



Jersey

# **SHIPPING (JERSEY) LAW 2002**

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Jersey

## SHIPPING (JERSEY) LAW 2002

### Arrangement

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Jersey

## SHIPPING (JERSEY) LAW 2002<sup>1</sup>

A **LAW** to make provision in respect of shipping

Commencement [see endnotes]

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### PART 1

#### INTERPRETATION

##### 1 General interpretation provisions<sup>2</sup>

(1) In this Law, unless the context otherwise requires –

“British connection” has the meaning given in Article 10(1)(a);<sup>3</sup>

“certificate” in Part 4 includes a licence, and a reference in another Part to a certificate issued under Part 4 is to be construed accordingly;

“charterer”, includes a person managing a ship under a management agreement defined in Article 61(7)(a);

“commissioned naval officer” means a commissioned officer of Her Majesty’s Navy on full pay;

“consular officer”, in relation to a foreign country, means the officer recognized by Her Majesty as a consular officer of that country;

“contravention” includes failure to comply;

“country” includes Jersey, a relevant British possession and a territory or dependency of another country, if the laws of that British possession, or territory or dependency, allow it to register its own ships;

“customs officer” means the Agent of the Impôts or an officer of the Impôts;

“enactment” means a Law or subordinate legislation of Jersey, or an Act, Order in Council or statutory instrument of the United Kingdom;

“failure” includes refusal;

“fishing vessel” means a vessel for the time being used or, in the context of an application for registration, intended to be used for or in connection

with fishing for sea fish, other than a vessel used or intended to be used for fishing otherwise than for profit; and for the purposes of this definition “sea fish” includes shellfish, salmon and migratory trout;

“foreign”, in relation to a ship, means that it is neither a Jersey ship nor a small ship, as defined in Article 2, that is a Jersey ship;

“Government ship” has the meaning given in Article 198;

“harbour” includes piers, jetties and other works in or at which ships can obtain shelter or ship and unship goods or passengers;

“Harbour Master” means the person appointed to that post under Article 2 of the Harbours Administration (Jersey) Law 1961;<sup>4</sup>

“inspector” means a person appointed under Article 154(1);

“Jersey” means the Island of Jersey and its dependencies;

“Jersey ship” has the meaning given in Article 2;

“Jersey waters” means the sea within the seaward limits of the territorial waters of Jersey;

“master” includes any person, except a pilot, having command or charge of a ship and, in relation to a fishing vessel, means the skipper;

“Minister” means the Minister for Economic Development;

“nationality” means belonging to a country as defined in this paragraph;

“police officer” means a member of the Honorary Police or the States of Jersey Police Force;

“port” includes place;

“proper officer” means a consular officer appointed by Her Majesty’s Government in the United Kingdom and, in relation to a port in a country outside the United Kingdom and the British Islands that is not a foreign country, also an officer exercising in that port functions similar to those of a shipping master;

“qualifying foreign ship” has the meaning given in Article 3;

“register”, as a noun, means the register of Jersey ships maintained under Article 11 and “registered”, except with reference to the law of another country, is to be construed accordingly;

“Registrar” means the Registrar of Shipping appointed under Article 188 or, as respects functions of his or her being discharged by another authority or person, that authority or person;

“Registration Regulations” means Regulations made under Article 13;

“relevant British possession” means –

- (a) the Isle of Man;
- (b) the Bailiwick of Guernsey; or
- (c) a colony (as defined in Schedule 1 to the Interpretation Act 1978 of the United Kingdom);

“Safety Regulations” means Regulations made under Article 49 and includes Orders made under paragraph (6)(a) of that Article;

“seaman” means a person, except a master and a pilot, employed or engaged in any capacity on board a ship;

“ship” includes every description of vessel used in navigation;

“shipping master” means a person appointed under Article 189;

“small ship” means a ship that is less than 24 metres in length when its ‘length’ is determined in accordance with the Tonnage Regulations;<sup>5</sup>

“surveyor of ships” means a person appointed under Article 154(2);

“Tonnage Regulations” means Regulations made under Article 21(1).

- (2) A vessel for the time being used, or intended to be used, wholly for the purpose of conveying persons wishing to fish for pleasure is not a fishing vessel.
- (3) A reference in this Law to a “right of innocent passage” is to be construed in accordance with the United Nations Convention on the Law of the Sea.
- (4) A reference in this Law to a requirement, restriction or prohibition under this Law includes any such requirement, restriction or prohibition constituting a term of an approval, licence, consent or exemption given in a document issued under this Law.
- (5) In this Law a reference by number or letter to 2 or more Articles, paragraphs or other divisions of this Law or another enactment is to be construed as including both the first and last mentioned.
- (6) A reference in this Law to an enactment, other than the Merchant Shipping Act 1995, is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied by or under another enactment, including another provision of that enactment.
- (7) Where in this Law or subordinate legislation made under it –
  - (a) a penalty is specified in respect of an offence, that penalty is the maximum that may be imposed for that offence;
  - (b) more than one penalty is specified in respect of an offence, the use of the word “and” between the respective penalties means that the penalties may be imposed cumulatively or in the alternative.

