Changes to Legislation: as of 17 June 2025, this Act is up to date with all changes known to be in force.

Number 9 *of* 2005

SEA POLLUTION (HAZARDOUS SUBSTANCES) (COMPENSATION) ACT 2005

REVISED

Updated to 22 November 2021

This Revised Act is an administrative consolidation of the *Sea Pollution (Hazardous Substances) (Compensation) Act 2005*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Child and Family Agency (Amendment) Act 2021* (34/2021), enacted 24 November 2021, and all statutory instruments up to and including the *Maritime Jurisdiction Act 2021 (Commencement) Order 2021* (S.I. No. 601 of 2021), made 17 November 2021, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

Number 9 *of* 2005

SEA POLLUTION (HAZARDOUS SUBSTANCES) (COMPENSATION) ACT 2005

REVISED

Updated to 22 November 2021

ARRANGEMENT OF SECTIONS

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SCHEDULE 1

INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA, 1996

SCHEDULE 2

PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

ACTS REFERRED TO

Number 9 *of* 2005

SEA POLLUTION (HAZARDOUS SUBSTANCES) (COMPENSATION) ACT 2005

REVISED

Updated to 22 November 2021

AN ACT TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA, 1996, DONE AT LONDON ON THE 3RD DAY OF MAY, 1996; TO GIVE EFFECT TO THE PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976, DONE AT LONDON ON THE 2nd DAY OF MAY, 1996, AND FOR THAT PURPOSE TO AMEND THE MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) ACT 1996; TO AMEND THE OIL POLLUTION OF THE SEA (CIVIL LIABILITY AND COMPENSATION) ACT 1988; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[30*th May,* 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

C1 Functions transferred and references to "Minister for" and "Department of Communications, Marine and Natural Resources" construed (1.01.2006) by *Maritime Transport, Safety and Security (Transfer of Departmental Administration and Ministerial Functions) Order 2005* (S.I. No. 842 of 2005), arts. 3, 4, 8 and 9, in effect as per art. 1(2), subject to transitional provisions in arts. 5, 6 and 7. (Note: name of Minister and Department changed (2.04.2011) to Transport, Tourism and Sport by *Transport (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 141 of 2011)).

3. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 4 of this Order are transferred to the Department of Transport.

(2) References to the Department of Communications, Marine and Natural Resources contained in any Act or instrument made thereunder and relating to any administration and business transferred by paragraph (1) of this Article shall, from the commencement of this Order, be construed as references to the Department of Transport.

4. (1) The functions vested in the Minister for Communications, Marine and Natural Resources -

(a) by or under the Acts specified in Part 1,

...

(2) References to the Minister for Communications, Marine and Natural Resources contained in any Act or instrument made thereunder and relating to any functions transferred by this Article shall, from the commencement of this Order, be construed as references to the Minister for Transport.

...

8. References to the Minister for Communications, Marine and Natural Resources contained in the memorandum and articles of association of any company and relating to any function transferred by this Order shall, on and after the commencement of this Order, be construed as references to the Minister for Transport.

9. (1) All property, rights and liabilities held, enjoyed or incurred before the commencement of this Order by the Minister for Communications, Marine and Natural Resources, in connection with the functions transferred by this Order are transferred to the Minister for Transport and, accordingly, without any further conveyance, transfer or assignment, from such commencement -

(a) that property, real and personal shall vest in the Minister for Transport,

(b) those rights shall be enjoyed by the Minister for Transport, and

(c) those liabilities shall be the liabilities of the Minister for Transport.

(2) All moneys, stocks, shares and securities transferred to the Minister for Transport by this Article which, on such commencement, are standing in the name of the Minister for Communications, Marine and Natural Resources shall on the request of the Minister for Transport be transferred into the name of the Minister for Transport.

Schedule

Article 4(1)

Part 1

Acts

...

Merchant Shipping Acts 1894 to 2005

Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 to 2005

...

Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (No. 9 of 2005)

...

Editorial Notes:

E1 Where liability or compensation provided for by Act, alternative remedy in respect of environmental damage or an imminent threat of such damage excluded (1.04.2009) by *European Communities (Environmental Liability) Regulations 2008* (S.I. No. 547 of 2008), reg. 4(2) and sch. 4 para. 3, in effect as per reg. 1(2).

PART 1

Preliminary and General

Short title, collective citation, collective construction and commencement.

1.—(1) This Act may be cited as the Sea Pollution (Hazardous Substances) (Compensation) Act 2005.

(2) The Merchant Shipping Acts 1894 to 2000, and *section 28* may be cited together as the Merchant Shipping Acts 1894 to 2005 and shall be construed together as one Act.

(3) The Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 to 2003, and *section 29* may be cited together as the Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 to 2005.

(4) This Act shall come into operation on such day or days as the Minister may, by order or orders, appoint, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.

Annotations

Editorial Notes:

E2 Power pursuant to subs. (4) exercised (9.08.2007) by *Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (Commencement) Order 2007* (S.I. No. 586 of 2007).

2. The 9th day of August 2007 is appointed as the day upon which the following provisions of the Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (No. 9 of 2005) shall come into operation:

(a) sections 1, 2, 3, 4, and 5;

(b) Part 3; and

(c) Schedule 2.

Interpretation.

2.—(1) In this Act, except where the context otherwise requires—

"the Central Bank" means the F1**[**Central Bank of Ireland**]**;

"the Convention" means the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, done at London on the 3rd day of May, 1996;

"convention court" means, in relation to a State Party (other than the State)—

(*a*) any court or tribunal that under the law of that State Party has jurisdiction to determine liability in respect of damage incurred, and to award compensation therefor, or

(*b*) any court or tribunal that under the law of that State Party has jurisdiction to, adjudicate on any appeal from, or review, a judgment of a court or tribunal referred to in *paragraph (a)*;

"Council Regulation" means Council Regulation (EC) No. 44/2001[1] of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

"final judgment" shall be construed in accordance with *section 17(3)*;

"functions" includes powers and duties, and references to the performance of functions include references to the exercise of powers and the carrying out of duties;

"harbour authority" means—

(*a*) in the case of a harbour to which the Harbours Act 1946 applies, a harbour authority within the meaning of that Act;

(*b*) in the case of a harbour under the control of a company established pursuant to section 7 of the Harbours Act 1996 the company concerned;

(*c*) in the case of a fishery harbour centre to which the Fishery Harbour Centres Act 1968 applies, the Minister;

(*d*) in the case of a harbour under the control of a local authority, the local authority concerned;

[1]O.J. No. L12 of 16.1.2001, p.1

(*e*) in the case of a harbour under the management of Iarnród Éireann — Irish Rail, Iarnród Éireann — Irish Rail;

"inspector" means—

(*a*) a person appointed to be an inspector under *section 23*,

(*b*) a person holding commissioned rank in the Permanent Defence Forces, while in uniform,

(*c*) a member of the Garda Síochána, while in uniform,

(*d*) as respects the harbour of which he or she is the harbour master, a person appointed to be a harbour master by a harbour authority;

"judgment" means a decision of a convention court made in accordance with the provisions of the Convention awarding compensation to a person in respect of damage incurred by him or her;

"judgment debtor" means the person against whom a convention court has given a final judgment;

"Member State" means a Member State of the European Community (other than the State and Denmark);

"Minister" means the Minister for Communications, Marine and Natural Resources;

"State Party" means a state that is declared by order under *section 9* to be a State Party to the Convention.

F2**[**(2) A reference in this Act to the State includes a reference to—

(*a*) the internal waters of the State,

(*b*) the territorial sea of the State, its seabed and subsoil, and

(*c*) the exclusive economic zone within the meaning of the Maritime Jurisdiction Act 2021.**]**

(3) A word or expression that is used in this Act and that is also used in the Convention has, in this Act, the meaning that it has in the Convention.

