

2006 No. 1265

MERCHANT SHIPPING

The Merchant Shipping (Oil Pollution) (Supplementary Fund Protocol) Order 2006

Made - - - - - 9th May 2006

Laid before Parliament 19th May 2006

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the 9th day of May 2006

Present,

The Queen's Most Excellent Majesty in Council

For the purposes of section 1(6) of the Merchant Shipping (Pollution) Act 2006^(a) this Order relates only to the Supplementary Fund Protocol.

Accordingly, Her Majesty, in exercise of the powers conferred by subsections (2)(a) and (4) to (6) of section 1 of the Merchant Shipping (Pollution) Act 2006, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

Citation and commencement

1.—(1) This Order may be cited as the Merchant Shipping (Oil Pollution) (Supplementary Fund Protocol) Order 2006.

(2) This Order comes into force on the day on which the Supplementary Fund Protocol enters into force in respect of the United Kingdom.

(3) The date this Order comes into force shall be notified by the Secretary of State in the London, Edinburgh and Belfast Gazettes.

Amendment of the Merchant Shipping Act 1995

2. The Merchant Shipping Act 1995^(b) is amended as provided for in articles 3 to 12.

3. In section 172 (meaning of the “Liability Convention”, “the Fund Convention” and related expressions)—

(a) in subsection (1), after paragraph (d) insert—

“(e) “the Supplementary Fund Protocol” means the Protocol of 2003 to the Fund Convention^(c);

(f) “the Supplementary Fund” means the International Supplementary Fund established by the Supplementary Fund Protocol; and

(a) 2006 c. 8.
(b) 1995 c. 21.
(c) Cmnd 6245.

(g) “Supplementary Fund Protocol country” means a country in respect of which the Supplementary Fund Protocol is in force.”;

and the word “and” at the end of paragraph (c) is repealed; and

(b) after subsection (2) insert—

“(3) Subsection (2) applies in relation to the Supplementary Fund Protocol as it applies in relation to the Fund Convention.”.

4.—(1) Section 173 (contributions by importers of oil and others) is amended as follows.

(2) In subsection (1) after “the Fund” insert “and to the Supplementary Fund”.

(3) In subsection (3)—

(a) after “payable” insert “—
(a)”; and

(b) at the end insert “; and

(b) to the Supplementary Fund in respect of oil when first received in any installation in the United Kingdom after having been carried by sea and discharged in a port or terminal installation in a country which is not a Supplementary Fund Protocol country.”.

(4) In subsection (7)—

(a) in paragraph (a), after “determined” insert “—
(i) in the case of contributions to the Fund,”;

(b) at the end of paragraph (a) insert—

“(ii) in the case of contributions to the Supplementary Fund, by the Director of the Supplementary Fund under Article 11 of the Supplementary Fund Protocol and notified to that person by the Supplementary Fund;”; and

(c) after “Assembly of the Fund” insert “or the Assembly of the Supplementary Fund (as the case may be)”.

5.—(1) Section 174 (power to obtain information) is amended as follows.

(2) In subsection (1), after each reference to “the Fund” insert “or the Supplementary Fund”.

(3) In subsection (4)—

(a) after the first reference to “the Fund” insert “or the Supplementary Fund”; and

(b) for the second reference to “the Fund” substitute “either of those Funds”.

6. After section 176 (limitation of Fund’s liability under section 175) insert—

“176A Liability of the Supplementary Fund

(1) The Supplementary Fund shall be liable for pollution damage in the territory of the United Kingdom in accordance with the Supplementary Fund Protocol in the circumstances mentioned in paragraph 1 of Article 4 of that Protocol (cases where full compensation cannot be obtained because of the limit imposed by paragraph 4 of Article 4 of the Fund Convention).

The text of paragraph 1 of Article 4 of the Supplementary Fund Protocol is set out in Schedule 5ZA.

(2) Subsection (1) shall apply with the substitution for the words “the United Kingdom” of the words “a Supplementary Fund Protocol country” where—

(a) the headquarters of the Supplementary Fund is for the time being in the United Kingdom, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country, or

(b) the incident has caused pollution damage in the territory of the United Kingdom and of another Supplementary Fund Protocol country, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country or in the United Kingdom.

- (3) Nothing in this section applies to pollution damage resulting from an incident if—
 - (a) in the case of a single occurrence, it took place before the day on which the Supplementary Fund Protocol enters into force as respects the United Kingdom; or
 - (b) in the case of a series of occurrences having the same origin, the first of those occurrences took place before that day.

176B Limitation of the Supplementary Fund’s liability under section 176A

- (1) The Supplementary Fund’s liability under section 176A shall be subject to—
 - (a) paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (which impose an overall limit on the liabilities of the Supplementary Fund); and
 - (b) paragraphs 2 and 3 of Article 15 of the Supplementary Fund Protocol (which prevent the Supplementary Fund from paying compensation temporarily and permanently where obligations to communicate information to the Director under paragraph 1 of Article 13 and paragraph 1 of Article 14 have not been met).

The text of paragraphs 2 and 3 of Article 4, paragraph 1 of Article 13 and paragraphs 1, 2 and 3 of Article 15 of the Supplementary Fund Protocol is set out in Schedule 5ZA.

- (2) For the purpose of giving effect to paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol a court giving judgment against the Supplementary Fund in proceedings under section 176A shall notify the Supplementary Fund, and—

- (a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it,
- (b) that leave shall not be given unless and until the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount, and
- (c) in the latter case the judgment shall be enforceable only for the reduced amount.