## **2 Meaning of “Jersey ship”**

A ship is a Jersey ship for the purposes of this Law, except Articles 49 and 111(1), if the ship is –

- (a) registered in Jersey under Part 3;
- (b) a small ship, other than a fishing vessel, that is not registered under Part 3 but that –
  - (i) is wholly owned by a person ordinarily resident in Jersey or by a company incorporated in Jersey, and
  - (ii) is not registered under the law of a country outside Jersey; or

- (c) a Government ship registered in Jersey by means of an Order made under Article 198.<sup>6</sup>

### **3 Meaning of “qualifying foreign ship”**

- (1) In this Law “qualifying foreign ship” means a ship other than –
  - (a) a Jersey ship;
  - (b) a ship that is not registered under Part 3 and that, although not by virtue of Article 2(1)(b) a Jersey ship –
    - (i) is wholly owned by persons falling within paragraph (2), and
    - (ii) is not registered under the law of a country outside the United Kingdom, the Channel Islands or the Isle of Man.
- (2) The persons referred to in paragraph (1)(b)(i) are –
  - (a) British citizens;
  - (b) British Dependent Territories citizens;
  - (c) British Overseas citizens;
  - (d) persons who under the British Nationality Act 1981 of the United Kingdom are British subjects;
  - (e) British Nationals (Overseas) within the meaning of that Act;
  - (f) British protected persons within the meaning of that Act; or
  - (g) bodies corporate incorporated in the United Kingdom or in a relevant British possession and having their principal place of business in the United Kingdom or in a relevant British possession.

## **PART 2**

### **JERSEY SHIPS**

#### **4 Jersey flag**

- (1) The flag that a Jersey ship may fly is –
  - (a) the red ensign without any defacement or modification;
  - (b) the red ensign defaced or modified, whose adoption for ships registered in Jersey is –
    - (i) authorized or confirmed by Her Majesty by Order in Council, or
    - (ii) authorized by the States;
  - (c) colours allowed to be worn under a warrant from Her Majesty.
- (2) Paragraph (1) does not apply to Government ships.

#### **5 Character of Jersey ships**

- (1) If the master, owner or any charterer of a ship that is not a Jersey ship does anything, or permits anything to be done, for the purpose of causing

the ship to appear to be a Jersey ship then, except as provided by paragraphs (2) and (5), the ship is liable to forfeiture and the master, the owner and any charterer each commits an offence.

- (2) If the registration of a ship has terminated by virtue of a provision of the Registration Regulations, any marks prescribed by those Regulations displayed on the ship within the period of 14 days beginning with the date of termination of that registration are to be disregarded.
- (3) If the master, owner or any charterer of a Jersey ship does anything, or permits anything to be done, for the purpose of concealing the nationality of the ship, the ship is liable to forfeiture and the master, the owner and any charterer each commits an offence.
- (4) Without prejudice to the generality of paragraphs (1) and (3), those paragraphs apply in particular to acts or deliberate omissions as respects –
  - (a) the flying of a national flag;
  - (b) the carrying or production of certificates of registration or other documents relating to the nationality of the ship; and
  - (c) the display of marks required by the law of any country.
- (5) Liability does not arise under paragraph (1) or (3) if the assumption or concealment of Jersey nationality has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.
- (6) A person who commits an offence under this Article is liable to imprisonment for 2 years and a fine.
- (7) This Article applies to things done outside, as well as within, Jersey.

## **6 Offence of carrying improper colours**

- (1) If any of the following, namely –
  - (a) any distinctive national colours except –
    - (i) the red ensign,
    - (ii) colours authorized or confirmed under Article 4(b) or (c),
    - (iii) the Union flag with a white border, or
    - (iv) the Jersey flag or ensign;
  - (b) any colours usually worn by Her Majesty's ships or resembling those of Her Majesty; or
  - (c) the pennant usually carried by Her Majesty's ships or a pendant resembling that pennant,

are hoisted on board a Jersey ship without warrant from Her Majesty, the owner or any charterer of the ship, if on board, or the master of the ship, and any other person hoisting them each commits an offence and is liable to a fine.

- (2) If colours are hoisted on board a ship in contravention of paragraph (1) –
  - (a) a commissioned naval or military officer;

- (b) a customs officer; or
  - (c) a British consular officer,
- may board the ship and seize and take away the colours.
- (3) Any colours so seized are to be forfeited.
- (4) In this Article “colours” includes a pennant.

## **7 Duty to show Jersey flag**

- (1) A Jersey ship, other than a fishing vessel, shall hoist the red ensign or other proper national colours –
  - (a) on a signal being made to the ship by one of Her Majesty’s ships, including a ship under the command of a commissioned naval officer;
  - (b) on entering or leaving a foreign port; and
  - (c) in the case of ships of 50 or more tons gross tonnage, on entering or leaving a Jersey port.
- (2) Paragraph (1)(c) does not apply to a small ship registered under Part 3.

## **8 Duty to declare national character of ship**

- (1) A customs officer shall not grant a clearance or transire for a ship until the master of the ship has declared to that officer the name of the nation to which he or she claims that the ship belongs.
- (2) The officer shall then immediately enter that name on the clearance or transire.
- (3) If a ship attempts to proceed to sea without a clearance or transire, the ship may be detained until the declaration is made.

## **9 Proceedings on forfeiture of a ship**

- (1) If a ship has either wholly or as to any share in it become liable to forfeiture under this Part –
  - (a) a commissioned naval or military officer; or
  - (b) a person appointed by the Minister for the purposes of this Article,may seize and detain the ship and bring it for adjudication before the Royal Court.
- (2) If a ship is subject to adjudication under this Article the Court may –
  - (a) adjudge the ship and her equipment to be forfeited; and
  - (b) make such order in the case as seems just.
- (3) An officer or person bringing proceedings under this Article is not liable in damages in respect of the seizure or detention of the ship, notwithstanding that –
  - (a) the ship has not been proceeded against; or
  - (b) if proceeded against, adjudicated not liable to forfeiture,



if the Court is satisfied that there were reasonable grounds for seizure or detention.

