

Regulations made under s. 118.

**MERCHANT SHIPPING (OIL POLLUTION)  
REGULATIONS 1999**

**(LN. 1999/090)**

**30.7.1999**

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**1995-13**

## Gibraltar Merchant Shipping (safety, etc.)

### MERCHANT SHIPPING (OIL POLLUTION) REGULATIONS 1999

**Subsidiary  
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*This version is out of date*

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#### **SCHEDULE.**

Overall limit on liability of fund

*In exercise of the powers conferred on it by section 118 of the Gibraltar Merchant Shipping (Safety etc) Act, 1993, and all other enabling powers, the Government makes the following Regulations –*

**PART I**

**PRELIMINARY**

**Citation.**

1. These Regulations may be cited as the Merchant Shipping (Oil Pollution) Regulations 1999.

**Interpretation.**

2.(1) In these Regulations, unless the context otherwise provides –

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

"the Court" means the Supreme Court;

"damage" includes loss;

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

"the Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;

"the Fund" means the International Fund established by the Fund Convention;

"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 Overseas Territory or Crown Dependency to which the Fund Convention has been extended;

"group" in relation to companies, means a holding company and its subsidiaries as defined in the Companies Act and, in the case of a company or companies incorporated outside Gibraltar, with the necessary modifications of those definitions in accordance with the law of the country in which the company is incorporated;

- "guarantor" means any person providing insurance or other financial security to cover the owner's liability of the kind described in regulation 16;
- "importer" means the person by whom or on whose behalf the oil in question is entered for customs purposes on importation, and "import" shall be construed accordingly;
- "incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of pollution damage;
- "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 Overseas Territory or Crown Dependency British to which the Fund Convention has been extended;
- "Liability Convention State" means a State which is a party to the Convention";
- "Maritime Administrator" means the person appointed under regulation 3 of the Gibraltar Merchant Shipping (Safety etc.) Act 1993;
- "Minister" means the Minister with responsibility for the environment;
- "oil" means persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship, 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;

"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;

"pollution damage" means -

- (a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;
- (b) the cost of preventive measures and further damage caused by preventive measures;

"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 shall be construed in accordance with the provisions of regulations 4 and 5;

"ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard;

“special drawing right” means special drawing right as defined by the International Monetary Fund; and

"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 offshore and linked to any such site.

(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 these Regulations 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) For the purposes of these Regulations -

- (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.

(4) The Contract and Tort Act shall apply in relation to any damage or cost for which a person is liable under these Regulations, but which is not due to his fault, as if it were due to his fault.

(5) If the Minister, upon the appropriate advice from Her Majesty's Government through the Governor's Office, by Order in the Gazette made under this subregulation, declares that any State specified in the Order is a party to the Liability Convention or to the Fund Convention in respect of any country so specified, the Order shall, while in force, be conclusive evidence that that State is a party to the convention concerned in respect of that country.

#### **Application of Regulations.**

3. These Regulations shall apply to pollution damage caused in Gibraltar or in any area within the limits of the territorial of Gibraltar, and Gibraltar's exclusive economic zone established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of Gibraltar 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 in accordance with international law.

## PART II

### LIABILITY

#### Liability for oil pollution in case of tankers.

4.(1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this regulation applies, then (except as otherwise provided by these Regulations) the owner of the ship shall be liable -

- (a) for any damage caused outside the ship in Gibraltar 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 Gibraltar by contamination resulting from the discharge or escape: and
- (c) for any damage caused in Gibraltar 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 regulation 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 these Regulations) 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 Gibraltar, and
- (b) for any damage caused outside the ship in Gibraltar by any measures so taken,

and in these Regulations any such threat is referred to as a relevant threat of contamination.

(3) Where a person incurs a liability under subregulation (1) or (2), he shall also be liable for any damage or cost for which he would be liable

under that subregulation if the references in it to Gibraltar included the territory of any other Liability Convention country.

(4) Where -

- (a) as a result of any occurrence, a liability is incurred under this regulation 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 regulation.

(5) The liability of the owner of a ship under this regulation 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.

**Liability for oil pollution in case of other ships.**

5.(1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship then (except as otherwise provided by these Regulations) the owner of the ship shall be liable for pollution damage.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship by the contamination which might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by these Regulations) the owner of the ship shall be liable for pollution damage; and in the subsequent provisions of these Regulations 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 regulation 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 regulation.