(4) In this Act—

(*a*) a reference to a section or Schedule is a reference to a section of, or a Schedule to, this Act, unless it is indicated that reference to some other enactment is intended,

(*b*) a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

(*c*) a reference to any enactment is a reference to that enactment as amended, extended or adapted, whether before or after the commencement of this section, by or under any subsequent enactment.

Annotations

Amendments:

F1 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(14) and sch. 2 part 14 para. 21, S.I. No. 469 of 2010.

F2 Substituted (22.11.2021) by *Maritime Jurisdiction Act 2021* (28/2021), s. 20(3) and sch. 2 item 33, S.I. No. 601 of 2021, art 2.

Editorial Notes:

E3 Previous affecting provision: subs. (2) substituted (4.04.2006) by *Sea-Fisheries and Maritime Jurisdiction Act 2006* (8/2006), s. 93(9), commenced on enactment; substituted as per F-note above.

Orders.

3.—(1) The Minister may by order amend or revoke an order made by him or her under this Act (other than an order under *section 1(4)* but including an order under this subsection).

(2) An order under *subsection (1)* shall be made in the like manner and its making shall be subject to the like (if any) consents and conditions as the order that it is amending or revoking.

Laying of orders and regulations before Houses of Oireachtas.

4.—Every order and regulation under this Act (other than an order under *section 1(4)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling such order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Penalties and offences.

6.—(1) (*a*) A person guilty of an offence under *section 15* shall be liable—

(i) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding €1,270,000, or to imprisonment for a term not exceeding 5 years, or to both.

(*b*) A person guilty of an offence under this Act (other than *section 15*) shall be liable—

(i) on summary conviction to a fine not exceeding €3,000, or to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding €13,000, or to imprisonment for a term not exceeding 2 years, or to both.

(2) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under *section 15* as if, in lieu of the penalties specified in subsection (3)(*a*) of that section, there were specified therein the penalties provided for in *subsection (1)(a)(i)*, and the reference in subsection (2)(*a*) of the said section 13 to the penalties provided for by subsection (3) shall be construed and have effect accordingly.

(3) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this Act (other than *section 15*) as if, in lieu of the penalties specified in subsection (3)(*a*) of that section, there were specified therein the penalties provided for in *subsection (1)(b)(i)*, and the reference in subsection (2)(*a*) of the said section 13 to the penalties provided for by subsection (3) shall be construed and have effect accordingly.

(4) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to,

any neglect on the part of any director, manager, secretary or other officer of such body corporate or a person who was purporting to act in any such capacity, that officer or person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Proceedings.

7.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Minister.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted—

(*a*) within 2 years from the date on which the offence was committed, and

(*b*) if at the end of that period, the person to be charged is outside the State, within 2 months of the date on which he or she next enters the State.

(3) References in section 382 of the Companies Act 1963 to a company shall, for the purposes of this Act, be construed as including references to a body corporate (whether or not a company within the meaning of that section) charged on indictment with an offence under this Act.

PART 2

Convention of 1996

Convention to have force of law.

8.—(1) Subject to the provisions of this Act, the Convention (other than Article 48 in so far as it relates to paragraph 1 of Article 9) shall have the force of law in the State and judicial notice shall be taken thereof.

(2) Where the Convention requires the State to impose a duty on any person the duty concerned shall, by virtue of *subsection (1)*, be deemed to be so imposed.

(3) For convenience of reference, the text, in the English language, of the Convention is set out in *Schedule 1*.

Order declaring state (other than State) to be State Party.

9.—The Minister may by order declare that any state specified in the order is a State Party to the Convention and such an order shall be evidence that that state is a State Party to the Convention.

Hazardous and Noxious Substances Fund.

10.—(1) The Hazardous and Noxious Substances Fund (hereafter referred to in this Act as "the Fund") is hereby recognised as, and as having all the attributes of, a body corporate, including perpetual succession, the power to acquire, hold and dispose of land or other property and the power to sue, and may be sued in its corporate name.

(2) The Director of the Fund is hereby recognised as being the legal representative of the Fund.

(3) The reference in paragraph 1 of Article 35 of the Convention to all State Parties shall be construed as a reference to the State.

Conversion of amounts in units of account into currency of State for purposes of Convention.

11.—(1) For the purpose of the limits of liability specified in Article 9 of the Convention, the value in the currency of the State of a unit of account shall be taken to be its value, ascertained in accordance with paragraph 9 of that Article, in that currency on the day specified in subparagraph (*a*) of the said paragraph 9 or, if its value on that day cannot be so ascertained, its value in that currency on the latest day, on which it can be so ascertained, before the first-mentioned day.

(2) For the purposes of Article 14 of the Convention, the value in the currency of the State of a unit of account shall be taken to be its value, ascertained in accordance with paragraph 5(*d*) of that Article, in that currency on the day specified in the said paragraph 5(*d*) or, if its value on that day cannot be so ascertained, its value on the latest day, on which it can be so ascertained, before the first-mentioned day.

(3) For the purposes of this section, a certificate purporting to be signed by an officer of the Central Bank and stating that—

(*a*) a specified amount in the currency of the State is the value of a unit of account on a specified day, or

(*b*) the value in the currency of the State of a unit of account on a specified day cannot be ascertained in accordance with the Convention and that a specified amount in the currency of the State is the value of a unit of account ascertained in accordance with that Convention on a specified day (being the latest day, on which such value can be so ascertained, before the first-mentioned specified day),

shall be admissible as evidence of the matters stated in the certificate.

Act not to apply to certain ships.

12.—The Minister may, by order declare that this Act shall not apply to ships in respect of which a declaration has been made under Article 5 of the Convention.

Construction of reference to competent public authority.

13.—The reference in paragraph 5(*d*) of Article 7 of the Convention to a competent public authority shall be construed as a reference to the Minister or a harbour authority.

Limitation of liability.

14.—(1) The owner of a ship who, or who it is alleged, has incurred a liability under Article 7 of the Convention may (whether proceedings for the recovery of compensation in respect of damage incurred resulting from a specific incident have been instituted against him or her, or not) apply to the High Court for an order limiting his or her liability in accordance with Article 9 of the Convention.

(2) Upon application being made under *subsection (1)* by the owner of the ship concerned (hereafter in this section referred to as "the applicant"), the High Court shall—

(*a*) if satisfied that were it to find that the applicant had incurred a liability under the said Article 7 he or she would be entitled to limit his or her liability in accordance with the said Article 9, and

(*b*) if the applicant pays into court, in accordance with paragraph 3 of that Article, such sum as, in the opinion of the court is equal to the maximum amount of compensation that the owner of the ship would, if he or she so limited his or her liability, be liable to pay in respect of damage caused as a result of the incident concerned,

make an order—

(i) declaring that where the applicant is so found to have incurred a liability under the said Article 7 the said applicant's liability in respect of damage resulting from the incident concerned shall be limited to the amount of the sum so paid into court, and

(ii) that such amounts as may be determined by that court be paid out of the said sum, in accordance with paragraph 4 of Article 9 of the Convention, to such persons (if any) as the court determines are entitled to receive compensation from the said applicant in respect of damage incurred resulting from the incident concerned.

Insurance of ships.

15.—(1) The owner of an Irish ship or a ship registered in a state, other than the State or another State Party, may apply to the Minister for a compulsory insurance certificate.

(2) The Minister shall, on being satisfied that there is in force, in respect of a ship to which an application under *subsection (1)* applies, a contract of insurance or other financial security that complies with Article 12 of the Convention, issue a compulsory insurance certificate to the owner thereof.

(3) The owner and master of an Irish ship that—

(*a*) is carrying hazardous and noxious substances, and

(*b*) does not have on board a compulsory insurance certificate issued by the Minister under *subsection (1)*,

shall each be guilty of an offence.

