

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3685 of 20 November, 2008

LEGAL NOTICE NO. 87 OF 2008.

GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC.) ACT, 1993

**MERCHANT SHIPPING (OIL POLLUTION) (AMENDMENT)
REGULATIONS 2008**

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, in order to implement in Gibraltar Council Decision 2002/762/EC of 19 September 2002 authorising the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention), and Council Decision 2004/246/EC of 2 March 2004 authorising the Member States to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and IMO Resolution Leg.1/82 and IMO Resolution Leg.2/82 adopted at the 82nd Session of the Legal Committee of the International Maritime Organisation, has made the following Regulations:

Title and commencement.

1. These Regulations may be cited as the Merchant Shipping (Oil Pollution) (Amendment) Regulations 2008 and shall come into operation on 21st November, 2008.

Amendment of regulation 2.

2. Regulation 2 of the Merchant Shipping (Oil Pollution) Regulations, 1999 (the principal Regulations) is amended—

(a) in subregulation (1)—

(i) by inserting the following definitions before the definition of “company”—

““Bunkers Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;

“Bunkers Convention country” means a country or territory in respect of which the Bunkers Convention is in force;

“Bunkers Convention State” means a State which is a party to the Bunkers Convention;

“bunker oil” means any hydrocarbon mineral oil, including lubricating oil, which is carried by a ship and used or intended to be used for the operation or propulsion of that ship and any residues of such oil;”;

- (ii) by inserting the following definition after the definition of “Fund Convention country”–

““Gibraltar ship” means a ship registered in Gibraltar in accordance with the provisions of the Gibraltar Merchant Shipping (Registration) Act, 1993;”;

- (iii) in the definition of “Liability Convention State”, by inserting “Liability” after “party to the”;

- (iv) in the definition of “oil”, after “oil”, by inserting “, except in the term “bunker oil”,”;

- (v) by substituting the following definitions for the definition of “owner”–

“owner”, except when used in the term “registered owner”, means the registered owner, bareboat charterer, manager or operator of the ship;”;

“registered 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;"

- (vi) in the definition of "relevant threat of contamination" for the words from "shall" to the end by substituting—

"includes (unless a contrary intention appears)—

- (a) a relevant threat of contamination falling within regulation 4(2) (as defined in regulation 4(3));
- (b) a relevant threat of contamination falling within regulation 4A(2) (as defined in regulation 4A(4)); and
- (c) a relevant threat of contamination falling within regulation 5(2) (as defined in regulation 5 (4)); and

- (vii) after the definition of "special drawing right", by inserting the following definitions—

"Supplementary Fund Protocol" means the Protocol of 2003 to the Fund Convention;

"Supplementary Fund" means the International Supplementary Fund established by the Supplementary Fund Protocol;

"Supplementary Fund Protocol country" means a country in respect of which the Supplementary Fund Protocol is in force;"

- (b) in subregulation (2)—

- (i) after "oil", by inserting "or bunker oil";
- (ii) after "owner" in the first place it appears, by inserting "or the registered owner"; and

- (iii) after “owner” in the second place it appears, by inserting “or the registered owner”;
- (c) in subregulation (5), by inserting “, Bunker Convention” after “the Liability Convention”.

Amendment of regulation 3.

3. Regulation 3 of the principal Regulations is amended by inserting “sea” after “limits of the territorial”.

Amendment of regulation 4.

4. Regulation 4 of the principal Regulations is amended—

- (a) in subregulation (1), by substituting “registered owner” for “owner”;
- (b) in subregulation (2)—
 - (i) by substituting “registered owner” for “owner”; and
 - (ii) by deleting the words after paragraph (b);
- (c) by inserting the following subregulation after subregulation (2)—

“(2A) In these Regulations, such a threat is referred to as a relevant threat of contamination falling within subregulation (2).”;
- (d) in subregulation (4) by substituting respectively “registered owner” and “registered owners” for “owner” and “owners” each time they appear; and
- (e) in subregulation (5), by substituting “registered owner” for “owner”.

Insertion of regulation 4A.

5. The principal Regulations are amended by inserting the following regulation after regulation 4—

“Liability for pollution by bunker oil.