- (3) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (2) shall be steps to obtain payment in sterling; and—

- (a) for the purpose of converting such an amount from special drawing rights into sterling, one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
 - (i) the relevant date, namely the date referred to in paragraph 2(b) of Article 4 of the Supplementary Fund Protocol, or
 - (ii) if no sum has been so fixed for the relevant date, the last day before that date for which a sum has been so fixed; and
- (b) a certificate given by or on behalf of the Treasury stating—
 - (i) that a particular sum in sterling has been so fixed for the relevant date, or
 - (ii) that no sum has been so fixed for the relevant date and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant date,

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

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

7.—(1) Section 177 (jurisdiction and effect of judgments) is amended as follows.

- (2) In subsection (1), after “on the Fund” insert “or the Supplementary Fund”.
- (3) In subsection (2), for the words from “, any judgment” to the end substitute “—
 - (a) the notice shall be deemed to have been given to the Supplementary Fund as well; and

(b) any judgment given in the proceedings shall, after it has become final and enforceable, become binding on the Fund and the Supplementary Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund or the Supplementary Fund even if it has not intervened in the proceedings.”.

(4) For subsections (4) and (5) substitute—

“(4) Subject to subsections (5) and (6), Part 1 of the Foreign Judgments (Reciprocal Enforcement) Act 1933(a) shall apply, whether or not it would so apply apart from this subsection, to—

(a) any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 175; and

(b) any judgment given by a court in a Supplementary Fund Protocol country to enforce a claim in respect of liability incurred under any provision corresponding to section 176A,

and in its application to such a judgment the said Part 1 shall have effect with the omission of sections 4(2) and (3).

(5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part 1 of the Act of 1933 gives leave to enforce it; and that leave shall not be given unless and until—

(a) in the case of a judgment within subsection (4)(a), the Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 4 and 5 of Article 4 of the Fund Convention (as set out in Part 1 of Schedule 5 to this Act) or that it is to be reduced to a specified amount; or

(b) in the case of a judgment within subsection (4)(b), the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (as set out in Schedule 5ZA to this Act) or that it is to be reduced to a specified amount.

(6) Where the court is so notified that a claim is to be reduced to a specified amount, the judgment shall be enforceable only for the reduced amount.”.

8. In section 178 (extinguishment of claims), after subsection (2) insert—

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

(4) For the purposes of this section—

(a) a person who commences an action to enforce a claim against the Fund in relation to any damage shall be deemed to have also commenced an action to enforce any claim he may have against the Supplementary Fund in relation to that damage; and

(b) a person who gives a third party notice to the Fund in relation to any damage as mentioned in subsection (1)(b) shall be deemed to have also given a notice to the Supplementary Fund in relation to that damage.”.

9. In section 179 (subrogation)—

(a) after subsection (1) insert—

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

(b) in subsection (2) after “the Fund” insert “or the Supplementary Fund”.

10. In section 180 (supplementary provisions as to proceedings involving the Fund), after subsection (2) insert—

(a) 1933 c. 13.

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

11. In section 181 (interpretation), in subsection (3) after “Fund Convention country” insert “or a Supplementary Fund Protocol country (as the case may be)”.

12. After Schedule 5 insert Schedule 5ZA as set out in the Schedule to this Order.

Amendment of the Supreme Court Act 1981

13. In section 20 of the Supreme Court Act 1981(a) (Admiralty jurisdiction of High Court), in subsection (5)(b) after “1992,” insert “or on the International Oil Pollution Compensation Supplementary Fund 2003,”.

A. K. Galloway
Clerk of the Privy Council

(a) 1981 c. 54.

Schedule 5ZA to the Merchant Shipping Act 1995

“SCHEDULE 5ZA

SUPPLEMENTARY FUND LIABILITY

Article 4—paragraphs 1, 2 and 3

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

2.—(a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.

(b) The amount of 750 million units of account mentioned in paragraph 2(a) shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.

3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.

Article 13—paragraph 1

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

Article 15—paragraphs 1, 2 and 3

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

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

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Merchant Shipping Act 1995 to give legal effect in the United Kingdom to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (“the Supplementary Fund Protocol”).

The Order amends section 20 (Admiralty jurisdiction of the High Court) of the Supreme Court Act 1981 (c. 54) to include a reference to the Supplementary Fund Protocol.

The Order gives effect to Council Decision 2004/246/EC (O.J. L78, 16.3.2004, p.22) authorising Member States to sign, ratify or accede to the Supplementary Fund Protocol and requiring them to take the necessary steps to consent to be bound by it.

The Order comes into force 3 months after the day on which the United Kingdom accedes to the Supplementary Fund Protocol. The date on which the Supplementary Fund Protocol enters into force in respect of the United Kingdom will be notified in the London, Edinburgh and Belfast Gazettes by the Secretary of State.

The purpose of the Supplementary Fund Protocol is to supplement the compensation available for oil pollution damage under the 1992 Civil Liability and Fund Conventions with an additional third tier of compensation.

The total amount of compensation payable for any one incident will be 750 million Special Drawing Rights, including the amount payable under the 1992 Civil Liability and Fund Conventions.

A Regulatory Impact Assessment has been prepared and copies can be obtained from the Department for Transport, 76 Marsham Street, London, SW1P 4DR or accessed via the OPSI website www.opsi.gov.uk. A copy has been placed in the library of each House of Parliament and on the DfT website <http://www.dft.gov.uk>.

The Supplementary Fund Protocol can be obtained from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR.

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Fund Protocol) Order 2006**

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