

THE NIGERIAN SHIPPING  
(LIMITATION OF LIABILITY) ACT, 1995

A MARITIME LEGISLATION DRAFTING PROJECT  
SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR THE AWARD  
OF A MASTER OF LAWS DEGREE (LL.M.)  
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SUPERVISOR: PROFESSOR P.K. MUKHERJEE

Ademola Ajibola

**Nigeria**

**DRAFTING INSTRUCTIONS**

**LEGISLATION ON THE LIMITATION OF LIABILITY**  
**FOR MARITIME CLAIMS**

Having recognised the special character and nature of shipping setting it apart from other areas of industry and commerce with its principal players being exposed to huge and potential liability in terms of damage that may be caused by a shipowner's vessel or by negligence of a salvor or as has become more apparent damage that may be attributable to ports authorities or dock owners, and yet having no financial backing or security of an equally substantial amount either by themselves or through the insurance industry which itself does not enjoy the benefit of limitless resources, the Nigerian Government accepted the need for some protectionist measures in this regard and thought it fit to ratify the International Convention relating to the Limitation of Liability of Owners of Sea-going Ships, Brussels, October 10, 1957 which it later enacted in the form of Part XI of the Merchant Shipping Act, 1962.

However, amongst enactments that the Government has thought needy of revision has been the above mentioned in respect of limitation of liability. In the task embarked upon by the Law Reform Commission, the Report produced [Ref No. LRC/10/1/6/94] revealed the following difficulties and inadequacies with the present state of the law:

1. Given that the intention of the statutory right to the limitation of liability was to protect the shipowners from the consequences of negligent acts of their servants in the navigation or the arrangement of their ship which stems from the recognition of the fact that in the ordinary course of events the individual or, Company owner is very rarely physically present on board their vessels, the requirement of having to prove the absence of "actual fault or privity" on their part in order to successfully invoke the right of limitation was such a heavy burden that the law in reality offered little or no protection at all.

This has further been worsened by the recent attitudes of the Courts in their decisions whereby shipowners now must also prove that loss or damage caused by their vessel was

not so caused by their actual fault or privity.

2. That the category of persons entitled to limitation of liability were no longer adequate in light of potential liability posed to other persons such as salvors or their insurers who are not contemplated by the Act. Reference was also made in this respect to an English case of the Toju Maru [1972] A.C. 242 decided by the House of Lords where the Court faced with the corresponding provision of Section 383 (1) (d) of the Merchant Shipping Act refused to accord the salvor (who was faced with huge liability) any right to limit.
3. Also highlighted was the problem faced today in trying to calculate limits of liability in terms of the "Poincare gold fame" due to the fluctuations of the free gold market and of the value itself. Suggested was that since Nigeria was a member of the International Monetary Fund, a more up to date and practical medium would be the special Drawing Right as defined in the Finance Act.
4. In the light of inflation and increased standards of living

coupled with the increased amount of damages that accrue from marine incidents, the limits under the Act were found to be inadequate. Thus there was a need for change to meet up with new standards.

In the light of this Report, the Government has decided to adopt the more recent Convention on Limitation of Liability for Maritime Claims, 1976 which Nigeria is however not a party to and as such is at liberty to modify, omit, or include any of the provisions, as may be necessary to achieve its aim. A fundamental departure from the main scheme of the Convention is however not intended.

You are therefore requested to draft a concise piece of legislation so as to bring the 1976 Convention as a whole into the law, paying particular attention to the following points so as to effect changes only where necessary:

- A. Despite the provisions of Article 18 of the Convention,
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permitted.

- B. Claims with respect to air cushioned crafts and floating platforms for exploration and exploitation of resources on the seabed or the subsoil should be expressly excluded from being subjected to limitation.
- C. The words of Article 4 of the Convention on conduct barring limitation should be closely followed so as to make clear:
  - (a) the quality of proof required; and
  - (b) on whom such burden of proof is to rest.
- D. Provisions should be made to incorporate the new limits of liability including that in respect of salvors where operating solely in respect of the vessel being salvaged and not operating from any ship.
- E. Separate limits of liability should be made for Ports Authorities, docks or canal owners in respect of any liability they may be subjected to as a result of damage to ships or goods on ships. The limitation here should be linked to the tonnage of the largest Nigerian vessel that

has come within the area of the port or dock within a specified period of 5 years and should be set at 80 units per ton of such vessel. Further consultation to be had with the Ministry of Transport with respect to this limit.