(4) The owner and master of a ship that—

(*a*) is carrying hazardous and noxious substances,

(*b*) is registered in a State Party other than the State, and

(*c*) does not have on board a compulsory insurance certificate that complies with, and is issued or certified in accordance with, the said Article 12,

shall, while the ship concerned is in the State, each be guilty of an offence.

(5) The owner and master of a ship that—

(*a*) is carrying hazardous and noxious substances,

(*b*) is not registered in the State or another State Party, and

(*c*) does not have on board—

(i) a compulsory insurance certificate issued by the Minister under *subsection (1)*, or

(ii) a compulsory insurance certificate that otherwise complies with, and is issued or certified in accordance with, the said Article 12,

shall, while the ship concerned is in the State, each be guilty of an offence.

(6) An application under *subsection (1)* shall be accompanied by such fee, not exceeding the expense incurred by the Minister in considering such application and issuing a compulsory insurance certificate, as may be prescribed by the Minister.

(7) The Public Offices Fees Act 1879 shall not apply to fees under this section.

(8) In this section—

"compulsory insurance certificate" shall be construed in accordance with Article 12 of the Convention;

"Irish ship" shall be construed in accordance with section 9 of the Mercantile Marine Act 1955.

Annotations

Amendments:

F3 Substituted by *Merchant Shipping (Registration of Ships) Act 2014* (43/2014), s. 68 and sch. 4, not commenced as of date of revision.

Modifications (not altering text):

C2 Prospective affecting provision: definition of "Irish ship" substituted by *Merchant Shipping (Registration of Ships) Act 2014* (43/2014), s. 68 and sch. 4, not commenced as of date of revision.

F3**[**"Irish ship" shall be construed in accordance with section 33 of the Merchant Shipping (Registration of Ships) Act 2014.**]**

Actions for compensation under Convention.

16.—(1) An action for compensation under the Convention (hereafter in this section referred to as a "convention action") shall be deemed for the purposes of every enactment and rule of law to be an action founded on tort.

(2) *Subsection (1)* shall not have the effect of applying to a convention action a provision of an enactment or rule of law that is inconsistent with a provision of the Convention.

(3) A convention action shall be brought in the High Court.

Final judgment to be recognised and enforceable in State.

17.—(1) A final judgment shall be recognised and enforceable in the State.

(2) An application for the enforcement of a final judgment shall be made to the High Court.

(3) For the purposes of this Act a judgment shall be deemed to be a final judgment where—

(*a*) the time within which, under the law of the State Party concerned, an appeal against the judgment may be brought has expired and no such appeal has been brought,

(*b*) under the law of the State Party concerned there is no provision for an appeal from such judgment,

(*c*) an appeal against the judgment has been withdrawn, or

(*d*) the judgment has been affirmed on appeal by the convention court hearing such appeal, and

(i) the time within which, under the law of the State Party concerned, an appeal against the decision to so affirm has expired and no such appeal has been brought,

(ii) under the law of the State Party concerned there is no provision for an appeal from the decision to so affirm, or

(iii) an appeal against the decision to so affirm has been withdrawn.

(4) This section shall not apply to a judgment of a court of a Member State (other than a court or tribunal of a territory of a Member State to which the Council Regulation does not apply).

Application for enforcement order.

18.—(1) Subject to *subsection (2)*, the High Court shall, on the hearing of an application for an order for the enforcement of a final judgment, make such an order to the extent that the amount of the compensation to which the judgment relates has not been satisfied.

(2) The High Court shall not make an order for the enforcement of a judgment where—

(*a*) the judgment concerned is not a final judgment,

(*b*) the judgment debtor was not served with the document instituting the proceedings in which the judgment was given in sufficient time to enable him or her to arrange for his or her defence, notwithstanding that notice of the proceedings may have been duly served on him or her in the State Party concerned, or

(*c*) the judgment concerned was obtained by fraud.

(3) Where, at the hearing of an appeal against an order under *subsection (1)*, the appellant satisfies the court that the judgment in respect of which such order was made is not a final judgment, the court may, on such terms as it considers appropriate—

(*a*) set aside the enforcement order, or

(*b*) adjourn the appeal pending—

(i) in circumstances where no appeal against the judgment is brought in the State Party concerned, the expiration of the period within which, under the law of that State Party, an appeal against the judgment may be brought, or

(ii) in circumstances where such an appeal is brought, the outcome of any such appeal.

(4) This section shall not apply to a judgment of a court of a Member State (other than a court or tribunal of a territory of a Member State to which the Council Regulation does not apply).

Payment of interest on judgment and payment of costs.

19.—(1) An order under *section 18* may, at the discretion of the court provide for the payment to the applicant concerned by the respondent concerned of the reasonable costs of or incidental to the application for the order.

(2) Where, on an application for an order under *section 18*, it is shown that, in accordance with the law of the State Party in which the judgment was given, interest on a sum, the payment of which is provided for in the judgment, is recoverable under the judgment at a particular rate or rates and from a particular date or time, the order, if made, shall provide that the person by whom the sum aforesaid is payable shall also be liable to pay the interest aforesaid apart from any interest on costs recoverable by virtue of *subsection (1)*, in accordance with the particulars noted in the order, and the amount of the interest shall be recoverable by the applicant concerned as if it were part of the sum aforesaid:

Provided that where the judgment debtor limited his or her liability in accordance with Article 9 of the Convention the aggregate of the interest payable by virtue of this subsection and the amount of compensation payable by the judgment debtor in respect of the incident concerned shall not exceed the maximum amount of compensation payable under that Article in respect of any one incident caused by hazardous and noxious substances carried on board the ship concerned.

(3) Interest shall be payable on a sum referred to in *subsection (2)* of this section only as provided for by this section.

Effect of order under *section 18*.

20.—A final judgment in respect of which an order under *section 18* has been made shall, to the extent to which the enforcement of that judgment is authorised by the enforcement order, be of the same force and effect as if the judgment were a judgment of the High Court.

Documents required to accompany application for order under *section 18*.

21.—(1) The following documents shall be attached to an application for an order under *section 18*, that is to say:

(*a*) a duly certified copy of the judgment to which the application relates,

(*b*) in the case of a judgment that was given in default of appearance or defence, a duly certified copy of the document that establishes that the party in default was served with the document instituting the proceedings to which the said judgment relates or with an equivalent document, and

(*c*) if the High Court so requires, a translation of the documents specified in *paragraphs (a)* and *(b)* certified as being a correct translation thereof by a person who is competent to so certify.

(2) For the purposes of this section—

(*a*) a document purporting to be a copy of a judgment shall be deemed to be duly certified if it purports—

(i) to bear the seal of the convention court that gave it, or

(ii) to be certified by any person in his or her capacity as a judge or officer of that court as being a true copy of the judgment, and

(*b*) a document purporting to be a copy of a document specified in *subsection (1)(b)* shall be deemed to be duly certified if it purports to be certified by a person who in relation to the convention court concerned performs functions the same as or similar to those performed in relation to a court in the State by the registrar or clerk thereof, as being a true copy of such document.

Recognition and enforcement of judgment of court or tribunal of Member State of European Community.

22.—The Council Regulation and the European Communities (Civil and Commercial Judgments) Regulations 2002 (S.I. No. 52 of 2002) shall apply in respect of a judgment of a court or tribunal of a Member State (other than a court or tribunal of a territory of a Member State to which the Council Regulation does not apply).

Inspectors.

23.—(1) The Minister may appoint such persons or classes of persons as he or she considers appropriate to be inspectors for the purposes of this Act.

(2) A person appointed under *subsection (1)* shall, on his or her appointment, be furnished by the Minister with a warrant of his or her appointment and when exercising a power conferred by this Act shall, if requested by any person thereby affected, produce such warrant to that person for inspection.