(4) The liability of the owner of a ship under this regulation 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.

**Exceptions from liability under regulations 4 and 5.**

6. No liability shall be incurred by the owner of a ship under regulation 4 or 5 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.**

7.(1) This regulation applies where, as a result of any incident-

- (a) there has been pollution damage, or
- (b) there arises a relevant threat of contamination.

(2) Where this regulation applies, the owner of the ship in question shall not be liable otherwise than under regulation 4 or 5, whether or not the owner of the ship in question incurs a liability under any of those regulations.

(3) Where this regulation applies, the following categories of persons, namely –

- (a) any servant or agent of the owner of the ship;
- (b) any person not falling within paragraph (a) 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 subregulation (1) (b) or (2) (a) of regulation 4;
- (f) any servant or agent of a person falling within paragraph (c), (d) or (e),

shall not be liable for any 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.

### **PART III**

#### **LIMITATION OF LIABILITY**

##### **Limitation of liability under regulation 4.**

8.(1) Where, as a result of any occurrence, the owner of a ship incurs liability under regulation 4 by reason of a discharge or escape or by reason of any relevant threat of contamination, then (subject to subregulation (3)) -

- (a) he may limit that liability in accordance with the provisions of these Regulations, and

- (b) if he does so, his liability (being the aggregate of his liabilities under regulation 4 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subregulation (1), "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 Minister may, by Order published in the Gazette, make such amendments to paragraphs (a) and (b) 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) Subregulation (1) 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 regulation 4 or recklessly and in the knowledge that any such damage or cost would probably result.

(4) For the purposes of this regulation a ship's tonnage shall be its gross tonnage calculated in such a manner as the Minister may prescribe by Order published in the Gazette.

#### **Limitation of actions.**

9.(1) Where the owner of a ship has or is alleged to have incurred a liability under regulation 4, he may apply to the court for the limitation of that liability to an amount determined in accordance with regulation 8.

(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 regulation.

(3) Where -

- (a) a distribution is made under subregulation (2)(b) 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.

(4) A payment into court of the amount of a limit determined in pursuance of this regulation shall be made in sterling; and -

- (a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling 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 Minister stating -
  - (i) that a particular sum in sterling 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 sterling 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 these Regulations;

(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.

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

(6) 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 regulation 16 as "the insurer"; or

(b) by a person who has or is alleged to have incurred a liability, otherwise than under regulation 4, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of the provisions of the Convention on the Limitation of Liability for Maritime Claims 1976,

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 regulation as the person to whom it was paid would have been.

(7) 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 regulation as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(8) 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 or territory outside Gibraltar.

(9) 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 subregulation (2)(b) .

**Restriction on enforcement after establishment of limitation fund.**

10. Where the court has found that a person who has incurred a liability under regulation 4 is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount -

- (a) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and
- (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs,

if the sum paid into court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under regulation 9 had been taken.

**Concurrent liabilities of owners and others.**

11. 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 regulation 4 and any other person incurs a liability, otherwise than under that regulation, for any such damage or cost as is mentioned in subregulation (1) or (2) of that regulation then if -

- (a) the owner has been found, in proceedings under regulation 9 to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount; and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of the provisions of the Convention on the Limitation of Liability for Maritime Claims 1976,

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 Gibraltar.**

12. Where the events resulting in the liability of any person under regulation 4 also resulted in a corresponding liability under the law of another Liability Convention country, regulations 10 and 11 shall apply as if the references to regulations 4 and 9 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.

**Limitation period.**

13. No action to enforce a claim in respect of a liability incurred under regulation 4 or 5 shall be entertained by any court in Gibraltar 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.

**PART IV**

**INSURANCE AND JURISDICTION**

*Insurance*

**Compulsory insurance against liability for pollution.**

14.(1) Subject to the provisions of these Regulations relating to Government ships, subregulation (2) applies to any ship carrying in bulk a cargo of more than 2000 tons of oil.

(2) The ship shall not enter or leave the port of Gibraltar or arrive at or leave any terminal in the territorial sea of Gibraltar nor, if the ship is registered in Gibraltar, 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 subregulation (3) 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 Gibraltar, a certificate issued by, or under the authority of, the Maritime Administrator;
- (b) if the ship is registered in a Liability Convention country other than Gibraltar, 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 Maritime

Administrator, or by, or under, the authority of the government of, any Liability Convention country other than Gibraltar.

