court in Montserrat unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the liability was incurred.

COMPULSORY INSURANCE

Compulsory insurance against liability for pollution.

163. (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) below shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of oil of a description specified in regulations made by the Governor.

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

(3) The certificate must be—

- (a) if the ship is registered in Montserrat, a certificate issued by the Governor;
- (b) if the ship is registered in a Liability Convention country other than Montserrat, a certificate issued by or under the authority of the government of the other Liability Convention country; and
- (c) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Governor or by or under the authority of the government of any Liability Convention country other than Montserrat.

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

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2) above, the master or owners shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding \$215,000.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4) above, the master shall be liable on summary conviction to a fine not exceeding \$10,800.

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

Issue of certificate by the Government.

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

(2) If the Governor 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 153 in all circumstances, he may refuse the certificate.

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

(4) If a person required by regulations under subsection (3) above to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding \$10,800.

(5) The Governor shall send a copy of any certificate issued by him under this section in respect of a ship registered in Montserrat to the Port Manager and the Port manager shall make the copy available for public inspection.

Rights of third parties against insurers.

165. (1) Where it is alleged that the owner of a ship has incurred a liability under section 153 as a result of any discharge or escape of oil occurring, or a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 163 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, or (as the case may be) the threat of contamination, 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, or (as the case may be), the threat of contamination, resulted from anything done or omitted to be done by the owner as mentioned in section 157(3).

(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.

SUPPLEMENTARY

Jurisdiction of Montserrat courts and registration of foreign judgments.

166. (1) Paragraph (d) of section 1(1) of the Administration of Justice Act 1956 as applied in Montserrat by the Admiralty Jurisdiction (Montserrat) Order 1964⁽⁶⁾ shall be construed as extending to any claim in respect of a liability incurred under this Chapter.

⁶ S.I. 1964/1662 (1964 III, p. 3769)

(2) Where—

- (a) any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of Montserrat and no measures are reasonably taken to prevent or minimise such damage in that territory; or
- (b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in the territory of Montserrat,

no court in Montserrat shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost—

- (i) against the owner of the ship; or
- (ii) against any person to whom section 156(1)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(3) In subsection (2) above, “relevant damage or cost” means—

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Liability Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country;
- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b) above,

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

(4) The Reciprocal Enforcement of Judgments Act⁷ shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 153; and in its application to such a judgment that Act shall have effect as if any reference in that Act to the High Court in England were a reference to the court in the Convention country in which that judgment has been given and with the omission of paragraphs (b) and (f) of subsection (2) of section 3 of that Act.

⁷ Laws of Montserrat, Revised Ed. 1962, Cap 67

Government ships.

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

(2) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with section 163(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Convention.

(3) Every Liability Convention State shall, for the purpose of any proceedings brought in a court in Montserrat to enforce a claim in respect of a liability incurred under section 153, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution against the property of any State.

Limitation of liability under section 154.

168. For the purposes of section 17 of the Merchant Shipping Act 1979 as extended to Montserrat any liability incurred under section 154 shall be deemed to be a liability to damages in respect of such damage to property as is mentioned in paragraph 1(a) of Article 2 of the Convention on Limitation of Liability for Maritime Claims 1976.

Saving for recourse actions.

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

Interpretation.

170. (1) In this Chapter—

“**the court**” means the High Court of the West Indian Association States Supreme Court;

“**damage**” includes loss;

“**dollars**” means East Caribbean dollars;

“**oil**” means persistent hydrocarbon mineral oil;

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

“**relevant threat of contamination**” shall be construed in accordance with section 153(2) or 154(2); and

“**ship**” (subject to section 154(5)) means any sea-going vessel or sea-borne craft of any type whatsoever.

(2) In relation to any damage or cost resulting from the discharge or escape of any oil from a ship, or from a relevant threat of contamination, references in this Chapter 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 or (as the case may be) in the threat of contamination.

(3) ...

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

- (a) in the case of Montserrat, any area within the fishery limits set by the Proclamation, defining the Fishery Limits of Montserrat under the Fisheries Ordinance, 1982 (No. 18 of 1982)⁽⁸⁾; and
- (b) in the case of any other Liability Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by that State in question in accordance with international law.

⁸ S.R.O. No. 4 of 1983.

CHAPTER IV
INTERNATIONAL OIL POLLUTION COMPENSATION FUND
PRELIMINARY

Meaning of the “Liability Convention”, “the Fund Convention” and related expressions.