(3) Whenever an inspector has reasonable grounds for believing that an offence has been committed in relation to a ship under this section or *section 15* and the ship concerned is in the State he or she may detain the ship or take it to such place in the State as he or she considers appropriate and there detain it.

(4) An inspector may, for the purposes of this Act—

(*a*) stop and board any ship,

(*b*) inspect and examine the ship,

(*c*) inspect and take copies of, or of extracts from the ship's log (if any) and the ship's manifest (if any) and any other records or documents on board the ship relating to the ship or its owner,

(*d*) require the master or any member of the crew of the ship to furnish him or her with such information or documents and give to him or her such assistance

as he or she may reasonably require for the purpose of carrying out his or her functions under this Act,

(*e*) inspect and examine any cargo carried on board the ship, or

(*f*) inspect, examine and take samples of any hazardous and noxious substances carried on board the ship.

(5) A person who obstructs or interferes with an inspector in the performance of his or her functions under this Act or who fails or refuses to comply with a requirement of an inspector under *subsection (4)* shall be guilty of an offence.

(6) If a ship that has been detained pursuant to this section leaves or attempts to leave the place at which it has been detained the owner and the master of the ship concerned shall each be guilty of an offence.

Detention of ships.

24.—(1) Where an inspector, in exercise of the powers conferred on him or her by this Act, detains a ship and the persons on board the ship at a port or other place in the State, an inspector who suspects that an offence under *section 15* or *23* has been committed in relation to the ship shall (unless he or she is proceeding under *subsection (2)*), as soon as may be, apply to a judge of the District Court for an order authorising the continued detention of the ship and those persons, and the said judge may grant an order authorising such detention for a period of 48 hours if he or she is satisfied that the applicant inspector has such a suspicion as aforementioned.

(2) Where an inspector, in exercise of the powers conferred on him or her by this Act, detains a ship and the persons on board the ship at a port or other place in the State, an inspector shall, as soon as may be, bring the master of the ship and any other persons on board the ship, against whom proceedings for an offence under *section 15* or *23(6)* have been or are about to be instituted, before a judge of the District Court and thereupon the said judge shall, if he or she is satisfied that such proceedings have been or are about to be instituted against the master and those other persons or any one or more of them, by order directed to an inspector, require such inspector to detain at a specified place in the State the ship and each person (including the master) aforesaid in respect of whom he or she is so satisfied, until such proceedings have been adjudicated upon by a court in exercise of its criminal jurisdiction, and when such proceedings are so adjudicated upon the judge of the court concerned may, by order, direct an inspector to further detain the ship at a specified place in the State pending the determination of any appeal from the adjudication concerned or the determination of any other proceedings connected with such adjudication or appeal.

(3) Where an inspector, pursuant to an order under *subsection (1)*, continues to detain a ship and the persons on board the ship at a port or other place in the State, an inspector may bring the master and any other persons on board the ship, against whom proceedings for an offence under *section 15* or *23(6)* have been or are about to be instituted, before a judge of the District Court and such judge shall—

(*a*) before the expiration of the period of 48 hours to which the said order applies, and

(*b*) if he or she is satisfied that such proceedings have been or are about to be instituted against the master and those other persons or any one or more of them,

by order directed to an inspector, require such inspector to detain at a specified place in the State the ship and each person (including the master) aforesaid in respect of whom he or she is so satisfied until such proceedings have been adjudicated upon by a court in exercise of its criminal jurisdiction, and when such proceedings are so adjudicated upon the judge of the court concerned may, by order, direct an inspector to further detain the ship at a specified place in the State pending the determination

of any appeal from the adjudication concerned or the determination of any other proceedings connected with such adjudication or appeal.

(4) Where an order is made under *subsection (2)* or *(3)*, a judge of the District Court or, as may be appropriate, the judge of the court adjudicating upon proceedings referred to in those subsections or that has adjudicated upon such proceedings, may by order direct an inspector to release the ship to which the order applies, subject to the giving of security, by or on behalf of the defendant, that in the opinion of the judge concerned would be adequate to provide for the payment of—

(*a*) (i) in circumstances where a court has not yet adjudicated upon such proceedings, the maximum fine for which the defendant would be liable if guilty of the offence to which the proceedings relate, or

(ii) in circumstances where the defendant has been convicted in such proceedings, any fine imposed by the court concerned,

and

(*b*) the estimated amount of the costs (if any) of any trials, appeals or other proceedings in relation to such an offence for which the defendant would be liable if convicted thereof or would be liable, if on appeal from a conviction for such offence or on the conclusion of any other proceedings connected with such conviction, the conviction were affirmed.

(5) *Subsection (3)* is in addition to and not in substitution for any other power of a court to require the entering into of a bond or recognisance by the defendant in respect of any trials, appeals or other proceedings to which the offence concerned relates.

(6) Where an order is made under this section for the detention or release of a ship, the ship shall be detained or released, as the case may be, in accordance with the terms of the order.

Recovery of fines etc. for certain offences.

25.—(1) The following provisions shall have effect in relation to the recovery of a fine for an offence under this Act committed by the owner or master of the ship concerned and the costs (if any) ordered to be paid in respect of proceedings for such offence:

(*a*) the court concerned shall fix a time within which such fine and costs (if any) are to be paid;

(*b*) where the ship concerned is detained under *section 24(2)* or *(3)* the court shall by order direct an inspector to further detain the ship at a specified place in the State until such fine and costs (if any) are paid, and the inspector shall comply with such order;

(*c*) where such fine and costs (if any) are not paid within the said time, such fine and costs may be recovered by the distress and sale of such ship, her equipment, furniture and apparel;

(*d*) the court shall order—

(i) the payment in whole or in part of any moneys given as security in accordance with *subsection (4)* of *section 24*, or

(ii) the sale of any property real or personal given as security in accordance with the said *subsection (4)* and the payment in whole or in part of the proceeds of any such sale,

in satisfaction in whole or in part of such fine and costs (if any).

(2) Nothing in *subsection (1)* shall be construed as preventing a fine or costs to which that subsection applies being recovered from the defendant concerned by ordinary process of law.

Returns of hazardous and noxious substances received in the State.

26.—(1) The Minister may by regulations require such persons or classes of persons as are specified therein to submit to him or her—

(*a*) at such intervals, and

(*b*) in respect of such periods,

as may be so specified, returns of the amounts and types of hazardous and noxious substances received by them in the State.

(2) A person to whom regulations under *subsection (1)* apply who fails to submit a return in accordance with such regulations or who, in purported compliance with such regulations, submits a return that is false or misleading in a material respect shall be guilty of an offence.

Contributions to Fund.

27.—(1) Subject to paragraph 5 of Article 5 of the Convention, in each year such persons or classes of persons as may be prescribed by regulations of the Minister shall, in such manner and on or before such date as may be so prescribed, pay to the Fund such sums as may be determined by the Assembly of the Fund and certified by the Director of the Fund.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

PART 3

Miscellaneous

Construction of certain references in Merchant Shipping (Liability of Shipowners and Others) Act 1996.

28.—(1) References in Part II of the Merchant Shipping (Liability of Shipowners and Others) Act 1996 (other than section 7(2)), to the 1976 Convention shall be construed as references to that Convention as amended by the Protocol of 1996 (other than Article 8 of that Protocol).

(2) For convenience of reference, the text, in the English language, of the Protocol of 1996 is set out in *Schedule 2*.

(3) In this section "the Protocol of 1996" means the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, done at London on the 2nd day of May, 1996.