(4) Any certificate required by this regulation 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 Maritime Administrator, the Captain of the Port, or any person authorised in writing on behalf of the Maritime Administrator or the Captain of the Port.

(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 subregulation (2), the master or owner shall be liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding £50,000.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subregulation (4), the master shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) If a ship attempts to leave the port of Gibraltar in contravention of this regulation the ship may be detained by a police or customs officer.

**Issue of certificate by or under the authority of the Maritime Administrator.**

15.(1) Subject to subregulation (2), if the Maritime Administrator is satisfied on the application for such a certificate as is mentioned in regulation 14 in respect of a ship registered in Gibraltar 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 Maritime Administrator shall issue or cause to be issued such a certificate to the owner.

(2) If the Maritime Administrator is of opinion that there is a doubt whether the person providing the insurance or the security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under regulation 4 in all circumstances, he may refuse the certificate.

(3) The Minister may by Order published in the Gazette provide for the cancellation and delivery up of a certificate under this regulation in such circumstances as may be prescribed by the Order.



(4) If a person required by an Order under subregulation (3) to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) The Maritime Administrator shall cause to be made available for public inspection, copies of any certificate issued by him under this regulation in respect of a ship registered in Gibraltar.

### **Rights of third parties against insurers.**

16.(1) Where it is alleged that the owner of a ship has incurred a liability under regulation 4 as a result of any discharge or escape of oil occurring, or as 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 regulation 14 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 regulation referred to as "the insurer").

(2) In any proceedings brought against the insurer by virtue of this regulation 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 regulation 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 regulation 8(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 Gibraltar courts and registration of foreign judgments.**

17.(1) Paragraph (e) of section 20(2) of the Supreme Court Act 1981 as applied in Gibraltar by article 2 of the Admiralty Jurisdiction (Gibraltar) Order 1987 (Admiralty jurisdiction in claims for damages done by ships) shall be construed as extending to any claim in respect of a liability incurred under these Regulations.

(2) Where -

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

no court in Gibraltar 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 regulation 7(3)(b) applies,

unless, in the case of paragraph (ii), any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(3) In subregulation (2), "damage or cost" means -

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subregulation, 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 as is mentioned in paragraph (b) of that subregulation, 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),

and regulation 7(3)(e) shall have effect for the purposes of subregulation (2)(ii) as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b).

(4) The Judgments (Reciprocal Enforcement) Act, or, as the case may be, the Civil Jurisdiction and Judgments Act 1993 shall apply, whether or not it would so apply apart from this regulation, 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 regulation 4; and in its application to such a judgment the Judgments (Reciprocal Enforcement) Act shall have effect with the omission of subregulation (2) and (3) of regulation 7 of that Act.

## **Government ships.**

18.(1) Nothing in the preceding provisions of these Regulations 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 regulation 14(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 purposes of any proceedings brought in a court in Gibraltar to enforce a claim in respect of a liability incurred under regulation 4, 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 subregulation shall authorise the issue of execution against the property of any State.

## **Limitation of liability under regulation 5.**

19. For the purposes of regulation 14, any liability incurred under regulation 5 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.**

20. Nothing in these Regulations shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under these Regulations may have against another person in respect of that liability.

## **PART V**

**INTERNATIONAL OIL POLLUTION COMPENSATION FUND***Contributions to Fund***Contributions by importers of oil and others.**

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

(2) Subregulation (1) 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 Gibraltar, 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 Gibraltar, 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 is imported or received in the year does not exceed 150,000 tonnes.

(6) For the purpose of subregulation (5) -

- (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 be -

- (a) 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) 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 Minister may, by Order published in the Gazette, impose on persons who are or may be likely to pay contributions under this regulation obligations to give security for payment to the Government or the Fund, and a failure to comply with such an Order shall be punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(9) An Order under subregulation (8) may contain such supplemental incidental provisions as appear expedient to the Minister.

**Power to obtain information.**

22.(1) For the purpose of transmitting to the Fund the names and addresses of the persons who, under regulation 21 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 Minister 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 regulation may require a company to give such information as may be required to ascertain whether its liability is affected by regulation 21(6).