172. (1) In this Chapter—

- (a) **“the Liability Convention”** has the same meaning as in Chapter III of this Part;
- (b) **“the Fund Convention”** means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;
- (c) **“the Fund”** means the International Fund established by the Fund Convention; and
- (d) **“Fund Convention country”** means a country in respect of which the Fund Convention is in force, and includes the United Kingdom and any relevant British possession to which the Fund Convention has been extended.

(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 that Convention in respect of that country.

CONTRIBUTIONS TO FUND

Contributions by importers of oil and others.

173. (1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in Montserrat otherwise than on a voyage only within waters landward of the baselines for measuring the breadth of the territorial sea of Montserrat.

(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 Montserrat 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 Montserrat, 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 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 Director of the Fund under Article 12 of the Fund Convention and notified to that person 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 Assembly of the Fund, until it is paid.

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

(9) Regulations under subsection (8) above—

(a) may contain such supplemental or incidental provisions as appear to the Governor expedient;

(b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding \$21,500 or such lower limit as may be specified in the regulations.

(10) In this section and in section 174, unless the context otherwise requires—

“company” means a body incorporated under the law of Montserrat, 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 Montserrat, to any necessary modifications of those definitions;

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

“oil” means crude oil and fuel oil, and

- (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 oil from which distillate fractions have been removed; and
 - (ii) crude oil 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 D396—69)”, or heavier,

“terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from water-borne transportation, including any facility situated off-shore and linked to any such site.

Power to obtain information.

174. (1) For the purpose of transmitting to the Fund the names and addresses of the persons who under section 173 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 Governor may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.

(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by section 173(6).

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

(4) In proceedings by the Fund against any person to recover any amount due under section 173, particulars contained in any list transmitted by the Governor 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, then, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the execution of this section; or
- (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings,

he shall be liable on summary conviction to a fine not exceeding \$21,500.

(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 \$10,800 in the case of an offence under paragraph (a) above and not exceeding \$21,500 in the case of an offence under paragraph (b) above; and
- (ii) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding twelve months, or both.

COMPENSATION FOR PERSONS SUFFERING POLLUTION

Liability of the Fund.

175. (1) The Fund shall be liable for pollution damage in the territory of Montserrat if the person suffering the damage has been unable to obtain full compensation under section 153—

- (a) because the discharge or escape, or the relevant threat of contamination, by reason of which the damage was caused—
 - (i) resulted from an exceptional, inevitable and irresistible phenomenon; or
 - (ii) was due wholly to anything done or omitted to be done by another person (not being a servant or agent of the owner) with intent to do damage; or
 - (iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible,(and because liability is accordingly wholly displaced by section 155),
or
- (b) because the owner or guarantor liable for the damage cannot meet his obligations in full; or
- (c) because the damage exceeds the liability under section 153 as limited by section 157.

(2) Subsection (1) above shall apply with the substitution for the words “Montserrat” of the words “a Fund Convention country” where the incident has caused pollution damage in the territory of Montserrat and of another Fund Convention country, and proceedings under the Liability Convention for

compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in Montserrat.

(3) Where the incident has caused pollution damage in the territory of Montserrat and of another country in respect of which the Liability Convention is in force, references in this section to the provisions of Chapter III of this Part shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(4) ...

(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 153.

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

(a) it proves that the pollution damage—

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

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

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

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

(a) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage; or

(b) from the negligence of that person,

the Fund may (subject to subsection (10) below) be exonerated wholly or partly from its obligations to pay compensation to that person.

(9) Where the liability under section 153 in respect of the pollution damage is limited to any extent by subsection (8) of that section, the Fund shall (subject to subsection (10) below) be exonerated to the same extent.

(10) Subsections (8) and (9) above shall not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures.

Limitation of Fund's liability under section 175.

176. (1) The Fund's liability under section 175 shall be subject to the limits imposed by paragraphs 4 and 5 of Article 4 of the Fund Convention (which impose an overall limit on the liabilities of the Fund and the text of which is set out in Part 1 of Schedule 5), and in those provisions references to the Liability Convention are references to the Liability Convention within the meaning of this Chapter.

(2) A certificate given by the Director of the Fund stating that subparagraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 175 shall be conclusive evidence for the purposes of this Chapter that it is so applicable.

(3) For the purpose of giving effect to paragraphs 4 and 5 of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under section 175 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 those paragraphs, or that it is to be reduced to a specified amount; and
- (c) in the latter case the judgment shall be enforceable only for the reduced amount.