Amendment of section 8 of Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

29.—Subsection (2) of section 8 of the Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988 (inserted by section 5 of the Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act 1998), is hereby amended by the substitution of the following paragraph for paragraph (*e*):

"(*e*) any person performing salvage operations in relation to the ship with the consent of the owner of the ship or on the instructions of the Minister or a harbour authority, or".

Section 8.

SCHEDULE 1

International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the dangers posed by the world-wide carriage by sea of hazardous and noxious substances,

CONVINCED of the need to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of such substances,

DESIRING to adopt uniform international rules and procedures for determining questions of liability and compensation in respect of such damage,

CONSIDERING that the economic consequences of damage caused by the carriage by sea of hazardous and noxious substances should be shared by the shipping industry and the cargo interests involved,

HAVE AGREED as follows:

Chapter I

GENERAL PROVISIONS

Definitions

Article 1

For the purposes of this Convention:

1. "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.

2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

3. "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.

4. "Receiver" means either:

(*a*) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or

(*b*) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (*a*).

5. "Hazardous and noxious substances" (HNS) means:

(*a*) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:

(i) oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;

(ii) noxious liquid substances carried in bulk referred to in appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorised as falling in pollution category A, B, C or D in accordance with regulation 3(4) of the said Annex II;

(iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code;

(iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;

(v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquified Gases in Bulk, 1983, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

(vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed cup test);

(vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and

(*b*) residues from the previous carriage in bulk of substances referred to in (*a*)(i) to (iii) and (v) to (vii) above.

6. "Damage" means:

(*a*) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;

(*b*) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;

(*c*) loss or damage by contamination of the environment caused by the hazardous and noxious substances, 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; and

(*d*) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.

In this paragraph, "caused by those substances" means caused by the hazardous or noxious nature of the substances.

7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimise damage.

8. "Incident" means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

9. "Carriage by sea" means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.

10. "Contributing cargo" means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

11. The "HNS Fund" means the International Hazardous and Noxious Substances Fund established under article 13.

12. "Unit of account" means the Special Drawing Right as defined by the International Monetary Fund.

13. "State of the ship's registry" means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.

14. "Terminal" means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.

15. "Director" means the Director of the HNS Fund.

16. "Organisation" means the International Maritime Organisation.

17. "Secretary-General" means the Secretary-General of the Organisation.

ANNEXES

Article 2

The Annexes to this Convention shall constitute an integral part of this Convention.

SCOPE OF APPLICATION

Article 3

This Convention shall apply exclusively:

(*a*) to any damage caused in the territory, including the territorial sea, of a State Party;

(*b*) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(*c*) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and

(*d*) to preventive measures, wherever taken.

Article 4

1. This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.

2. This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.

3. This Convention shall not apply:

(*a*) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and

(*b*) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.

4. Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

5. A State Party may decide to apply this Convention to its war-ships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

6. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 38 and shall waive all defences based on its status as a sovereign State.

Article 5

1. A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention or any time thereafter, declare that this Convention does not apply to ships;

(*a*) which do not exceed 200 gross tonnage; and

(*b*) which carry hazardous and noxious substances only in packaged form; and

(*c*) while they are engaged on voyages between ports or facilities of that State.

2. Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1(*a*) and (*b*) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.

3. Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.

4. A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.

5. Where a State has made a declaration under paragraph 1 or 2 and has not withdrawn it, hazardous and noxious substances carried on board ships covered by that paragraph shall not be considered to be contributing cargo for the purpose of application of articles 18, 20, article 21, paragraph 5 and article 43.

6. The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:

(*a*) the damage as defined in article 1, paragraph 6(*a*), (*b*) or (*c*) was caused in:

(i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or

(ii) the exclusive economic zone, or area mentioned in article 3(*b*), of the State or States referred to in (i);

(*b*) the damage includes measures taken to prevent or minimise such damage.

Duties of State Parties

Article 6

Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.

Chapter II

LIABILITY

Liability of the owner

Article 7

1. Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2. No liability shall attach to the owner if the owner proves that:

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

(*b*) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

(*c*) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or

(*d*) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either

(i) has caused the damage, wholly or partly; or

(ii) has led the owner not to obtain insurance in accordance with article 12;

provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3. If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

4. No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5. Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

(*a*) the servants or agents of the owner or the members of the crew;

(*b*) the pilot or any other person who, without being a member of the crew, performs services for the ship;

(*c*) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;

(*d*) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(*e*) any person taking preventive measures; and

(*f*) the servants or agents of persons mentioned in (*c*), (*d*) and (*e*);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

6. Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

Incidents involving two or more ships

Article 8

1. Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.

2. However, owners shall be entitled to the limits of liability applicable to each of them under article 9.

3. Nothing in this article shall prejudice any right of recourse of an owner against any other owner.

Limitation of liability

Article 9

1. The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

(*a*) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and

(*b*) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (*a*):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account;

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

2. The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowlege that such damage would probably result.

3. The owner shall, for the purpose of benefitting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

4. Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5. If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7. Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce the claim against the fund.

8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise damage shall rank equally with other claims against the fund.

9. (*a*) The amounts mentioned in paragraph 1 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 constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

(*b*) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(*a*) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(*a*) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

(*c*) The calculation mentioned in the last sentence of paragraph 9(*a*) and the conversion mentioned in paragraph 9(*b*) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(*a*). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(*a*), or the result of the conversion in paragraph 9(*b*) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10. For the purpose of this article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 10

1. Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

(*a*) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and

(*b*) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

DEATH AND INJURY

Article 11

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.

COMPULSORY INSURANCE OF THE OWNER

Article 12

1. The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention.

2. A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:

(*a*) name of the ship, distinctive number or letters and port of registry;

(*b*) name and principal place of business of the owner;

(*c*) IMO ship identification number;

(*d*) type and duration of security;

(*e*) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and

(*f*) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

3. The compulsory insurance certificate shall be in the offical language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.

4. The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

5. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

6. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.

7. Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

8. Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.

10. A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.

11. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

12. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit

prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

CHAPTER III

COMPENSATION BY THE INTERNATIONAL HAZARDOUS AND NOXIOUS SUBSTANCES FUND (HNS FUND)

ESTABLISHMENT OF THE HNS FUND

Article 13

1. The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:

(*a*) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and

(*b*) to give effect to the related tasks set out in article 15.

2. The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceeding before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

COMPENSATION

Article 14

1. For the purpose of fulfilling its function under article 13, paragraph 1(*a*), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of Chapter II:

(*a*) because no liability for the damage arises under Chapter II;

(*b*) because the owner liable for the damage under Chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under Chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under Chapter II after having taken all reasonable steps to pursue the available legal remedies;

(*c*) because the damage exceeds the owner's liability under the terms of Chapter II.

2. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this article.

3. The HNS Fund shall incur no obligation under the preceding paragraphs if:

(*a*) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or

(*b*) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

4. If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

5. (*a*) Except as otherwise provided in subparagraph (*b*), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under Chapter II for damage within the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.

(*b*) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistable character shall not exceed 250 million units of account.

(*c*) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.

(*d*) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.

6. Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, 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. Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.

7. The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with Chapter II. In such cases paragraph 5(*d*) applies accordingly.

Related tasks of the HNS Fund

Article 15

For the purpose of fulfilling its function under article 13, paragraph 1(*a*), the HNS Fund shall have the following tasks:

(*a*) to consider claims made against the HNS Fund;

(*b*) to prepare an estimate in the form of a budget for each calendar year of:

Expenditure:

(i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and

(ii) payments to be made by the HNS Fund in the relevant year;

Income:

(iii) surplus funds from operations in preceding years, including any interest;

(iv) initial contributions to be paid in the course of the year;

(v) annual contributions if required to balance the budget; and

(vi) any other income;

(*c*) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and

(*d*) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

GENERAL PROVISIONS ON CONTRIBUTIONS

Article 16

1. The HNS Fund shall have a general account, which shall be divided into sectors.

2. The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:

(*a*) oil as defined in article 1, paragraph 5(*a*)(i) (oil account);

(*b*) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and

(*c*) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).