F. The limits in respect of loss of life or personal injury should be dealt with separately as done in the Convention but such limits should not be made subject to any maximum.

G. The ranking of the above claims shall also be necessary so that those of loss of life and personal injury shall be paramount followed by those of ports authorities and dock owners before those arising from other claims.

H. With respect to procedural matters:

(i) Provisions should be made dealing with the requirements of necessary documents to be submitted by a shipowner when applying for limitation.

Such documents should include the tonnage certificate of the relevant vessel and a list of known claimants.

(ii) In this respect, notice to claimants of the lists

should be made mandatory and provisions as to the time limit within which challenge of the calculation of the fund itself may be made.

(iii) No challenge of claims should be permitted once the limitation proceedings have commenced, except in Just circumstances which shall be at the discretion of the Court.

(iv) Where there are proceedings pending in other Courts with respect to the same matter, express provisions should be made permitting the Court to stay other such matters.

(v) Where a claimant fails to bring his claim within a specified time, provisions should be made allowing the Court to nonetheless proceed. Where on the other hand the Court anticipates future claims that may later be established, postponement of the distribution of any part of the fund should be permitted.

I. The rights of a person who has settled claims prior to the

distribution of the fund to be subrogated to the rights of those claimants whose claims he has settled must be provided for.

J. Provisions are required with respect to the protection of the proportion in which the fund is distributed from any lien or other rights on any ship or property.

K. Provision relating to apportionment of liability will remain necessary and in this respect, where an incident has occurred as a result of negligence on the part of more than one vessel, the degree of fault of each vessel should be taken into account in determining what should be paid by each vessel. Also, where it is not possible to establish the different degrees of negligence, the liability should be shared in pari passu.

No exemption in this regard should be made in respect of ships belonging to the Government.

L. Provisions should also be made for joint and several liability with respect to loss of life or personal injury

as a result of the negligence between two or more vessels.

In this respect, provisions for contribution should be made requiring the owner of a ship to contribute in proportion to his liability to the damage caused. Provisions in this regard should only operate where they would not have the effect of denying a person liability from the benefit of a contractual or statutory exemption or limitation of liability.

It is also necessary here to allow the person entitled to contribution to have the rights of the person entitled to the damages for the purposes of recovering the amount of contribution.

- M. Claims made under this legislation should be made subject to the limitation of two years and, where it is a claim for recovery of an amount of contribution in respect of an overpaid proportion of damages for loss of life or personal injury, limitation of one year should be prescribed.

Discretion should, however, be given to the Court to extend

the time limit where it is satisfied that no reasonable opportunity to arrest the defendant's vessel has been had during such a period, either within the Nigerian territorial jurisdiction or that of the state of registration of the vessel and that neither has it been possible to do so in the place of residence or principal place of business of the owner. Provisions made in this respect are not however to affect the position under the Workmen's Compensation Act.

Note: This legislation is intended to repeal the existing law of limitation of liability in maritime claims.

**THE NIGERIAN SHIPPING (LIMITATION OF LIABILITY) ACT, 1995****ARRANGEMENT OF SECTIONS**

- Long title
- Commencement
1. Short title
  2. Interpretation
  3. Persons entitled to limit liability
  4. Invoking of limitation not an admission of liability
  5. Claims subject to limitation
  6. Claims excepted from limitation
  7. Conduct barring limitation
  8. Counter claims
  9. Limits of liability
  10. Calculation of salvors' limits
  11. Ranking of claims
  12. Measurement of ship's tonnage
  13. Limit for passenger claims
  14. Proof of passenger on board ship

15. Limitation of liability of port authorities and owners of docks
16. Conversion of unit of account
17. Aggregation of claims
18. Constitution of fund by security or guarantee
19. Documents to be provided with application for limit by shipowner
20. Notice of constitution of fund and submission of claims thereof
21. Time limit to challenge calculation of fund
22. Time limit for challenge of claims by owner or other claimant
23. Distribution of the funds
24. Bar to other actions
25. Rule as a division of loss
26. Damages for personal injury
27. Right of contribution
28. Limitation of actions
29. Repeal and saving



**THE NIGERIAN SHIPPING (LIMITATION OF LIABILITY) ACT, 1995**

**AN ACT TO PROVIDE FOR LIMITATION OF LIABILITY**

**OF PERSONS INVOLVED IN SHIPPING**

Commencement BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows:

Short title 1(1) This Act may be cited as the Limitation of Liability Act, 1995 and shall come into operation on the 1st day of January, 1996.  
(2) This Act shall be of Federal application.