- (4) If the Court is not so satisfied it may award costs and damages to the party aggrieved and make such other order as it thinks just.

### **PART 3**

#### **REGISTRATION**

##### **10 Interpretation of Part**

- (1) In this Part –
- (a) a reference to a ship having a British connection is a reference to compliance with the conditions of entitlement imposed by Article 12(1)(a) and (b), and “declaration of British connection” is to be construed accordingly;
  - (b) “the private law provisions for registered ships” means the provisions of Schedule 1 and includes provisions in the Registration Regulations made for the purpose of that Schedule or under Article 13(3)(a).<sup>7</sup>
- (2) If, for the purposes of an enactment, the question arises whether a ship is owned by a person qualified to own a Jersey ship, the question is to be determined by reference to the Registration Regulations.

##### **11 Register of Jersey ships**

- (1) The Registrar shall maintain a register of Jersey ships.
- (2) The Registrar –
- (a) shall so constitute the register as to distinguish, in separate parts, registration of fishing vessels and registration of small ships, and may otherwise divide the register into parts so as to distinguish between classes or descriptions of ships;
  - (b) shall maintain the register in accordance with –
    - (i) the Registration Regulations,
    - (ii) the private law provisions for registered ships, and
    - (iii) any directions given by the Minister under paragraph (3)(b); and
  - (c) shall make the register available for public inspection at all reasonable times.<sup>8</sup>
- (3) The Minister may –
- (a) designate a person to discharge, on behalf of the Registrar, all his or her functions or such of them as the Minister may direct;
  - (b) give the Registrar directions of a general nature as to the discharge of any of his or her functions.

**12 Basic provisions as to registration**

- (1) A ship shall be registered if –
  - (a) it is owned to the prescribed extent by a person or persons qualified to own a Jersey ship; and
  - (b) any condition prescribed under paragraph (2)(b) is satisfied; and
  - (c) application for registration is duly made.
- (2) The Registration Regulations shall –
  - (a) determine the qualification a person must possess to be qualified to be the owner of a Jersey ship, or a Jersey ship of any class or description, and prescribe the extent of the ownership required for compliance with paragraph (1)(a); and
  - (b) prescribe other requirements designed to secure that, taken in conjunction with the requisite ownership, only ships having a British connection are registered.<sup>9</sup>
- (3) Despite paragraph (1), the Registrar may, if the Registration Regulations so provide –
  - (a) refuse to register or terminate the registration of a ship if, having regard to any relevant requirements of this Law, he or she considers it would be inappropriate for the ship to be, or to remain, registered;
  - (b) register a fishing vessel despite the fact that paragraph (1)(a) is not satisfied in relation to a particular owner of a share in the vessel if the vessel otherwise has a British connection.<sup>10</sup>
- (4) If a ship becomes registered at a time when it is already registered under the law of a country other than Jersey, the owner of the ship shall take all reasonable steps to secure the termination of the ship's registration under the law of that country.
- (5) Paragraph (4) does not apply to a ship that becomes registered on a transfer of registration from the United Kingdom or a relevant British possession.
- (6) A person who contravenes paragraph (4) commits an offence and is liable to a fine at level 3 on the standard scale.
- (7) In paragraph (3)(a) "relevant requirements of this Law" means the requirements, including requirements falling to be complied with after registration, relating to –
  - (a) the condition of a ship or its equipment so far as relevant to its safety or a risk of pollution;
  - (b) the safety, health and welfare of people employed or engaged on a ship; and
  - (c) the numbers and qualifications of officers, doctors, cooks and other seamen that are required to be carried on a ship.

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**13 Registration Regulations**

- (1) The States shall make Regulations to provide generally for and in connection with the registration of Jersey ships and, in particular, for any of the following matters –
- (a) to restrict the registration of ships by reference to their gross tonnage or length;
  - (b) the persons by whom and the manner in which applications in connection with registration are to be made;
  - (c) the information and evidence, including declarations of British connection, to be provided in connection with applications and such supplementary information or evidence as may be required by any specified authority;
  - (d) the shares in the property in, and the number of owners, including joint owners, of, a ship permitted for the purposes of registration and the persons required or permitted to be registered in respect of a ship or to be so registered in specific circumstances;
  - (e) the issue of certificates, including provisional certificates, of registration, their production and surrender;
  - (f) to restrict and regulate the names of ships registered or to be registered;
  - (g) the marking of ships registered or to be registered, including marks for identifying the port to which a ship is to be treated as belonging;
  - (h) the period for which registration is to remain effective without renewal;
  - (i) the production to the Registrar of declarations of British connection or other information relating to it, as respects registered ships, at specified intervals or at his or her request;
  - (j) the survey and inspection of ships registered or to be registered and the recording of their tonnage as ascertained or re-ascertained under the Tonnage Regulations;
  - (k) the refusal, suspension and termination of registration in specified circumstances;
  - (l) matters arising out of the expiry, suspension or termination of registration, including the removal of marks and the cancellation of certificates;
  - (m) the charging of fees in connection with the registration of registered ships;
  - (n) the transfer of the registration of ships to and from the register from and to registers or corresponding records in countries other than Jersey;
  - (o) the inspection of the register;
  - (p) any other matter that is authorized or required by this Part to be prescribed by the Registration Regulations.<sup>11</sup>
- (2) The Registration Regulations may –