3. There shall be initial contributions and, as required, annual contributions to the HNS fund.

4. Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or article 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.

5. For the purposes of article 18, article 19, paragraph 1(*a*)(i), paragraph 1(*a*)(ii) and paragraph 1(*c*), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person

in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the limit specified in the respective sub-paragraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.

6. "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

GENERAL PROVISIONS ON ANNUAL CONTRIBUTIONS

Article 17

1. Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.

2. Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph 5 shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received or, in respect of cargoes referred to in article 19, paragraph 1(*b*), discharged during the preceding calendar year or such other year as the Assembly may decide.

3. The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and article 21, paragraph 5, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.

4. The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.

5. The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

ANNUAL CONTRIBUTIONS TO THE GENERAL ACCOUNT

Article 18

1. Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1, which fall within the following sectors:

(*a*) solid bulk materials referred to in article 1, paragraph 5(*a*)(vii);

(*b*) substances referred to in paragraph 2; and

(*c*) other substances.

2. Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.

ANNUAL CONTRIBUTIONS TO SEPARATE ACCOUNTS.

Article 19

1. Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:

(*a*) in the case of the oil account,

(i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and

(ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix 1 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;

(*b*) in the case of the LNG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State;

(*c*) in the case of the LPG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG.

2. Subject to paragraph 3; the separate accounts referred to in paragraph 1 above shall become effective at the same time as the general account.

3. The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:

(*a*) 350 million tonnes of contributing cargo in respect of the oil account;

(*b*) 20 million tonnes of contributing cargo in respect of the LNG account; and

(*c*) 15 million tonnes of contributing cargo in respect of the LPG account.

4. The Assembly may suspend the operation of a separate account if:

(*a*) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or

(*b*) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten per cent of the most recent levy to that account in accordance with paragraph 1.

5. The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.

6. Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.

INITIAL CONTRIBUTIONS

Article 20

1. In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5 be calculated in the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received or, in the case of LNG, discharged in that State, during the calendar year preceding that in which this Convention enters into force for that State.

2. The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.

3. Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

REPORTS

Article 21

1. Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.

2. For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such person is liable to contribute in respect of the preceding calendar year.

3. For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be *prima facie* evidence of the facts stated therein.

4. Where a State Party does not fulfill its obligations to communicate to the Director the information referred to in paragraph 2 and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a State Party.

5. In respect of contributing cargo from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either:

(*a*) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or

(*b*) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party, for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.

Non-payment of contributions

Article 22

1. The amount of any contribution due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.

2. Where a person who is liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

Optional liability of States Parties for the payment of contributions

Article 23

1. Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 in respect of hazardous and noxious substances received or discharged in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with article 46, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.

3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4. A declaration made in accordance with this article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director's receipt thereof.

5. Any State which is bound by a declaration made under this article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

Organization and administration

Article 24

The HNS Fund shall have an Assembly and a Secretariat headed by the Director.

Assembly

Article 25

The Assembly shall consist of all States Parties to this Convention.

Article 26

The functions of the Assembly shall be:

(*a*) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;

(*b*) to determine its own rules of procedure, subject to the provisions of this Convention;

(*c*) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in article 13, paragraph 1(*a*), and the related tasks of the HNS Fund listed in article 15;

(*d*) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;

(*e*) to adopt the annual budget prepared in accordance with article 15(*b*);

(*f*) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;

(*g*) to appoint auditors and approve the accounts of the HNS Fund;

(*h*) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of

compensation in accordance with article 14 and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;

(*i*) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

(*j*) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;

(*k*) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;

(*l*) to supervise the proper execution of this Convention and of its own decisions;

(*m*) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and

(*n*) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

Article 27

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.

2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

Article 28

A majority of the members of the Assembly shall constitute a quorum for its meetings.

SECRETARIAT

Article 29

1. The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.

2. The Director shall be the legal representative of the HNS Fund.

Article 30

1. The Director shall be the chief administrative officer of the HNS Fund. Subject to the instructions given by the Assembly, the Director shall perform those functions which are assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.

2. The Director shall in particular:

(*a*) appoint the personnel required for the administration of the HNS Fund;

(*b*) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;

(*c*) collect the contributions due under this Convention while observing in particular the provisions of article 22, paragraph 2;

(*d*) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;

(*e*) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;

(*f*) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;

(*g*) prepare, in consultation with the President of the Assembly, and publish a report on the activities of the HNS Fund during the previous calendar year; and

(*h*) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies.

Article 31

In the performance of their duties the Director and the staff and experts appointed by the Director shall not seek or receive instructions from any Government or from any authority external to the HNS Fund. They shall refrain from any action which might adversely reflect on their position as international officials. Each State Party on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties.

FINANCES

Article 32

1. Each State Party shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.

2. Any other expenses incurred in the operation of the HNS Fund shall be borne by the HNS Fund.

VOTING

Article 33

The following provisions shall apply to voting in the Assembly:

(*a*) each member shall have one vote;

(*b*) except as otherwise provided in article 34, decisions of the Assembly shall be made by a majority vote of the members present and voting;

(*c*) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and

(*d*) for the purpose of this article the phrase "members present" means "members present at the meeting at the time of the vote", and the phrase "members present and voting" means "members present and casting an affirmative or negative vote". Members who abstain from voting shall be considered as not voting.

Article 34

The following decisions of the Assembly shall require a two-thirds majority:

(*a*) A decision under article 19, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;

(*b*) a decision under article 22, paragraph 2, not to take or continue action against a contributor;

(*c*) the appointment of the Director under article 26(*d*);

(*d*) the establishment of subsidiary bodies, under article 26(*i*), and matters relating to such establishment; and

(*e*) a decision under article 51, paragraph 1, that this Convention shall continue to be in force.

TAX EXEMPTIONS AND CURRENCY REGULATIONS

Article 35

1. The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.

2. When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.

3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.

4. The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use.

Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.

5. Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6. Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction.

Confidentiality of information

Article 36

Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

Chapter IV

CLAIMS AND ACTIONS

Limitation of actions

Article 37

1. Rights to compensation under chapter II shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.

2. Rights to compensation under chapter III shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.

3. In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.

4. Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

Jurisdiction in respect of action against the owner

Article 38

1. Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(*b*), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against

the owner or other person providing financial security for the owner's liability only in the courts of any such States Parties.

2. Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(*c*) have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of:

(*a*) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or

(*b*) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or

(*c*) the State Party where a fund has been constituted in accordance with article 9, paragraph 3.

3. Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant.

4. Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

5. After a fund under article 9 has been constituted by the owner or by the insurer or other person providing financial security in accordance with article 12, the courts of the State in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.

JURISDICTION IN RESPECT OF ACTION AGAINST THE HNS FUND OR TAKEN BY THE HNS FUND

Article 39

1. Subject to the subsequent provisions of this article, any action against the HNS Fund for compensation under article 14 shall be brought only before a court having jurisdiction under article 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.

2. In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of article 38, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.

3. Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.

4. Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 in respect of the same damage.

5. Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.

6. Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

7. Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

RECOGNITION AND ENFORCEMENT

Article 40

1. Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:

(*a*) where the judgement was obtained by fraud; or

(*b*) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2. A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3. Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

SUBROGATION AND RECOURSE

Article 41

1. The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.

2. Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(*d*), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

SUPERSESSION CLAUSE

Article 42

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.

Chapter V

TRANSITIONAL PROVISIONS

INFORMATION ON CONTRIBUTING CARGO

Article 43

When depositing an instrument referred to in article 45, paragraph 3, and annually thereafter until this Convention enters into force for a State, that State shall submit to the Secretary-General data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year in respect of the general account and each separate account.