(3) A notice under this regulation 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 regulation 21, particulars contained in any list transmitted to the Fund shall, so far as those particulars are based on information obtained under this regulation, 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 regulation, or in connection with the execution of this regulation, 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 regulation, or
- (c) for the purposes of any legal proceedings arising out of this regulation or of any report of such proceedings,

he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) A person who -

- (a) refuses or wilfully neglects to comply with a notice under this regulation, or
- (b) in furnishing any information in compliance with a notice under this regulation 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 level 4 on the standard scale in the case of an offence under paragraph (a) and not exceeding level 3 on the standard scale in the case of an offence under paragraph (b), and
  - (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 12 months or to both.

*Compensation for persons suffering pollution damage*

**Liability of the fund.**

23. The Fund shall be liable for pollution damage in Gibraltar if the person suffering the damage has been unable to obtain full compensation under regulation 4 -

- (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 regulation 6), 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 regulation 4 as limited by regulation 8.

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

(3) Where the incident has caused pollution damage in the territory of Gibraltar and of another country in respect of which the Liability Convention is in force, references in this regulation to the provisions of these Regulations shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(4) For the purposes of this regulation 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.

(5) 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 regulation, and accordingly he shall be in the same position with respect to claims against the Fund under this regulation as if he had a claim in respect of liability under regulation 4.

(6) The Fund shall incur no obligation under this regulation 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.

(7) 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 subregulation (8)) be exonerated wholly or partly from its obligations to pay compensation to that person.

(8) Where the liability under regulation 4 in respect of the pollution damage is limited to any extent by subregulation (8) of that regulation, the Fund shall (subject to subregulation (9)) be exonerated to the same extent.

(9) Subregulations (7) and (8) 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 regulation 23.**

24.(1) The Fund's liability under regulation 23 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 the Schedule), and in those provisions references to the Liability Convention are references to the liability Convention within the meaning of these Regulations.

(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 regulation 23 shall be conclusive evidence for the purposes of these Regulations that it is so applicable.



(3) For the purpose of giving effect to paragraphs 4 and 5 of the Fund Convention a court giving judgment against the Fund in proceedings under regulation 23 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 subregulation (3) shall be steps to obtain payment in sterling; and -

- (a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling 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 Minister stating -
  - (i) that a particular sum in sterling 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 sterling 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 these Regulations.

(5) Any document purporting to be such a certificate as is mentioned in subregulation (2) or (4)(b) 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.**

25.(1) Paragraph (e) of section 20(2) of the Supreme Court Act 1981 as applied in Gibraltar by article 2 of the Admiralty Jurisdiction (Gibraltar) Order 1987 (Admiralty jurisdiction in claims for damages done by ships) shall be construed as extending to any claim in respect of a liability falling on the Fund under these Regulations.

(2) Where in accordance with rules of court made for the purposes of this subregulation, the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under regulation 4, 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 these Regulations for damage which is partly in Gibraltar, subregulation (2) shall, for the purpose of proceedings under these Regulations, apply with any necessary modifications to a judgment in proceedings under that law of that country.

(4) Subject to subregulation (5), the Judgments (Reciprocal Enforcement) Act or, as the case may be, the Civil Jurisdiction and Judgments Act 1993 shall apply, whether or not it would so apply apart from this subregulation, 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 regulation 23; and in its application to such a judgment the Judgments (Reciprocal Enforcement) Act shall have effect with the omission of subregulations (2) and (3) of regulation 7 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 Judgments (Reciprocal Enforcement) Act, or, as the case may be, the Civil Jurisdiction and Judgments Act 1993 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 the Schedule to these Regulations) or that it is to be reduced to a specified amount; and
- (b) in the latter case, the judgment shall be enforceable only for the reduced amount.

**Limitation period.**

26.(1) No action to enforce a claim against the Fund under these Regulations shall be entertained by a court in Gibraltar 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 subregulation "third party notice" means a notice of the kind described in regulation 25(2).

(2) No action to enforce a claim against the Fund under these Regulations shall be entertained by a court in Gibraltar 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.**

27.(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 Gibraltar as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under these Regulations

**Supplementary provisions as to proceedings involving the Fund.**

**1995-13**

## Gibraltar Merchant Shipping (safety, etc.)

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### MERCHANT SHIPPING (OIL POLLUTION) REGULATIONS 1999

**Subsidiary  
1999/090**

**This version is out of date**

28.(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.

SCHEDULE

PARAGRAPHS 4 AND 5 OF ARTICLE 4 OF THE FUND  
CONVENTION

Regulation 24

OVERALL LIMIT ON LIABILITY OF FUND

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 account.
  - (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.

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## Gibraltar Merchant Shipping (safety, etc.)

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- (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.