- (a) create offences punishable with a fine not exceeding level 4 on the standard scale;
  - (b) provide for –
    - (i) the approval of forms by the Minister,
    - (ii) the discharge of specified functions by specified authorities or persons;
  - (c) make any of their provisions extend to places outside Jersey;
  - (d) provide that a reference in another Law or an enactment extending to Jersey, or in an instrument made under it, to the port of registry or the port to which a ship belongs is to be construed as a reference to the port identified by the marks required for the purpose by the Registration Regulations;
  - (e) provide for authorizing investigations and conferring powers of inspection for verifying the British connection of a ship.<sup>12</sup>
- (3) The Registration Regulations –
- (a) may provide for the registration of any class or description of ships to be such as to exclude the application of the private law provisions for registered ships, and, if they do, may regulate the transfer, transmission or mortgaging of ships of the class or description so excluded;
  - (b) may provide for any matter that is authorized or required by those provisions to be prescribed by the Registration Regulations; and
  - (c) shall provide for the preclusion of notice of a trust being entered in the register or being receivable by the Registrar except as respects specified classes or descriptions of ships or in specified circumstances.
- (4) A document that purports –
- (a) to be a copy of information contained in an entry in the register; and
  - (b) to be certified as a true copy by the Registrar,
- is evidence of the matters stated in the document.

#### **14 Tonnage ascertained for registration to be tonnage of ship**

- (1) If the tonnage of a ship has been ascertained and registered in accordance with the Tonnage Regulations, that tonnage is to be treated as the tonnage of the ship.
- (2) Paragraph (1) shall not apply if the Registration Regulations provide, in specified circumstances, for the ship to be re-measured and the register to be amended accordingly.

#### **15 Tonnage of ships of foreign countries adopting Tonnage Regulations**

- (1) The Minister may by Order provide in relation to the ships of a foreign country as is authorized by this Article if it appears to the Minister that

the Tonnage Regulations have been adopted by the foreign country and are in force there.

- (2) An Order under this Article may provide that the ships of the foreign country are, without being remeasured in Jersey, to be treated as being of the tonnage denoted by their certificates of registration or other national papers, to the same extent, and for the same purposes, as the tonnage denoted in the certificate of registration of a Jersey ship is treated as being the tonnage of that ship.
- (3) Subject to paragraph (4), if an Order under this Article is in force in relation to the ships of any country, any space shown in the ship's certificate of registration or other national papers as deducted from the tonnage shall, if a similar deduction in the case of a Jersey ship depends on –
  - (a) compliance with any conditions; or
  - (b) on the compliance being evidenced in any manner,be treated as complying with those conditions and as being so evidenced.
- (4) Paragraph (3) shall not apply if a surveyor of ships certifies to the Minister that the construction and equipment of the ship as respects that space do not come up to the standard that would be required if the ship were a Jersey ship.
- (5) An Order under this Article may operate for a limited time.
- (6) If it appears to the Minister that the tonnage of a foreign ship, as measured by the rules of the country to which the ship belongs, materially differs from what it would be under the Tonnage Regulations, the Minister may by Order prescribe that, despite any Order in force under paragraph (1), any of the ships of that country may, for all or any of the purposes of this Law, be remeasured in accordance with the Tonnage Regulations.

## **16 Status of certificate of registration**

The certificate of registration of a Jersey ship –

- (a) is not to be used except for the lawful navigation of the ship; and
- (b) is not to be subject to detention to secure a private right or claim.

## **17 Offences relating to a ship's British connection<sup>13</sup>**

- (1) A person commits an offence if, in relation to a matter relevant to the British connection of a ship, he or she makes a false statement to the Registrar, or furnishes the Registrar with false information –
  - (a) the person knows to be false; or
  - (b) concerning which he or she is reckless as to whether it is false.<sup>14</sup>
- (2) If at any time there occurs, in relation to a registered ship, a change affecting the British connection of the ship, the owner of the ship shall, as

soon as practicable after the change occurs, notify the Registrar of that change; and if the Registrar fails to do so he or she commits an offence.<sup>15</sup>

- (3) A person commits an offence if he or she intentionally alters, suppresses, conceals or destroys a document that contains information relating to the British connection of a ship and that he or she has been required to produce to the Registrar under the Registration Regulations.<sup>16</sup>
- (4) A person who commits an offence under this Article is liable to imprisonment for 2 years and a fine.
- (5) This Article applies to things done outside as well as within Jersey.

## **18 Supplementary provisions as respects fishing vessels**

- (1) If a fishing vessel that –
  - (a) is either –
    - (i) entitled to be registered, or
    - (ii) wholly owned by persons qualified to be owners of Jersey ships; but
  - (b) is registered neither under this Law in the part of the register relating to fishing vessels nor under the law of a country outside Jersey,

is used for fishing for profit, the vessel is liable to forfeiture and the skipper, the owner and any charterer of the vessel each commits an offence.

- (2) Paragraph (1) does not apply to fishing vessels of such classes or descriptions, or in such circumstances, as may be specified in an Order made by the Minister.
- (3) If the skipper, owner or any charterer of a fishing vessel that is not registered in Jersey does anything, or permits anything to be done, for the purpose of causing the vessel to appear to be so registered, the vessel is liable to forfeiture and the skipper, the owner and any charterer of the vessel each commits an offence.
- (4) If the registration of a fishing vessel has terminated by virtue of a provision of the Registration Regulations, any marks prescribed by those Regulations displayed on the fishing vessel within the period of 14 days beginning with the date of termination of that registration are to be disregarded for the purposes of paragraph (3).
- (5) A person who commits an offence under this Article is liable to imprisonment for 2 years and a fine.
- (6) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.
- (7) This Article applies to things done outside as well as within Jersey.
- (8) Article 16 of the Sea Fisheries (Jersey) Law 1994<sup>17</sup> applies in relation to a provision of this Article or of the Registration Regulations in their application to fishing vessels or fishing vessels of any class or description; and Article 18 of that Law applies accordingly.