FIRST SESSION OF THE ASSEMBLY

Article 44

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

CHAPTER VI

FINAL CLAUSES

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

Article 45

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(*a*) signature without reservation as to ratification, acceptance or approval; or

(*b*) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval, or

(*c*) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ENTRY INTO FORCE

Article 46

1. This Convention shall enter into force eighteen months after the date on which the following conditions are fulfilled:

(*a*) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and

(*b*) the Secretary-General has received information in accordance with article 43 that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(*a*) and (*c*) have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Convention enters into force in accordance with paragraph 1, whichever is the later.

REVISION AND AMENDMENT

Article 47

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of six States Parties or one-third of the States Parties, whichever is the higher figure.

3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

AMENDMENT OF LIMITS

Article 48

1. Without prejudice to the provisions of article 47, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1 and article 14, paragraph 5.

2. Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.

4. All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

5. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.

6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5.

7. (*a*) No amendment of the limits under this article may be considered less than five years from the date this Convention was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.

(*b*) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention increased by six per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.

(*c*) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention multiplied by three.

8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

10. All Contracting States shall be bound by the amendment, unless they denounce this Convention in accordance with article 49, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11. When an amendment has been adopted but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.

DENUNCIATION

Article 49

1. This Convention may be denounced by any State Party at any time after the date on which it enters into force for that State Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. Denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Convention relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5 in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

EXTRAORDINARY SESSIONS OF THE ASSEMBLY

Article 50

1. Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.

2. The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.

3. If the Assembly, at an extraordinary session, convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from the same date.

CESSATION

Article 51

1. This Convention shall cease to be in force:

(*a*) on the date when the number of States Parties falls below 6; or

(*b*) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, if the data shows that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(*a*) and (*c*) received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding (*b*), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(*a*) and (*c*) received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Convention shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

2. States which are bound by this Convention on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 52 and shall, for that purpose only, remain bound by this Convention.

Winding up of the HNS Fund

Article 52

1. If this Convention ceases to be in force, the HNS Fund shall nevertheless:

(*a*) meet its obligations in respect of any incident occurring before this Convention ceased to be in force; and

(*b*) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (*a*), including expenses for the administration of the HNS Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.

3. For the purposes of this article the HNS Fund shall remain a legal person.

Depositary

Article 53

1. This Convention and any amendment adopted under article 48 shall be depositied with the Secretary-General.

2. The Secretary-General shall:

(*a*) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 48, paragraph 2;

(iv) any amendment which has been adopted in accordance with article 48, paragraph 5;

(v) any amendment deemed to have been accepted under article 48, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that article;

(vi) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect; and

(vii) any communication called for by any article in this Convention; and

(*b*) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

LANGUAGES

Article 54

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this third day of May one thousand nine hundred and ninety-six.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

ANNEX I

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR DAMAGE CAUSED BY HAZARDOUS AND NOXIOUS SUBSTANCE (HNS)

Issued in accordance with the provisions of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

Type of security .....
....

Duration of security .....
.....

Name and address of the insurer(s) and/or guarantor(s)

Name.....
.....

Address .....
....

This certificate is valid until .....
.....

Issued or certified by the Government of.....
.....

....
.....
(Full designation of the State)

At..... .....
On..... .....
(Place) (Date)

....
(Signature and Title of issuing or certifying official)

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.

2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3. If security is furnished in several forms, these should be enumerated.

4. The entry "Duration of the Security" must stipulate the date on which such security takes effect.

5. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

ANNEX II

REGULATIONS FOR THE CALCULATION OF ANNUAL CONTRIBUTIONS TO THE GENERAL ACCOUNT

Regulation 1

1. The fixed sum referred to in article 17, paragraph 3 shall be determined for each sector in accordance with these regulations.

2. When it is necessary to calculate contributions for more than one sector of the general account, a separate fixed sum per unit of contributing cargo shall be calculated for each of the following sectors as may be required:

(*a*) solid bulk materials referred to in article 1, paragraph 5(*a*)(vii);

(*b*) oil, if the operation of the oil account is postponed or suspended;

(*c*) LNG, if the operation of the LNG account is postponed or suspended;

(*d*) LPG, if the operation of the LPG account is postponed or suspended;

(*e*) other substances.

Regulation 2

1. For each sector, the fixed sum per unit of contributing cargo shall be the product of the levy per HNS point and the sector factor for that sector.

2. The levy per HNS point shall be the total annual contributions to be levied to the general account divided by the total HNS points for all sectors.

3. The total HNS points for each sector shall be the product of the total volume, measured in metric tonnes, of contributing cargo for that sector and the corresponding sector factor.

4. A sector factor shall be calculated as the weighted arithmetic average of the claims/volume ratio for that sector for the relevant year and the previous nine years, according to this regulation.

5. Except as provided in paragraph 6, the claims/volume ratio for each of these years shall be calculated as follows:

(*a*) established claims, measured in units of account converted from the claim currency using the rate applicable on the date of the incident in question, for damage caused by substances in respect of which contributions to the HNS Fund are due for the relevant year; divided by

(*b*) the volume of contributing cargo corresponding to the relevant year.

6. In cases where the information required in paragraphs 5(*a*) and (*b*) is not available, the following values shall be used for the claims/volume ratio for each of the missing years:

(*a*) solid bulk materials referred to in article 1, paragraph 5(*a*)(vii)	0
(*b*) oil, if the operation of the oil account is postponed	0
(*c*) LNG, if the operation of the LNG account is postponed	0
(*d*) LPG, if the operation of the LPG account is postponed	0
(*e*) other substances	0.0001

7. The arithmetic average of the ten years shall be weighted on a decreasing linear scale, so that the ratio of the relevant year shall have a weight of 10, the year prior to the relevant year shall have a weight of 9, the next preceding year shall have a weight of 8, and so on, until the tenth year has a weight of 1.

8. If the operation of a separate account has been suspended, the relevant sector factor shall be calculated in accordance with those provisions of this regulation which the Assembly shall consider appropriate.

SCHEDULE 2

Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the Convention on Limitation of Liability for Maritime Claims, done at London on 19 November 1976, to provide for enhanced compensation and to establish a simplified procedure for updating the limitation amounts,

HAVE AGREED as follows:

Article 1

For the purposes of this Protocol:

1. "Convention" means the Convention on Limitation of Liability for Maritime Claims, 1976.

2. "Organization" means the International Maritime Organization.

3. "Secretary-General" means the Secretary-General of the Organization.

Article 2

Article 3, subparagraph (*a*) of the Convention is replaced by the following text:

(*a*) claims for salvage, including, if applicable, any claim for special compensation under article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;

Article 3

Article 6, paragraph 1 of the Convention is replaced by the following text:

1. The limits of liability for claims other than those mentioned in article 7, arising on any distinct occasion, shall be calculated as follows:

(*a*) in respect of claims for loss of life or personal injury,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 800 Units of Account;

for each ton from 30,001 to 70,000 tons, 600 Units of Account; and

for each ton in excess of 70,000 tons, 400 Units of Account,

(*b*) in respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 400 Units of Account;

for each ton from 30,001 to 70,000 tons, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account.

Article 4

Article 7, paragraph 1 of the Convention is replaced by the following text:

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

Article 5

Article 8, paragraph 2 of the Convention is replaced by the following text:

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

(*a*) in respect of article 6, paragraph 1(*a*), at an amount of:

(i) 30 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 12,000 monetary units;

for each ton from 30,001 to 70,000 tons, 9,000 monetary units; and

for each ton in excess of 70,000 tons, 6,000 monetary units; and

(*b*) in respect of article 6, paragraph 1(*b*), at an amount of:

(i) 15 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 6,000 monetary units;

for each ton from 30,001 to 70,000 tons, 4,500 monetary units; and

for each ton in excess of 70,000 tons, 3,000 monetary units; and

(*c*) in respect of article 7, paragraph 1, at an amount of 2,625,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate.