Interpretation 2(1) In this Act, unless the context otherwise requires:

"Court" means the Court in which a fund has been constituted in respect of any claim giving rise to limitation under this Act;

"Salvage operation" shall include operations referred to in sections 5(d) and (e);

"Salvage services" means services rendered in direct connection with salvage operation;

"Salvor" means any person rendering salvage services;

"Ship" includes any kind of watercraft not withstanding its means of propulsion or its structure, launched and intended for use in navigation as a ship or part of a ship;

"Shipowner" includes charterer, manager or operator of a ship and shall also include for the purposes of Section 2 any person who contracts or hired to take over the sole charge and management of any vessel within the meaning of this section in such circumstances that he shall be responsible

for its navigation and equipment thereof;

"Unit of Account" means the special drawing right as defined in Section 2 of Article XXI of the Article of Agreement of the International Monetary Fund being schedule to the Finance Act.

**PART I**

**PERSONS ENTITLED TO LIMIT (IN GENERAL)**

Persons

3(1) Shipowners, whether in an action entitled to brought against them or against their limit liability ship may limit their liabilities in accordance with the provisions of this Act for the claims set out in Section 4.

(2) Salvors may limit their liabilities in accordance with the provisions of this Act for the claims set out in Section 4.

(3) An insurer of liability for claims subject to limitation under this Act shall be entitled to the benefit of limitation to the same extent as the assured.

(4) A person for whose act, neglect or default the shipowner or salvor is responsible, may limit his liability under this part.

## **PART II**

### **ADMISSION OF LIABILITY**

Invoking of limitation not an admission of liability

4. The act of invoking limitation shall not constitute an admission of liability.

## **PART III**

### **CLAIMS COVERED BY LIMITATION**

Claims subject to

5(1) Subject to Sections 6 and 7, the limitation following

claims, regardless of the basis of liability, shall be subject to limitation of liability:

- (a) Claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- (b) Claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or other luggage;
- (c) Claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the

operation of the ship or salvage operations;

(d) Claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

(e) Claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

(f) Claims of a person, other than the person liable, in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Act, and further loss caused by such measures.

(2) The claims referred to in subsection (4) shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise, so however that, the claims referred to in paragraphs 5(d), (e) and (f) shall not be subject to limitation to the extent that they relate to remuneration under a contract with the person liable.

Claims excepted

6. Limitation of liability under this Act from limitation shall not apply to the following claims:-

(a) Claims for salvage or contribution in general average;

(b) Claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs,

dependants or other persons entitled to make such claims, if under the contract of service between the shipowner or salvor and such servants, the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is under such contract only permitted to limit his liability to an amount greater than that provided for in Section 9;

(c) Claims in respect of air cushioned vehicles and floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof.

Conduct barring      7. A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or





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

(i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons;

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

(A) for each ton from 501 to 3,000 tons, 500 units of account;

(B) for each ton from 3,001 tons, 333 units of account;

(C) for each ton from 30,0001 to 70,000 tons, 250 units of account; and

(D) for each ton in excess of 70,000 tons, 167 units of account.

(b) in respect of any other claims -

(i) 167,000 units of account for a ship with a tonnage not exceeding 500 tons;

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

(A) for each ton from 501 to 30,000 tons, 167 units of account;

(B) for each ton from 30,001 to 70,000 tons, 125 units of account; and

(C) for each ton in excess of 70,000 tons, 83 units of account.

#### **PART V**

#### **LIMITS FOR SALVORS**

Calculation of salvors 10. The limits of liability for any limits  
salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall

be calculated according to a tonnage of 1,500 tons.

**PART VI****PRIORITIES**

Ranking of claims

11(1) Where the amount calculated

in accordance with paragraph 9(a) is insufficient to pay the claims mentioned therein in full, the amount in accordance with paragraph 9(b) shall be available for payment of the unpaid balance of claims under paragraph 9(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph

9(b).

(2) Without prejudice to the right of claim for loss of life or personal injury referred to in paragraph 9(a), claims referred to in Section 15 shall rank above the claims referred to in paragraph 9(b).

#### **PART VII**

#### **CALCULATION OF TONNAGE**

Measurement of 12. For the purposes of this Act, a ship's ship's tonnage tonnage shall be her gross tonnage as defined in the Merchant Shipping (Tonnage) Regulations and shall be measured in accordance with the said Regulations.

#### **PART VIII**

#### **PASSENGER CLAIMS**



Limit for passenger claims 13. 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 46,666 units of account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.