(4) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (3) above shall be steps to obtain payment in dollars; and—

- (a) for the purpose of converting such an amount from special drawing rights into dollars one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
 - (i) the relevant day, namely the day on which the Assembly of the Fund decide the date for the first payment of compensation in respect of the incident; or
 - (ii) if no sum has been so fixed for the relevant day, the last day before that day for which a sum has been so fixed; and
- (b) a certificate given by or on behalf of the Ministry of Finance stating—
 - (i) that a particular sum in dollars has been so fixed for the relevant day; or
 - (ii) that no sum has been so fixed for the relevant day and that a particular sum in dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,

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

(5) The Secretary of State may by order make such amendments of this section and Part I of Schedule 5 as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the provisions set out in that Schedule.

(6) Any document purporting to be such a certificate as is mentioned in subsection (2) or (4)(b) above shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

SUPPLEMENTAL

Jurisdiction and effect of judgments.

177. (1) Paragraph (d) of section 1(1) of the Administration of Justice Act 1956 as applied in Montserrat by the Admiralty Jurisdiction (Montserrat) Order 1964⁽⁹⁾ shall be construed as extending to any claim in respect of a liability falling on the Fund under this Chapter.

(2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 153, 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 Chapter III of this Part for damage which is partly in the territory of Montserrat, subsection (2) above shall, for the purpose of proceedings under this Chapter, apply with any necessary modifications to a judgment in proceedings under the law of the said country.

(4) Subject to subsection (5) below, the Reciprocal Enforcement of Judgments Act⁽¹⁰⁾ 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 175; and in its application to such a judgment the said Ordinance shall have effect as if any reference in that Act to the High Court in England were a reference to the Court in the Fund Convention country in which that judgment has been given and with the omission of paragraphs (b) and (f) of subsection 2 of section 3 of that Act.

(5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under the Reciprocal Enforcement of Judgments Act 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 Part I of Schedule 5 to this Act) or that it is to be reduced to a specified amount; and

⁹ S.I. 1964/1662 (1964 III, p. 3769).

¹⁰ Laws of Montserrat, Revised Ed. 1962, Cap 67

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

Extinguishment of claims.

178. (1) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in Montserrat unless—

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

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

In this subsection “third party notice” means a notice of the kind described in section 177(2) and (3).

(2) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in Montserrat unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape or (as the case may be) in the relevant threat of contamination, by reason of which the claim against the Fund arose.

Subrogation.

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

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

Supplementary provisions as to proceedings involving the Fund.

180. (1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund’s representative.

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

Interpretation.

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

“**damage**” includes loss;

“**discharge or escape**”, in relation to pollution damage, means the discharge or escape of oil from the ship;

“dollars” means East Caribbean dollars;

“guarantor” means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 163;

“incident” means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination;

“oil”, except in section 173 and 174, means persistent hydrocarbon mineral oil;

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

“pollution damage” means—

(a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship;

(b) the cost of preventive measures; and

(c) further damage caused by preventive measures,

but does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of—

(i) any loss of profits; or

(ii) the cost of any reasonable measures of reinstatement actually taken or to be taken;

“preventive measures” means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken—

(a) after an incident has occurred; or

(b) in the case of an incident consisting of a series of occurrences, after the first of those occurrences;

“relevant threat of contamination” means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship; and

“ship” means any ship (within the meaning of Chapter III of this Part) to which section 153 applies.

(2) For the purposes of this Chapter—

(a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and

(b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.

(3) References in this Chapter to the territory of any country shall be construed in accordance with section 170(4) reading the reference to a Liability Convention country as a reference to a Fund Convention country.

SCHEDULE 5 OVERALL LIMIT ON LIABILITY OF FUND

(Section 176)

PART I

PERMANENT PROVISION

Article 4—paragraphs 4 and 5

4. (a) Except as otherwise provided in sub-paragraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of accounts.
- (b) Except as otherwise provided in sub-paragraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 135 million units of account.
- (c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.
- (d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.
- (e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

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

EXPLANATORY NOTE

(This note is not part of the Order)

The International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC), which was extended to Montserrat by Schedule 1 to the Merchant Shipping (Oil Pollution) (Montserrat) Order 1975, 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 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the 1971 Fund Convention) which was extended to Montserrat by Schedule 2 to the 1975 Order set up an international fund to provide a supplementary system for compensation and indemnification for such damage. The 1992 Protocol to the CLC and the 1992 Protocol to the Fund Convention respectively create a new 1992 Civil Liability Convention and a 1992 Fund Convention, which together provide for higher levels of compensation and more extensive liability. The 1992 Protocols are given effect in the United Kingdom by Part VI, Chapters III and IV of the Merchant Shipping Act 1995. This Order extends those provisions of the 1995 Act to Montserrat, with the necessary exceptions, modifications and adaptations.
