

Reprint
as at 15 June 2018



Maritime Transport (International Oil Pollution Compensation Levies) Order 1996 (SR 1996/337)

Order name: amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 18th day of November 1996

Present:

His Excellency the Governor-General in Council

Pursuant to section 385 of the Maritime Transport Act 1994, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry of Transport.

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Order

1 Title and commencement

- (1) This order may be cited as the Maritime Transport (International Oil Pollution Compensation Levies) Order 1996.
- (2) This order shall come into force on 20 February 1997.

Clause 1(1): amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

2 Interpretation

- (1) In this order,—

Assembly means the Assembly of the International Oil Pollution Fund or the Supplementary Fund (as the case may be)

contributing oil means oil carried by sea and landed from a ship in any port or oil transfer site in New Zealand (whether or not landed from a country outside New Zealand)

contributor means a person liable to pay a levy under this order

Director means the Director of the International Oil Pollution Fund or the Supplementary Fund (as the case may be)

Fund Convention means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Articles 10, and 12 to 15 of the English text of which are set out in Schedule 1) and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand

International Oil Pollution Fund means the International Oil Pollution Compensation Fund established under Article 2 of the Fund Convention

oil has the meaning given to that term by section 385(3) of the Maritime Transport Act 1994

SDR means the special drawing right as defined by the International Monetary Fund

Supplementary Fund means the International Oil Pollution Compensation Supplementary Fund, 2003 established under Article 2 of the Supplementary Fund Protocol

Supplementary Fund Protocol means the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Articles 10 to 15 of the English text of which are set out in Schedule 2) and includes any subsequent protocol or amendment to, or revision of, that protocol accepted or ratified by New Zealand

ton, in relation to oil, means a metric ton.

- (2) For the purposes of this order, a person is an associated person in relation to another person if the persons are—
- (a) bodies corporate that consist substantially of the same members or shareholders or that are under the control of the same persons; or
 - (b) a body corporate and a person who has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attached to 25% or more of the voting securities of the body corporate.

Clause 2(1) **Assembly**: amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 2(1) **contributor**: amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 2(1) **contributor**: amended, on 9 September 1999, by clause 2(1) of the Maritime Transport (Fund Convention) Levies Amendment Order 1999 (SR 1999/262).

Clause 2(1) **Director**: amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 2(1) **Fund**: repealed, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 2(1) **Fund Convention**: replaced, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 2(1) **International Oil Pollution Fund**: inserted, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 2(1) **relevant calendar years**: revoked, on 9 September 1999, by clause 2(3) of the Maritime Transport (Fund Convention) Levies Amendment Order 1999 (SR 1999/262).

Clause 2(1) **Supplementary Fund**: inserted, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 2(1) **Supplementary Fund Protocol**: inserted, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

3 **Initial levy**

[Revoked]

Clause 3: revoked, on 9 September 1999, by clause 3(1) of the Maritime Transport (Fund Convention) Levies Amendment Order 1999 (SR 1999/262).

4 Levies payable as annual contributions to International Oil Pollution Fund and Supplementary Fund

- (1) A person is liable to pay an annual contribution to the International Oil Pollution Fund in respect of a calendar year if, in that year, the person received, in total,—
 - (a) more than 150 000 tons of contributing oil; or
 - (b) a quantity of contributing oil that, when aggregated with the quantity of contributing oil in total received by any associated person or persons in that year, was more than 150 000 tons.
- (1A) A person is liable to pay an annual contribution to the Supplementary Fund in respect of a calendar year if, in that year, the person received, in total,—
 - (a) more than 150,000 tons of contributing oil; or
 - (b) a quantity of contributing oil that, when aggregated with the quantity of contributing oil in total received by any associated person or persons in that year, was more than 150,000 tons.
- (2) The amount of the annual contribution payable in respect of a calendar year by a person liable to pay it under subclause (1)(b) or (1A)(b) must be calculated in respect of the actual quantity of contributing oil received by the person in that year.
- (3) The amount of a person's annual contribution payable under subclause (1) must be calculated by the Director, on the basis of the total amount of contributions to be levied decided by the Assembly, in accordance with Article 12 of the Fund Convention.
- (3A) The amount of the annual contribution payable under subclause (1A) must be calculated by the Director, on the basis of the total amount of contributions to be levied decided by the Assembly, in accordance with Article 11 of the Supplementary Fund Protocol.
- (4) On receiving an invoice from the Director of the International Oil Pollution Fund or the Supplementary Fund (as the case may be), a person liable to pay an annual contribution to the International Oil Pollution Fund or the Supplementary Fund (as the case may be) must pay the amount specified in the invoice directly to that fund, in accordance with the terms, and by the due date, specified in the invoice.
- (5) An annual contribution is payable—
 - (a) in pounds sterling; or
 - (b) if the Director so requires, in New Zealand dollars, or in a combination of pounds sterling and New Zealand dollars.

Clause 4: substituted, on 9 September 1999, by clause 4 of the Maritime Transport (Fund Convention) Levies Amendment Order 1999 (SR 1999/262).

Clause 4 heading: replaced, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 4(1): amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 4(1A): inserted, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 4(2): amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 4(3): amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 4(3A): inserted, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Clause 4(4): amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

5 Interest for late payment

- (1) If any amount of levy payable by a contributor remains unpaid after the date when it became due for payment, the contributor shall be liable to pay to the International Oil Pollution Fund or the Supplementary Fund (as the case may be), in addition to the levy outstanding, an amount of interest calculated in accordance with subclause (2).
- (2) The amount of interest payable shall be calculated on the unpaid levy from the date on which payment is due at an annual rate which for each period of 12 months from 1 February in any year shall be 2% higher than the lowest London clearing bank base rate prevailing on 1 February in that year.