Proof of Passenger 14. In any proceeding under this Act against on board ship the owner of a ship or share therein with respect to loss of life, any prescribed passenger list shall be received as evidence that the person upon whose fault proceedings are taken under this Act was a passenger on board the ship at the time of death.

**PART IX****LIMITATION FOR PUBLIC AUTHORITIES**

Limitation of 15(1) Where, the owners of the dock or canal liability of port or any harbour or port authority may be authorities and liable for any loss or damage to any owners of docks vessel or number of vessels or to any goods, merchandise or other such things and whatsoever on board any vessel or number of vessels, such owners shall not be liable to damage beyond any aggregate amount equivalent to 80 units of account for each ton of the tonnage of the largest Nigerian ship that, at the time of such loss or damage occurring, is or within a period of five years previous thereto has been within the area over which such dock or canal owner or port or harbour authority performs any duty or exercises any power.

- (2) For the purpose of this Section, a ship shall not be deemed to have been within the area over which a port or harbour authority performs any duty or exercises any power by reason only that it has been built or fitted out within such area or that it has been built or fitted out within such area or that it has taken shelter within or passed through such area on a voyage between two places both situated outside that area or that it has loaded or unloaded cargo or passengers within that.
- (3) The limitation of liability under this section shall operate with respect to the whole of any loss and damage which may arise upon one distinct occasion, notwithstanding that such loss or damage may be sustained by more than one person and shall apply whether the liability arises at common law or under

any enactment and irrespective of any provisions in any enactment.

(4) For the purposes of this Section, the expression "owner of a dock or canal" includes any person or authority having the control and management of any dock or canal and any ship repairer using the same, as the case may be.

(5) This Section shall not have the effect of creating any liability in respect of any loss or damage on any such owner or authority where no such liability would have existed if this Act had not been enacted.

## **PART X**

## **THE UNIT OF ACCOUNT**

Conversion of Unit 16. The amounts referred to in Sections 9 of Account and 13 shall be converted into Naira according to

the value of the Naira on the date the security or guarantee referred to in Section 17 shall have been deposited.

**PART XI****AGGREGATION OF CLAIMS**

Aggregation of 17(1) The limits of liability determined in claims accordance with Section 9 shall apply to the aggregate of all claims which arises on any distinct occasion -

- (a) against the shipowner and any person for whose act, neglect or default he may be responsible; or
- (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible;

(c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

(2) The limits of liability determined in accordance with Section 13 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the shipowner in respect of the ship referred to in Section 13 and any person for whose act, neglect or default he may be responsible.

## **PART XII**

## **CONSTITUTION OF FUND**

Constitution of 18(1) Any person alleged to be liable and fund by security seeking to

limit his liability under or guarantee  
this Act shall  
constitute a fund by way  
of deposit of an amount  
at least equal to the limit provided  
for in Sections 9 and 13 as appropriate  
into Court.

- (2) Such deposits made shall be in the term  
of a security or guarantee and shall be  
a sum inclusive of the interest thereon  
from the date of the occurrence giving  
rise to the liability until the date  
such security or guarantee is  
deposited, and the amounts so  
constituted shall be available only for  
the payment of claims in respect of  
which limitation of liability can be  
invoked.
- (3) A security or guarantee, deposited by  
one of the persons mentioned in

paragraph 17(1) (a) (b) or (c) or subsection 15(2) or his insurer, shall be deemed to have been deposited by all persons mentioned in paragraphs 17(1) (a) (b) or (c) or subsection 17(2), respectively.

**PART XIII**

**REQUIREMENT FOR DOCUMENTS AND NOTICE**

Documents to be provided with application for limit by shipowner

19(1) A shipowner on application for the limitation of liability shall provide an annexed to the Application:

(a) the tonnage certificate of the vessel;  
and

(b) a list of known claimants;

(2) Upon the order by the Court such further information a documents as may be deemed necessary in the circumstance



shall be provided by such owner.

Notice of 20(1) Where fund has been properly constitution of fund constituted, the owner must give due and submissions of claims notice of the commencement of the claims thereof limitation proceedings to all claimants included in the list that shall have been annexed to the application for the limitation.

(2) The claimants shall submit their claim in the limitation proceedings within such time as the Court may allow.

#### **PART XIV**

#### **CHALLENGE OF FUND AND CLAIMS**

Time limit to 21. A claimant may not challenge the challenge calculation of the fund after the expiry calculation of of sixty days after notice of the same fund has been given and where upon such time

no distribution of the fund has been made.