**19 Private law provisions for registered ships and liability as owner**

- (1) Schedule 1 has effect in relation to the title to, and the registration of mortgages over ships, except ships that are excluded from its application by any provisions of the Registration Regulations made under Article 13(3)(a).
- (2) If a person is beneficially interested, otherwise than as a mortgagee, in a ship or a share in a ship registered in the name of some other person as owner, the person so interested, as well as the registered owner, is liable to any pecuniary penalties imposed by or under this Law or another Law, or any enactment extending to Jersey, on the owners of registered ships.
- (3) If the registration of a ship terminates by virtue of a provision of the Registration Regulations, the termination of that registration does not affect an entry in the register so far as relating to an undischarged registered mortgage of that ship or of any share in it.
- (4) In paragraph (3) “registered mortgage” has the same meaning as in Schedule 1.

**20 Ships bareboat chartered-in by Jersey charterers**

- (1) This Article applies to a ship that –
  - (a) is chartered on bareboat charter terms to a charterer who is a person qualified to own Jersey ships; and
  - (b) is so chartered in circumstances where the conditions of entitlement to registration prescribed under Article 12(2)(b), read with the requisite modifications, are satisfied as respects the charterer of the ship.
- (2) The “requisite modifications” of the conditions referred to in paragraph (1) are the substitution for any requirement to be satisfied by or as respects the owner of a ship of a corresponding requirement to be satisfied by or as respects the charterer of the ship.
- (3) A ship to which this Article applies is entitled to be registered if an application for registration is duly made, but Article 12(3)(a) (Registrar’s power to refuse to register) applies also in relation to registration by virtue of this Article.
- (4) The registration of a ship registered by virtue of this Article remains in force until the end of the charter period unless terminated earlier by virtue of the Registration Regulations and is subject to suspension under those Regulations.
- (5) Article 12(4) (duty to take steps to secure the termination of registration in another country) does not apply to a ship registered by virtue of this Article, but the Registration Regulations shall include provisions for securing that the authority responsible for the registration of ships in any country in which the ship is otherwise registered is notified of the registration of the ship under this Article and of the termination of its registration, whether by virtue of paragraph (4) or the Registration Regulations.

- (6) Throughout the period of registration under this Article –
  - (a) the ship, as a Jersey ship, is entitled to fly a flag that a Jersey ship is entitled to fly under Article 4;
  - (b) subject to paragraphs (7) and (8), this Law applies to the ship as it applies to other Jersey ships; and
  - (c) subject to paragraph (8), any other enactment applicable to Jersey ships applies to the ship.
- (7) The private law provisions for registered ships do not apply to a ship registered by virtue of this Article, and any matters or questions corresponding to those for which those provisions provide are to be determined –
  - (a) by reference to the law of the country in which the ship is otherwise registered; or
  - (b) in the event of the ship not being so registered, by reference to the law of the country with which the owners are most closely connected.
- (8) The Minister may by Order provide that this Law or an enactment referred to in paragraph (6)(c), or any provision of either, is not to have effect, or is to have effect subject to any modifications specified in the Order; but no provision is to be made by the Order that would have the effect of relaxing –
  - (a) the condition of ships or their equipment so far as relevant to their safety or a risk of pollution;
  - (b) the safety, health and welfare of persons employed or engaged in them; and
  - (c) the numbers and qualifications of officers, doctors, cooks and other seamen that are required to be carried in them.
- (9) An Order under paragraph (8) may include provisions divesting, or providing for the divestment of, ownership in the ship, as appear to the Minister to be necessary or expedient.
- (10) In this Article –
  - “bareboat charter terms”, in relation to a ship, means the hiring of the ship for a stipulated period on terms that give the charterer possession and control of the ship, including the right to appoint the master and crew;
  - “the charter period” means the period during which the ship is chartered on bareboat charter terms.

## **21 Tonnage Regulations**

- (1) The tonnage of a ship to be registered under this Part shall be ascertained in accordance with Regulations made by the States.
- (2) The Tonnage Regulations may provide –
  - (a) for the measurement and survey of ships to be undertaken, in circumstances specified in the Regulations, by persons appointed by such organisations as may be authorized by the Minister;



- (b) for the issue, by the Minister or by persons appointed by organisations authorized for the purpose by the Minister, of certificates of –
    - (i) the registered tonnage of a ship, or
    - (ii) the tonnage that is to be taken for a purpose specified in the Regulations as the tonnage of a ship not registered in Jersey;
  - (c) for the cancellation and delivery up of the certificates in circumstances prescribed by the Regulations;
  - (d) for assigning a ship, either instead of or as an alternative to the tonnage ascertained in accordance with the other provisions of the Regulations, a lower tonnage applicable if the ship is not loaded to the full depth to which it can safely be loaded;
  - (e) for indicating on the ship, by a mark specified in the Regulations, that a lower tonnage has been assigned to it; and
  - (f) if a lower tonnage has been assigned to it as an alternative, for indicating on the ship the depth to which the ship may be loaded for the lower tonnage to be applicable.
- (3) The Tonnage Regulations may –
- (a) prohibit or restrict the carriage of goods or stores in spaces not included in the registered tonnage and provide for making the master, any charterer and the owner each guilty of an offence and liable to a fine not exceeding level 3 on the standard scale if such a prohibition or restriction is contravened;
  - (b) in the case of Regulations requiring the delivery up of a certificate, make failure to comply with the requirement an offence punishable with a fine not exceeding level 3 on the standard scale.