4A.(1) Subject to subregulation (3), where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship

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;
 - (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) Subject to subregulation (3), where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship by the contamination that might result if there were a discharge or escape of bunker 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.
- (3) There shall be no liability under this regulation in relation to—
- (a) a discharge or escape of bunker oil from a ship to which regulation 4 applies; or
 - (b) a threat mentioned in subregulation (2) arising in relation to a potential discharge or escape of bunker oil from such a ship,

where that bunker oil is also persistent hydrocarbon mineral oil.

- (4) In the subsequent provisions of these Regulations—

- (a) a discharge or escape of bunker oil from a ship, other than a discharge or escape of oil excluded by subregulation (3), is referred to as a discharge or escape of bunker oil falling within subregulation (1) of this regulation; and
 - (b) a threat mentioned in subregulation (2), other than one excluded by subregulation (3), is referred to as a relevant threat of contamination falling within subregulation (2).
- (5) Where a person incurs a liability under subregulation (1) or (2), that person shall also be liable for any damage or cost for which he would be liable under either of those subregulations if the references in it to Gibraltar included the territory of any other Bunkers Convention country.
- (6) 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.

Substitution of regulation 5.

6. The principal Regulations are amended by substituting the following regulation for regulation 5—

“Liability for oil pollution in other cases.

5.(1) Subject to subregulation (3), 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 registered owner of the ship shall be liable for—

- (a) any damage caused outside the ship in Gibraltar by contamination resulting from the discharge or escape;
 - (b) 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) any damage so caused in Gibraltar by any measures so taken.
- (2) Subject to subregulation (3), 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 registered owner of the ship shall be liable for—
- (a) the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in Gibraltar; and
 - (b) any damage caused outside the ship in Gibraltar by any measures so taken.
- (3) No liability shall be incurred under this regulation by reason of a discharge or escape of—
- (a) oil from a ship to which regulation 4 applies or a relevant threat of contamination falling within subregulation (2) of that regulation;
 - (b) bunker oil falling within regulation 4A(1) or a relevant threat of contamination falling within regulation 4A(2).
- (4) In the subsequent provisions of these Regulations—

- (a) a discharge or escape of oil from a ship, other than one excluded by subregulation (3), is referred to as a discharge or escape of oil falling within subregulation (1) of this regulation; and
 - (b) a threat mentioned in subregulation (2), other than one excluded by subregulation (3), is referred to as a relevant threat of contamination falling within subregulation (2) of this regulation.
- (5) Where—
- (a) as a result of any occurrence, a liability is incurred under this regulation by the registered owner of each of two or more ships, but
 - (b) the damage or cost for which each of the registered owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

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

- (6) In this regulation (apart from subregulation (3)) “ship” includes a vessel which is not seagoing.”.

Substitution of regulation 6.

7. The principal Regulations are amended by substituting the following regulation for regulation 6—

“Exceptions from liability under regulations 4, 4A and 5.

- 6.(1) No liability shall be incurred by a person (“the defendant”) under regulation 4, 4A or 5 by reason of a discharge or escape of oil or bunker oil from a ship, or of a relevant threat of contamination, if the defendant proves that subregulation (2) applies.

- (2) This subregulation applies if the discharge or escape or the relevant threat of contamination—
- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
 - (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the defendant, 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.”.

Substitution of regulation 7.

8. The principal Regulations are amended by substituting the following regulation for regulation 7—

“Restriction of liability for pollution from oil or bunker oil.

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

- (a) there is a discharge or escape of oil from a ship to which regulation 4 applies or there arises a relevant threat of contamination falling within subregulation (2) of that regulation; or
- (b) there is a discharge or escape of oil falling within regulation 5(1) or there arises a relevant threat of contamination falling within regulation 5(2),

then, whether or not the registered owner of the ship in question incurs a liability under regulation 4 or 5—

- (i) he shall not be liable otherwise than under that regulation for any such damage or cost as is mentioned in it, and

- (ii) no person to whom this regulation 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) Subregulation (1)(ii) applies to—
- (a) any servant or agent of the registered 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 registered 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 or 5; and
 - (f) any servant or agent of a person falling within paragraph (c), (d) or (e).
- (3) Where, as a result of any occurrence—
- (a) there is a discharge or escape of bunker oil falling within regulation 4A(1); or
 - (b) there arises a relevant threat of contamination falling within regulation 4A(2),
- then, whether or not the owner of the ship in question incurs any liability under regulation 4A—