Clause 5(1): amended, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

6 Bank charges payable by contributor

Any bank charges that arise in connection with the payment of any levy under this order or the payment of interest on any overdue levy under this order shall be paid by the contributor.

7 Contributors to provide records of contributing oil received

- (1) Every contributor shall, on or before 1 March each year, provide to the Director of Maritime New Zealand a record of the amount of contributing oil received by that person in the preceding calendar year.
- (2) The record required to be given by subclause (1) shall be given in such form as may be agreed between the Director of Maritime New Zealand and the contributor.

Clause 7(1): amended, on 1 July 2005, by section 11(4) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Clause 7(2): amended, on 1 July 2005, by section 11(4) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Schedule 1
Articles 10, 12 to 15 of the International Convention on the
Establishment of an International Fund for Compensation for Oil
Pollution Damage, 1992

Schedule 1: substituted, on 9 September 1999, by clause 5 of the Maritime Transport (Fund Convention) Levies Amendment Order 1999 (SR 1999/262).

Contributions

Article 10

- 1 Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 12, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:
- (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
 - (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.
- 2 (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the same Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.
- (b) *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.

Article 11

[*deleted*]

Article 12

- 1 With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:
- (i) *Expenditure*

- (a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;
 - (b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under article 4, including repayment on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident does not exceed four million units of account.
 - (c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under article 4, including repayments on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident is in excess of four million units of account;
 - (ii) *Income*
 - (a) surplus funds from operations in preceding years, including any interest;
 - (b) annual contributions, if required to balance the budget;
 - (c) any other income.
- 2 The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in article 10 the amount of his annual contribution:
- (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) and (b) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and
 - (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(c) of this article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that the State was a Party to this Convention at the date of the incident.
- 3 The sums referred to in paragraph 2 above shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.
- 4 The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.
- 5 The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Fund, to make transfers between funds received in accordance with article 12.2(a) and funds received in accordance with article 12.2(b).

Article 13

- 1 The amount of any contribution due under article 12 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.
- 2 Each Contracting State shall ensure that any obligation to contribute to the Fund arising under this Convention in respect of oil received within the territory of that State is fulfilled and shall take any appropriate measures under its law, including the imposing of such sanctions as it may deem necessary, with a view to the effective execution of any such obligation; provided, however, that such measures shall only be directed against those persons who are under an obligation to contribute to the Fund.
- 3 Where a person who is liable in accordance with the provisions of articles 10 and 12 to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action against such person on behalf of the Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise warrant, the Assembly may, upon recommendation of the Director, decide that no action be taken or continued against the contributor.

Article 14

- 1 Each Contracting State may at the time when it deposits its instrument of ratification or accession or at any time thereafter declare that it assumes itself obligations that are incumbent under this Convention on any person who is liable to contribute to the Fund in accordance with article 10, paragraph 1, in respect of oil received within the territory of that State. Such declaration shall be made in writing and shall specify which obligations are assumed.
- 2 Where a declaration under paragraph 1 is made to the entry into force of this Convention in accordance with article 40, it shall be deposited with the Secretary-General of the Organization who shall after the entry into force of the 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 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.

Article 15

- 1 Each Contracting State shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the Fund appears on a list to be established and kept up to date by the Director in accordance with the subsequent provisions of this article.
- 2 For the purposes set out in paragraph 1, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the Fund pursuant to article 10, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.
- 3 For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the Fund in accordance with article 10, paragraph 1, and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be *prima facie* evidence of the facts stated therein.
- 4 Where a Contracting State does not fulfil its obligations to submit to the Director the communication referred to in paragraph 2 and this results in a financial loss for the Fund, that Contracting State shall be liable to compensate the Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by that Contracting State.

Schedule 2

Articles 10 to 15 of the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

Schedule 2: inserted, on 15 June 2018, by section 29(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Article 10

1. Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 11, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:
 - (a) in the ports or terminal installations in the territory of that State contributing oil carried by seas to such ports or terminal installations; and
 - (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph

on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. The provisions of article 10, paragraph 2, of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

Article 11

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

- (i) **Expenditure**

- (a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;
 - (b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under article 4, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;

- (ii) **Income**

- (a) surplus funds from operations in preceding years, including any interest;
 - (b) annual contributions, if required to balance the budget;
 - (c) any other income.

2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director of the Supplementary Fund shall, in respect of each Contracting State, calculate for each person referred to in article 10, the amount of that person's annual contribution.

- (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and
 - (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(b) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident.

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment.
5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2(a) and funds received in accordance with paragraph 2(b).

Article 12

1. The provisions of article 13 of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.
2. A Contracting State itself may assume the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in article 14 of the 1992 Fund Convention.

Article 13

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.
2. Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

Article 14

1. Notwithstanding article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.
2. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

Article 15

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.
4. Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.

Marie Shroff,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Maritime Transport (Fund Convention) Levies Order 1996 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Maritime Transport Amendment Act 2017 (2017 No 48): section 29(1)

Maritime Transport Amendment Act 2004 (2004 No 98): section 11(4)

Maritime Transport (Fund Convention) Levies Amendment Order 1999 (SR 1999/262)