## **22 Proceedings on forfeiture of ships under Part 3**

Article 9 applies in relation to ships or shares in ships that become liable to forfeiture under this Part as it applies to those liable to forfeiture under Part 2.

## **23 Disclosure of information relating to registration**

- (1) An obligation as to secrecy or other restriction on the disclosure of information, whether imposed by enactment or otherwise, does not preclude any of the persons mentioned in paragraph (2) from disclosing to –
  - (a) the Minister or an officer, authorized by the Minister, of an administration of the States for which the Minister is assigned responsibility;
  - (b) the Registrar,information for the purpose of assisting the Minister in the performance of his or her functions under this Part.
- (2) The persons referred to in paragraph (1) are –

- (a) the Minister for Treasury and Resources;
  - (b) the Minister for Home Affairs;
  - (c) the Jersey Financial Services Commission or an officer or agent of the Commission who is authorized by it;
  - (d) a person who is –
    - (i) an officer of an administration of the States Department for which one of the Ministers mentioned in this paragraph is designated responsibility and who is authorized by that Minister, or
    - (ii) an agent of one of the Ministers mentioned in this paragraph and who is authorized by that Minister.
- (3) Information obtained under paragraph (1) shall not be disclosed by a person receiving it to another person except if the disclosure is made to a person to whom information could have been disclosed by a person mentioned in paragraph (2) in accordance with paragraph (1), or for the purpose of legal proceedings arising out of this Part.

## **PART 4**

### **MASTERS AND SEAMEN**

#### **24 Interpretation of Part**

- (1) A reference in this Part to going to sea includes a reference to going to sea from a country outside Jersey.
- (2) A power conferred by this Part to provide for or grant an exemption includes power to provide for or grant the exemption subject to conditions.

#### **25 Application of certain Articles**

Articles 29 to 33 apply to –

- (a) a Jersey ship; and
- (b) a ship registered under the law of a country outside Jersey that carries passengers –
  - (i) between places in Jersey or between Jersey and the United Kingdom, the Isle of Man or any of the other Channel Islands, or
  - (ii) on a voyage that begins and ends at the same place in Jersey and on which the ship calls at no place outside Jersey.

#### **26 Obligation of shipowners as to seaworthiness**

- (1) In a contract of employment between the owner of a Jersey ship and the master of or a seaman employed in the ship there is implied an obligation on the owner of the ship, despite any agreement to the contrary, that –
  - (a) the owner of the ship;

- (b) its master; and
- (c) an agent charged –
  - (i) to load the ship,
  - (ii) to prepare it for sea, or
  - (iii) to send it to sea,

shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences and to keep the ship in a seaworthy condition for the voyage during the voyage.

- (2) Liability on the owner of a ship does not arise under paragraph (1) in respect of a ship that is sent to sea in an unseaworthy state if, owing to special circumstances, the sending of the ship to sea in that state was reasonable and justifiable.

## **27 Complaints about provisions or water**

- (1) The master of a Jersey ship shall investigate any complaint made by 3 or more seamen employed in the ship that they consider that the provisions or water provided for the seamen employed in the ship is not in accordance with any requirement of the Safety Regulations, whether because of bad quality, unfitness for use or deficiency in quantity.
- (2) If the seamen are dissatisfied with the action taken by the master as a result of his or her investigation or by his or her failure to take any action, they may state their dissatisfaction to the master and may claim to complain to a shipping master or proper officer; and in that case the master shall make adequate arrangements to enable the seamen to do so as soon as the service of the ship permits.
- (3) The shipping master or proper officer to whom a complaint has been made under this Article shall investigate the complaint and may examine the provisions or water on the ship or cause them to be examined.
- (4) If the master fails without reasonable excuse to comply with paragraph (2) he or she commits an offence and is liable to a fine at level 3 on the standard scale.
- (5) If the master has been notified in writing by the person making an examination under paragraph (3) that any provisions or water are found to be unfit for use or not of the quality required by the Regulations –
  - (a) if they are not replaced within a reasonable time, the master, the owner and any charterer each commits an offence and is liable to a fine at level 3 on the standard scale unless he or she proves that the failure to replace them was not due to his or her neglect or default;
  - (b) if the master, without reasonable excuse, permits them to be used he or she commits an offence and is liable to a fine at level 3 on the standard scale.

**28 Expenses of medical and other treatment during voyage**

- (1) If a person, while employed on a Jersey ship, receives outside Jersey –
  - (a) surgical or medical treatment; or
  - (b) dental or optical treatment, including the repair or replacement of an appliance, that cannot be postponed without impairing efficiency,the reasonable expenses of the treatment are to be paid by the person by whom he or she is employed.
- (2) If a person dies while employed in a Jersey ship and is buried or cremated outside Jersey, the expenses of his or her burial or cremation are to be paid by the person by whom he or she is employed.
- (3) The reference in paragraph (2) to burial includes burial at sea.