- (i) he shall not be liable otherwise than under that regulation for any such damage or cost as is mentioned in it; and
 - (ii) no person to whom this subparagraph 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.
- (4) Subregulation (3)(ii) applies to—
- (a) any servant or agent of the owner;
 - (b) any person not falling within paragraph (a) but engaged in any capacity on board the ship or to perform any service for the ship;
 - (c) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
 - (d) any person taking any such measures as are mentioned in subregulation (1)(b) or (2)(a) of regulation 4A;
 - (e) any servant or agent of a person falling within paragraph (c) or (d).
- (5) The liability of a person under regulation 4, 4A or 5 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.”.

Insertion of regulation 7A.

9. The principal Regulations are amended by inserting the following regulation after regulation 7—

“Liability under regulation 4, 4A or 5: supplementary provisions.

7A. For the purposes of these Regulations–

- (a) references to a discharge or escape of oil or bunker oil from a ship are references to such a discharge or escape wherever it may occur;
- (b) references to a discharge or escape of oil from a ship include a discharge or escape of oil carried in the bunkers of the ship;
- (c) where more than one discharge or escape of oil or bunker oil 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
- (d) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.”.

Amendment of the heading to Part III.

10. The principal Regulations are amended in the heading to Part III by inserting “UNDER REGULATION 4” after “LIMITATION OF LIABILITY”.

Amendments of regulation 8.

11. Regulation 8 of the principal Regulations is amended–

- (a) in subregulation (1)–
 - (i) by substituting “registered owner” for “owner”; and
 - (ii) by inserting “falling within subregulation (2) of that regulation” after “contamination”;
- (b) in subregulation (2)(a), by substituting “4.51 million” for “three million”;

- (c) in paragraph (2)(b), by substituting—
 - (i) “4.51 million” for “three million”;
 - (ii) “631” for “420”; and
 - (iii) “89.77” for “59.7”; and
- (d) in subregulation (3), by substituting “registered owner” for “owner”.

Amendments of regulation 9.

12. Regulation 9 of the principal Regulations is amended—

- (a) in subregulation (1), by substituting “registered owner” for “owner”; and
- (b) in subregulation (6)(a)—
 - (i) by substituting “registered owner” for “owner”; and
 - (ii) by inserting at the end, “(in relation to any insurance or other security provided as mentioned in subregulation (1) of that regulation)”.

Amendments of regulation 11.

13. Regulation 11 of the principal Regulations is amended by substituting “registered owner” for “owner” in the three places where it appears.

Amendment of regulation 13.

14. Regulation 13 of the principal Regulations is amended by substituting “regulation 4, 4A” for “regulation 4”.

Amendment of regulation 14.

15. Regulation 14 of the principal Regulations is amended in subregulation (7) by substituting “duly authorised person” for “police or customs officer”.

16. The principal Regulations are amended by inserting the following regulation after regulation 14–

“Compulsory insurance against liability for pollution from bunker oil.

- 14A.(1) Subject to the provisions of these Regulations relating to Government ships, subregulation (2) shall apply to any ship having a gross tonnage greater than 1,000 tons.
- (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 a Gibraltar ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force–
- (a) a contract of insurance or other security in respect of the ship satisfying the requirements of Article 7 of the Bunkers Convention; and
 - (b) a certificate complying with the provisions of subregulation (3) showing that there is in force in respect of the ship a contract of insurance or other security satisfying those requirements.
- (3) The certificate must be–
- (a) if the ship is a Gibraltar ship, a certificate issued by the Maritime Administrator;
 - (b) if the ship is registered in a Bunkers Convention country other than Gibraltar, a certificate issued by or under the authority of the government of the Bunkers Convention country in which the ship is registered; and
 - (c) if the ship is registered in a country which is not a Bunkers Convention country, a certificate issued by the Maritime Administrator or by or under the authority of the government of any Bunkers 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 other 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) by reason of there being no certificate in force as mentioned in that subregulation, the master or registered owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding level 5 on the standard scale.
- (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 5 on the standard scale.
- (7) If a ship attempts to leave the port of Gibraltar in contravention of subregulation (2), the ship may be detained by a duly authorised person.”.