Time limit for 22. Unless the Court think it just to do challenge of claims otherwise, no challenge of the claims by owner or other shall be made after the commencement of claimant the limitation proceedings either by the person who has sought to limit his liability or, any other claimants.

#### **PART XV**

#### **DISTRIBUTION OF FUND**

Distribution of 23(1) Subject to Sections 9, 10 and 13 the the fund proceeds of any security or guarantee deposited with the Court shall be distributed among the claimants in proportion to their established claims.

(2) The Court may stay any proceedings pending in any other Court in Relation to the same matter, and may proceed in such manner and subject to such regulation as to the exclusion of any claimants who do not come in within a certain time and as to payment of costs, as the Court thinks just.

(3) No lien or other right in respect of any ship or properly shall affect the proportions in which any amount is distributed amongst several claimants.

(4) If, prior to the distribution of the proceeds of the security or guarantee, the person liable, or his insurer, has settled the claim, such person shall, up to the



any other assets of a person by or on behalf of whom the security or guarantee has been deposited.

- (2) Where a ship or other property is seized or arrested in connection with a claim which appears to the Court to be founded on liability to which limitation is applicable under this Act, and in respect of which a security or guarantee is deposited, the Court shall order the release of the ship or property if the security or guarantee has been deposited in Nigeria or -

(a) at the port where the occurrence took place, or if it took place out of port, at the first port of call thereafter; or

(b) at the port of disembarkation in

respect of claims for loss of  
life or personal injury; or

(c) at the port of discharge in  
respect of damage to cargo,

but where the release is ordered the  
person on whose application such order  
is made shall be deemed to have  
submitted to the jurisdiction of the  
Court to adjudicate on the claim.

(3) The provisions of subsections (1) and  
(2) shall only apply where the claimant  
brings a claim before the Court and the  
security or guarantee deposited with  
the Court is actually available and  
freely transferable in respect of that  
claim.

Rule as to

25(1) Where, by the fault of two or more division of loss ships, damage or loss is caused to one or more of them, or to their cargo or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault, provided that -

(a) If, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally;

(b) Nothing in this Section shall affect the ability of any person under a contract of carriage, or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any

provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) This section shall apply in the case of ships belonging to the Government of the Federation as it applies in the case of other ships.

Damages for

26(1) Where loss of life or personal injury personal injury is suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, the liability of the owners of the ships shall be joint and several.

(2) Nothing in this Section shall be construed as depriving any person of any right of



defence on which, independently of this Section, he might have relied in an action brought against him by the person injured or any person entitled to sue in respect of that loss of life, or shall affect the right of any person to limit his liability in cases to which this Section relates in the manner provided by law.

Right of

27(1) Subject to the provisions of this contribution Section, where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the other ship or ships to the extent to which those ships were respectively in fault. No amount shall be so recovered which could not, by reason of any statutory

or contractual limitation of, or exemption from, liability, or which could not, for any other reason, have been recovered in the first instance as damages by the person entitled to sue therefor.

- (2) Notwithstanding any other remedy provided by law, the persons entitled to contribution under this section shall, for the purposes of recovering the contribution, also have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Limitation of 28(1) Subject to the provisions of this actions Section, no action shall be maintainable to enforce any claim or lien against a ship or its owners in respect of any damages or

loss to another ship, her cargo or freight, or any other property on board, damages for loss of life or personal injuries suffered by any person on board, caused by the fault of the former ship, whether such ship is wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services rendered; and an action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment.

- (2) Any Court of competent jurisdiction  
may extend the

period on such condition as it thinks fit and shall, if satisfied the period there has not been a reasonable opportunity of arresting the defendant ship at any port in Nigeria, or within Nigeria's territorial waters, or locally within the jurisdiction of the country to which the ship of the plaintiff belongs or in which the plaintiff resides or has no principal place of business, extend the period to the extent necessary to give such a reasonable opportunity.

- (3) Nothing in this Section shall affect the provisions of the Workmen's Compensation Act.

**PART XVIII****MISCELLANEOUS**

Repeal and saving 29(1) Part XI of the Merchant Shipping Act

1962 is hereby  
amended by way of repeal.

(2) Notwithstanding the amendment of the  
said Part,  
every statutory instrument made  
thereunder or deemed to be made there  
under and in force immediately before  
the commencement of this Act shall,  
until altered, revoked or modified  
under this Act, continue in force as if  
made under this Act, with such  
modifications as may be necessary,  
having regard to the provisions of this  
Act.