**29 Manning**

- (1) The Minister may by Order –
  - (a) require ships to which this Article applies to carry the number of qualified officers of any description, qualified doctors and qualified cooks, and the number of other seamen or qualified seamen of any description specified in the Order; and
  - (b) prescribe or enable the Minister to specify standards of competence to be attained and other conditions to be satisfied, subject to any exceptions allowed by or under the Order, by officers and other seamen of any description in order to be qualified for the purposes of this Article,but the Minister shall not exercise his or her power to require ships to carry seamen other than doctors and cooks except to the extent that it appears to the Minister necessary or expedient in the interests of safety.
- (2) Without prejudice to the generality of paragraph (1)(b), the conditions prescribed or specified under that paragraph may include conditions as to nationality, and an Order made for the purposes of that paragraph may provide, or enable the Minister to provide, for –
  - (a) the manner in which the attainment of a standard or the satisfaction of any other condition is to be evidenced;
  - (b) the conduct of any examinations, the conditions for admission to them and the appointment and remuneration of examiners; and
  - (c) the issue, form and recording of certificates and other documents.
- (3) If an Order under this Article exempts a ship or ships of a particular description from a requirement of the Order, the exemption may be confined to a particular period or to one or more particular voyages.
- (4) If a person makes a statement that he or she knows to be false or recklessly makes a statement that is false in a material particular for the purpose of obtaining for himself, herself or another person a certificate or other document that may be issued under this Article, that person commits an offence and is liable to a fine at level 4 on the standard scale.

**30 Prohibition of going to sea undermanned**

Subject to any exemption under Article 29(3), if a ship to which this Article applies goes to sea or attempts to go to sea without carrying the officers and other seamen that it is required to carry by virtue of Article 29, the owner, the master and any charterer each commits an offence and is liable to a fine, and the ship, if in Jersey, may be detained.

**31 Production of certificates and other documents of qualification**

- (1) A person serving or engaged to serve in a ship to which this Article applies and holding a certificate or other document that is evidence that the person is qualified for the purpose of Article 29 shall produce it on demand to a shipping master, surveyor of ships or proper officer and, if he or she is not the master, to the master of the ship.
- (2) A person who fails without reasonable excuse to comply with paragraph (1) commits an offence and is liable to a fine at level 2 on the standard scale.

**32 Crew's knowledge of English**

- (1) If in the opinion of a shipping master or proper officer the crew of a ship to which this Article applies consists of or includes persons who may not understand orders given to them in the course of their duty because of their insufficient knowledge of English and the absence of adequate arrangements for transmitting the orders in a language of which they have sufficient knowledge –
  - (a) the ship shall not go to sea if the shipping master or proper officer has informed the master of that opinion; and
  - (b) if the ship is a Jersey ship, it may be detained.
- (2) If a ship goes to sea or attempts to go to sea in contravention of this Article, the owner, the master and any charterer each commits an offence and is liable to a fine at level 4 on the standard scale.

**33 Unqualified persons going to sea as qualified**

If a person goes to sea as a qualified officer or seaman of any description without being qualified as such for the purposes of Article 29, he or she commits an offence and is liable to a fine.

**34 Medical treatment on board ship**

The master of a Jersey ship that does not carry a doctor among the seamen employed in the ship shall make arrangements to secure that any medical attention on board the ship is given either by the master, or under his or her supervision by a person appointed by the master for the purpose.

**35 Special certificates of competence**

- (1) The Minister may issue and record documents certifying the attainment of any standard of competence relating to ships or their operation, despite the fact that the standard is not among those prescribed or specified under Article 29(1)(b); and may, in relation to it, make an Order for purposes corresponding to those mentioned in Article 29(2).
- (2) If a person makes a statement that he or she knows to be false, or recklessly makes a statement that is false in a material particular, for the purpose of obtaining for himself, herself or another person a document that may be issued under this Article, the person commits an offence and is liable to a fine at level 4 on the standard scale.

**36 Young persons**

- (1) A person of compulsory school age shall not be employed in a Jersey ship except as permitted by an Order under this Article.
- (2) The Minister may by Order –
  - (a) prescribe circumstances in which, and conditions subject to which, persons of compulsory school age who have attained an age specified in the Order may be employed in a ship in capacities that are specified;
  - (b) prescribe circumstances and capacities in which persons over compulsory school age but under the age of 18, or under any lower age specified in the Order, shall not be employed in a Jersey ship, or may be so employed only subject to conditions specified in the Order.
- (3) If a person is employed in a ship in contravention of this Article, or if a condition subject to which a person may be employed under an Order made under paragraph (2) is not complied with, the owner, the master and any charterer each commits an offence and is liable to a fine at level 3 on the standard scale.
- (4) In this Article “compulsory school age” is to be construed in accordance with Article 2 of the Education (Jersey) Law 1999.<sup>18</sup>

**37 Conduct endangering ships, structures or individuals**

- (1) This Article applies –
  - (a) to the master of, or a seaman employed in, a Jersey ship; and
  - (b) to the master of, or a seaman employed in, a ship that –
    - (i) is registered under the law of a country outside Jersey, and
    - (ii) is in a port in Jersey, or within Jersey waters while proceeding to or from any such port.
- (2) A person to whom this Article applies commits an offence if, while on board his or her ship or in its immediate vicinity that person –
  - (a) does an act that causes or is likely to cause –

- (i) the loss or destruction of, or serious damage to, his or her ship or its machinery, navigational equipment or safety equipment,
  - (ii) the loss or destruction of, or serious damage to, another ship or any structure, or
  - (iii) the death of, or serious injury to, a person; or
- (b) omits to do anything required –
  - (i) to preserve his or her ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged,
  - (ii) to preserve a person on board his or her ship from death or serious injury, or
  - (iii) to prevent his or her ship from causing the loss or destruction of, or serious damage to, another ship or any structure, or the death of, or serious injury to, a person not on board his or her ship,

and either of the conditions specified in paragraph (3) is satisfied with respect to that act or omission.