Substitution of regulation 15.

17. The principal Regulations are amended by substituting the following regulation for regulation 15–

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

- 15.(1) Subject to subregulation (3), if the Maritime Administrator is satisfied, on the application for such a certificate as is mentioned in regulation 14(2) or 14A(2) in respect of a Gibraltar ship 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 may issue such a certificate to the registered owner.

- (2) Subject to subregulation (3), if the Maritime Administrator is satisfied, on the application for such a certificate as is mentioned in regulation 14(2) or 14A(2) in respect of a Gibraltar ship or a ship registered in any country which is not a Bunkers 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 7 of the Bunkers Convention, the Maritime Administrator may issue such a certificate to the registered owner.
- (3) The Maritime Administrator may refuse the certificate if he is of the opinion that there is a doubt whether—
 - (a) the person providing the insurance or other security will be able to meet his obligations thereunder; or
 - (b) the insurance or other security will cover the registered owner's liability under regulation 4, or the owner's liability under regulation 4A.
- (4) 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.
- (5) If a person required by an Order under subregulation (4) 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.
- (6) 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 Gibraltar ship.”.

Substitution of regulation 16.

18. The principal Regulations are amended by substituting the following regulation for regulation 16—

“Rights of third parties against insurers.

- 16.(1) Where it is alleged that the registered 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(2) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security.
- (2) Where it is alleged that the owner of a ship has incurred a liability under regulation 14A as a result of any discharge or escape of bunker 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 14A(2) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security.
- (3) In the following provisions of this regulation, “the insurer” means the person who provided the insurance or other security referred to in subregulation (1) or subregulation (2), as the case may be.
- (4) In any proceedings brought against the insurer by virtue of this regulation in respect of liability under regulation 4, it shall be a defence (in addition to any defence affecting the registered owner’s liability) to prove that the discharge or escape, or the threat of contamination, was due to the wilful misconduct of the registered owner himself.
- (5) The insurer may limit his liability in respect of claims in respect of liability under regulation 4 which are made against him by virtue of this regulation in like manner and to the same extent as the registered owner may limit his liability under regulation 8 but the insurer may do so whether or not the discharge or escape, or the threat of contamination, resulted

from anything done or omitted to be done by the registered owner as mentioned in regulation 8(3).

- (6) Where the registered owner and the insurer each apply to the court for the limitation of his liability (in relation to liability under regulation 4) any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.
- (7) In any proceedings brought against the insurer by virtue of this regulation in respect of liability under regulation 4A 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.
- (8) Where the owner and the insurer each apply to the court for the limitation of his liability (in relation to liability under regulation 4A) any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.”.

Substitution of regulation 17.

19. The principal Regulations are amended by substituting the following regulation for regulation 17—

“Jurisdiction of Gibraltar courts and registration of foreign judgments.

17.(1) Paragraph (e) of section 20(2) of the United Kingdom's 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) there is a discharge or escape of oil from a ship to which regulation 4 applies, or a discharge or escape of oil falling within regulation 5(1), which 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 falling within regulation 4(2) or 5(2) 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 registered owner of the ship, or
- (ii) against any person to whom regulation 7(3)(b) applies,

unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(3) In subregulation (2), “relevant 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 of contamination 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)(b)(ii) as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b).

(4) Where—

- (a) there is a discharge or escape of bunker oil falling within regulation 4A(1) which does not result in any damage caused by contamination in Gibraltar and no measures are reasonably taken to prevent or minimise such damage; or
- (b) any relevant threat of contamination falling within regulation 4A(2) 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)(ii) applies,

unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(5) In subregulation (4), “relevant 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 Bunkers 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 Bunkers Convention country;
- (b) in relation to any such threat of contamination 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 Bunkers Convention country; or

- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b),

and regulation 7(4)(d) shall have effect for the purpose of subregulation (4)(b)(ii) above as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b).

- (6) 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 subsections (2) and (3) of section 7 of that Act.”.

Amendments of regulation 18.

20. Regulation 18 of the principal Regulations is amended—

- (a) by substituting the following subregulation for subregulation (2)—

“(2) In relation to a ship owned by a State and for the time being used for commercial purposes—

- (a) it shall be 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 that Convention; and

- (b) it shall be sufficient compliance with regulation 14A(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 1 of the Bunkers Convention will be met”.