Paragraphs 2 and 3 of article 6 apply correspondingly to sub-paragraphs (*a*) and (*b*) of this paragraph.

Article 6

The following text is added as paragraph 3*bis* in article 15 of the Convention:

3*bis* Notwithstanding the limit of liability prescribed in paragraph 1 of article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of

article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

Article 7

Article 18, paragraph 1 of the Convention is replaced by the following text:

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

(*a*) to exclude the application of article 2, paragraphs 1(*d*) and (*e*);

(*b*) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

Article 8

Amendment of limits

1. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits specified in article 6, paragraph 1, article 7, paragraph 1 and article 8, paragraph 2 of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as amended by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States to the Convention as amended by this Protocol shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

6. (*a*) No amendment of the limits under this article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.

(*b*) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased

by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(*c*) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one-fourth of the States that were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of article 12 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 9

1. The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. A State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention.

3. The Convention as amended by this Protocol shall apply only to claims arising out of occurrences which take place after the entry into force for each State of this Protocol.

4. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Convention and to this Protocol with respect to a State which is a Party to the Convention but not a Party to this Protocol.

FINAL CLAUSES

Article 10

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 by all States.

2. Any State may express its consent to be bound by this Protocol by:

(*a*) signature without reservation as to ratification, acceptance or approval; or

(*b*) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(*c*) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 11

Entry into force

1. This Protocol shall enter into force ninety days following the date on which ten States have expressed their consent to be bound by it.

2. For any State which expresses its consent to be bound by this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force ninety days following the date of expression of such consent.

Article 12

Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which it enters into force for that State Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with article 19 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article 13

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Organization shall convene a conference of Contracting States to this Protocol for revising or amending it at the request of not less than one-third of the Contracting States.

Article 14

Depositary

1. This Protocol and any amendments adopted under article 8 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(*a*) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument together with the date thereof;

(ii) each declaration and communication under article 8, paragraph 2 of the Convention as amended by this Protocol, and article 8, paragraph 4 of the Convention;

(iii) the date of entry into force of this Protocol;

(iv) any proposal to amend limits which has been made in accordance with article 8, paragraph 1;

(v) any amendment which has been adopted in accordance with article 8, paragraph 4;

(vi) any amendment deemed to have been accepted under article 8, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;

(vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(*b*) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 15

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this second day of May one thousand nine hundred and ninety-six.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

Number 9 *of* 2005

SEA POLLUTION (HAZARDOUS SUBSTANCES) (COMPENSATION) ACT 2005

REVISED

Updated to 22 November 2021

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Merchant Shipping Acts 1894 to 2015: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Harbours Act 2015*, s. 1(3)). The Acts in this group are:

- *Merchant Shipping Act 1894* (57 & 58 Vict. c. 60)
- *Merchant Shipping (Liability of Shipowners) Act 1898* (61 & 62 Vict. c. 14)
- *Merchant Shipping (Merchantile Marine Fund) Act 1898* (61 & 62 Vict. c. 44)
- *Merchant Shipping Act 1906* (6 Edw. 7 c. 48)
- *Merchant Shipping (Amendment) Act 1920* (10 Geo. 5 c. 2)
- *Merchant Shipping Act 1921* (11 & 12 Geo. 5 c. 28)
- *Merchant Shipping (International Labour Conventions) Act 1933* (29/1933)
- *Merchant Shipping (Safety and Load Line Conventions) Act 1933* (42/1933)
- *Merchant Shipping (Amendment) Act 1939* (12/1939)
- *Merchant Shipping Act 1947* (46/1947)
- *Merchant Shipping (Safety Convention) Act 1952* (29/1952)
- *Merchant Shipping Act 1966* (20/1966)
- *Merchant Shipping (Load Lines) Act 1968* (17/1968)
- *Merchant Shipping (Certification of Seamen) Act 1979* (37/1979)
- *Merchant Shipping Act 1981* (33/1981)
- *Merchant Shipping Act 1992* (2/1992)
- *Merchant Shipping (Salvage and Wreck) Act 1993* (34/1993)
- *Merchant Shipping (Liability of Shipowners and Others) Act 1996* (35/1996)
- *Merchant Shipping (Commissioners of Irish Lights) Act 1997* (37/1997)
- *Merchant Shipping (Miscellaneous Provisions) Act 1998* (20/1998)
- *Merchant Shipping (Investigation of Marine Casualties) Act 2000* (14/2000)
- *Sea Pollution (Hazardous Substances) (Compensation) Act 2005* (9/2005), s. 28
- *Maritime Safety Act 2005* (11/2005), other than Parts 5 and 6
- *Merchant Shipping Act 2010* (14/2010), other than s. 93
- *Local Government Reform Act 2014* (1/2014), s. 1(15) and the amendment to the *Merchant Shipping (Salvage and Wreck) Act 1993* provided for in s. 5(6) and Schedule 2, Part 6 (Note: the reference to s. 5(6) appears to refer to s. 5(8))
- *Merchant Shipping (Registration of Ships) Act 2014* (43/2014)
- *Harbours Act 2015* (61/2015), s. 51

Acts preciously included in the group but now repealed are:

- *Merchant Shipping (Exemption from Pilotage) Act 1897* (60 & 61 Vict. c. 61)
- *Merchant Shipping (Liability of Shipowners & Others) Act 1900* (63 & 64 Vict. c. 32)
- *Merchant Shipping Act 1907* (7 Edw. 7 c. 52)
- *Pilotage Act 1913* (2 & 3 Geo. 5 c. 31)
- *Merchant Shipping (Certificates) Act 1914* (4 & 5 Geo. 5 c. 42)
- *Merchant Shipping (Convention) Act 1914* (4 & 5 Geo. 5 c. 50)
- *Merchant Shipping (Salvage) Act 1916* (6 & 7 Geo. 5 c. 41)
- *Merchant Shipping (Wireless Telegraphy) Act 1919* (9 & 10 Geo. 5 c. 38)
- *Merchant Shipping (Helm Orders) Act 1932* (32/1932)
- *Pilotage (Amendment) Act 1962* (2/1962)
- *Fisheries (Amendment) Act 1983* (27/1983), s. 8 in so far as it amends the *Merchant Shipping Act 1894* and s. 10(2)

Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 to 2005: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Sea Pollution (Hazardous Substances) (Compensation) Act 2005* (9/2005), s. 1(3)). The Acts in this group are:

- *Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988* (11/1988)
- *Sea Pollution Act 1991* (27/1991), s. 37
- *Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act 1998* (13/1998)
- *Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act 2003* (33/2003)
- *Sea Pollution (Hazardous Substances) (Compensation) Act 2005* (9/2005), s. 29

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Maritime Jurisdiction Act 2021* (28/2021)
- *Merchant Shipping (Registration of Ships) Act 2014* (43/2014)
- *Central Bank Reform Act 2010* (23/2010)
- *Sea-Fisheries and Maritime Jurisdiction Act 2006* (8/2006)

All Acts up to and including *Child and Family Agency (Amendment) Act 2021* (34/2021), enacted 24 November 2021, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Communities (Environmental Liability) Regulations 2008* (S.I. No. 547 of 2008)
- *Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (Commencement) Order 2007* (S.I. No. 586 of 2007)
- *Maritime Transport, Safety and Security (Transfer of Departmental Administration and Ministerial Functions) Order 2005* (S.I. No. 842 of 2005)

All statutory instruments up to and including *Maritime Jurisdiction Act 2021 (Commencement) Order 2021* (S.I. No. 601 of 2021), made 17 November 2021, were considered in the preparation of this revision.