- (b) by inserting the following subregulation after subregulation (3)–

“(4) Every Bunkers 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 4A, 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.”.

Amendments of regulation 19.

21. Regulation 19 of the principal Regulations is amended by substituting “regulation 4A or 5” for “regulation 5” where it appears including in the heading.

Amendments of regulation 21.

22. Regulation 21 of the principal Regulations is amended–

- (a) in subregulation (1), by inserting “and to the Supplementary Fund” after “to the Fund”;
- (b) by substituting the following for subregulation (3)–

“(3) Contributions shall also be payable–

- (a) 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; and

- (b) to the Supplementary 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 Supplementary Fund Protocol country.”;
- (c) by substituting the following for subregulation (7)–
 - “(7) The contributions payable by a person for any year shall be–
 - (a) of such amount as may be determined–
 - (i) in the case of contributions to the Fund by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund;
 - (ii) in the case of contributions to the Supplementary Fund, by the Director of the Supplementary Fund under Article 11 of the Supplementary Fund Protocol and notified to that person by the Supplementary Fund; and
 - (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 or the Assembly of the Supplementary Fund, until it is paid.”.

Amendments of regulation 22.

23. Regulation 22 of the principal Regulations is amended–

- (a) in subregulation (1), after each reference to “the Fund” by inserting “or the Supplementary Fund”; and
- (b) in subregulation (4)–

- (i) after the first reference to “the Fund” by inserting “or the Supplementary Fund”; and
- (ii) for the second reference to “the Fund” by substituting “either of those Funds”.

Insertion of regulations 24A and 24B.

24. The principal Regulations are amended by inserting the following regulations after regulation 24–

“Liability of the Supplementary Fund.

- 24A.(1) The Supplementary Fund shall be liable for pollution damage in Gibraltar in accordance with the Supplementary Fund Protocol in the circumstances mentioned in paragraph 1 of Article 4 of that Protocol (cases where full compensation cannot be obtained because of the limit imposed by paragraph 4 of Article 4 of the Fund Convention).
- (2) Subregulation (1) shall apply with the substitution for the words “Gibraltar” of the words “a Supplementary Fund Protocol country” where–
 - (a) the headquarters of the Supplementary Fund is for the time being in Gibraltar, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country; or
 - (b) the incident has caused pollution damage in Gibraltar and in another Supplementary Fund Protocol country, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country or in Gibraltar.
 - (3) Nothing in this regulation applies to pollution damage resulting from an incident if–

- (a) in the case of a single occurrence, it took place before the day on which the Supplementary Fund Protocol enters into force as respects Gibraltar; or
- (b) in the case of a series of occurrences having the same origin, the first of those occurrences took place before that day.

Limitation of the Supplementary Fund's liability under regulation 24A.

24B.(1) The Supplementary Fund's liability under regulation 24A shall be subject to—

- (a) paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (which impose an overall limit on the liabilities of the Supplementary Fund); and
 - (b) paragraphs 2 and 3 of Article 15 of the Supplementary Fund Protocol (which prevent the Supplementary Fund from paying compensation temporarily and permanently where obligations to communicate information to the Director under paragraph 1 of Article 13 and paragraph 1 of Article 15 have not been met).
- (2) For the purpose of giving effect to paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol a court giving judgment against the Supplementary Fund in proceedings under regulation 24A shall notify the Supplementary 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 Supplementary 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.
- (3) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subregulation (2) 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 date, namely the date referred to in paragraph 2(b) of Article 4 of the Supplementary Fund Protocol; or
 - (ii) if no sum has been so fixed for the relevant date, the last day before that date for which a sum has been so fixed; and
 - (b) a certificate given by or on behalf of the Minister for finance stating—
 - (i) that a particular sum in sterling has been so fixed for the relevant date, or
 - (ii) that no sum has been so fixed for the relevant date 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 date,

shall be conclusive evidence of those matters for the purposes of this Part of these Regulations.

- (4) Any document purporting to be such a certificate as is mentioned in subregulation (3)(b) shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

- (5) The text of paragraphs 1, 2 and 3 of Article 4, paragraph 1 of Article 13 and paragraphs 1, 2 and 3 of Article 15 of the Supplementary Fund Protocol is set out in Part II of the Schedule”.

Substitution of regulation 25.

25. The principal Regulations are amended by substituting the following regulation for regulation 25–

“Jurisdiction and effect of judgments.

- 25.(1) Paragraph (e) of section 20(2) of the United Kingdom’s 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 or the Supplementary 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–
- (a) the notice shall be deemed to have been given to the Supplementary Fund as well; and
 - (b) any judgment given in the proceedings shall, after it has become final and enforceable, become binding on the Fund and the Supplementary Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund or the Supplementary Fund even if it 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—
- (a) 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
 - (b) any judgment given by a court in a Supplementary Fund Protocol country to enforce a claim in respect of liability incurred under any provision corresponding to regulation 24A,

and in its application to such a judgment the Judgments (Reciprocal Enforcement) Act shall have effect with the omission of subsections (2) and (3) of section 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 that leave shall not be given unless and until—
- (a) in the case of a judgement within subregulation (4)(a), the Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 4 and 5 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 case of a judgment within subregulation (4)(b), the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (as set out in Part II of the Schedule) or that it is to be reduced to a specified amount.
- (6) Where the court is so notified that a claim is to be reduced to a specified amount, the judgment shall be enforceable only for the reduced amount.”.

Amendment of regulation 26.

26. Regulation 26 of the principal Regulations is amended by inserting the following subregulations after subregulation (2)–

“(3) Subregulations (1) and (2) apply in relation to claims against the Supplementary Fund as they apply in relation to claims against the Fund (with the substitution for the reference to the Fund in subregulation (1)(b) of a reference to the Supplementary Fund).

(4) For the purposes of this regulation–

- (a) a person who commences an action to enforce a claim against the Fund in relation to any damage shall be deemed to have also commenced an action to enforce any claim he may have against the Supplementary Fund in relation to that damage; and
- (b) a person who gives a third party notice to the Fund in relation to any damage as mentioned in subregulation (1)(b) shall be deemed to have also given a notice to the Supplementary Fund in relation to that damage.”.

Amendment of regulation 27.

27. Regulation 27 of the principal Regulations is amended–

(a) by inserting the following subregulation after subregulation (1)–

“(1A) In respect of any sum paid by the Supplementary Fund as compensation for pollution damage the Supplementary 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.”;

(b) by inserting in subregulation (2) “or the Supplementary Fund” after “the Fund”.

Amendment of regulation 28.

28. Regulation 28 of the principal Regulations is amended by inserting the following subregulation after subregulation (2)–

“(3) Subregulations (1) and (2) apply in relation to the Supplementary Fund as they apply in relation to the Fund (with the substitution for references to the Director, any organ or an official of the Fund of references to the Director, any organ or an official of the Supplementary Fund).”.

Amendment to the Schedule.

29. The Schedule of the principal Regulations is amended–

- (a) at paragraphs 4(a) and (b) by substituting “203” for “135”;
- (b) at paragraph 4(c) by substituting “300.74” for “200”; and
- (c) by inserting the following after paragraph 5–

“PART II

SUPPLEMENTARY FUND LIABILITY

Article 4—paragraphs 1, 2 and 3

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.

2.

- (a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention

within the scope of application of this Protocol shall not exceed 750 million units of account.

- (b) The amount of 750 million units of account mentioned in paragraph 2(a) 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 determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.

3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, 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 Protocol shall be the same for all claimants.

Article 13—paragraph 1

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

Article 15—paragraphs 1, 2 and 3

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.

2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.”.

Dated 20th November, 2008.

J J HOLLIDAY,

Minister with responsibility for Port and Shipping.

EXPLANATORY MEMORANDUM

These Regulations amend the Merchant Shipping (Oil Pollution) Regulations, 1999 in order to give effect to—

- (a) Council Decision 2002/762/EC authorising the Member States, in the interests of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the Bunkers Convention);
- (b) Council Decision 2004/246/EC authorising the Member States to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992; and
- (c) IMO Resolution Leg.1/82 and IMO Resolution Leg.2/82 adopted at the 82nd Session of the Legal Committee of the International Maritime Organisation.