- (3) Those conditions are –
  - (a) that the act or omission was deliberate, or amounted to a breach or neglect of duty; or
  - (b) that the master or seaman in question was under the influence of drink or a drug or both at the time of the act or omission.
- (4) A person to whom this Article applies commits an offence if that person –
  - (a) discharges any of his or her duties, or performs another function in relation to the operation of his or her ship or its machinery or equipment, in such a manner as to cause, or be likely to cause, loss, destruction, death or injury as is mentioned in paragraph (2)(a); or
  - (b) fails to discharge any of his or her duties, or perform any such function, properly, to the extent as to cause, or be likely to cause, any of those things.
- (5) A person who commits an offence under this Article is liable to imprisonment for 2 years and a fine.
- (6) In proceedings for an offence under this Article it is a defence to prove –
  - (a) in the case of an offence under paragraph (2) –
    - (i) if the act or omission alleged against the defendant constituted a breach or neglect of duty, that the defendant took all reasonable steps to discharge that duty, or
    - (ii) that at the time of the act or omission alleged against the defendant he or she was under the influence of a drug taken by the defendant for medical purposes and either that he or she took it on medical advice and complied with any directions given as part of that advice, or that he or she had

- no reason to believe that the drug might have the influence it had;
- (b) in the case of an offence under paragraph (4), that the defendant took all reasonable precautions and exercised all due diligence to avoid committing the offence; or
  - (c) in the case of an offence under either of those paragraphs –
    - (i) that he or she could have avoided committing the offence only by disobeying a lawful command, or
    - (ii) that in all the circumstances the loss, destruction, death or injury in question, or, as the case may be, the likelihood of its being caused, either could not reasonably have been foreseen by the defendant or could not reasonably have been avoided by him or her.
- (7) In the application of this Article to a person falling within paragraph (1)(b) –
- (a) paragraphs (2) and (4) have effect as if paragraph (2)(a)(i) and (b)(i) were omitted; and
  - (b) proceedings for an offence under this Article are not to be instituted except by or with the consent of the Attorney-General.
- (8) In this Article –
- “breach or neglect of duty”, except in relation to a master, includes disobedience to a lawful command;
- “duty” –
- (a) in relation to a master or seaman, means a duty falling to be discharged by him or her in his or her capacity as such;
  - (b) in relation to a master, includes the master’s duty with respect to the good management of his or her ship and the master’s duty with respect to the safety of operation of his or her ship, its machinery and equipment;
- “structure” means a fixed or movable structure of any description other than a ship.

### **38 Concerted disobedience and neglect of duty**

- (1) A seaman employed in a Jersey ship commits an offence if he or she combines with other seamen employed in that ship –
- (a) to disobey a lawful command that is required to be obeyed at a time when the ship is at sea;
  - (b) to neglect a duty that is required to be discharged at such a time; or
  - (c) to impede, at such a time, the progress of a voyage or the navigation of the ship,
- and is liable to imprisonment for 2 years and a fine.
- (2) For the purposes of this Article a ship is to be treated as being at sea at any time when it is not securely moored in a safe berth.



**39 Inquiry into fitness or conduct of officer**

- (1) If it appears to the Minister that an officer –
  - (a) is unfit to discharge his or her duties, whether by reason of incompetence or misconduct or for another reason;
  - (b) has been seriously negligent in the discharge of his or her duties; or
  - (c) has failed to comply with Article 55,the Minister may cause an inquiry to be held by one or more persons appointed by the Minister and may suspend, pending the outcome of the inquiry, a certificate issued to the officer under Article 29 and require the officer to deliver it to the Minister.
- (2) If a certificate has been suspended under paragraph (1), the suspension may, on the application of the officer, be terminated by the Royal Court, and the decision of the Court on the application is final.
- (3) An inquiry under this Article is to be conducted in accordance with provisions made under Article 43(1), and those provisions shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.
- (4) The persons holding an inquiry under this Article –
  - (a) may, if satisfied as to any of the matters mentioned in paragraphs (1)(a) to (c) –
    - (i) cancel or suspend a certificate issued to him or her under Article 29, or
    - (ii) censure him or her;
  - (b) may make an order with regard to costs of the inquiry as they think just; and
  - (c) shall make a report on the case to the Minister,and if the certificate is cancelled or suspended the officer, unless he or she has delivered it to the Minister under paragraph (1), shall deliver it immediately to the person holding the inquiry or to the Minister.
- (5) Any costs that a person is ordered to pay under paragraph (4)(b) may be recovered from him or her by the Minister.

**40 Disqualification of holders of certain certificates**

- (1) This Article applies to –
  - (a) a certificate issued under Article 29, other than one certifying that a person is qualified as an officer; and
  - (b) a certificate issued under Article 35.
- (2) If it appears to the Minister that a person who is the holder of a certificate to which this Article applies is unfit to be the holder of it, whether by reason of incompetence or misconduct or for another reason, the Minister may give him or her notice in writing that the Minister is considering the suspension or cancellation of the certificate stating –

- (a) the reasons why it appears to the Minister that the person is unfit; and
  - (b) that within a period specified in the notice, or such longer period as the Minister may allow, the person may make written representations to the Minister or claim to make oral representations to the Minister.
- (3) After considering any representations made under paragraph (2) the Minister shall decide whether to suspend or cancel the certificate and give the holder written notice of the Minister's decision.
- (4) If the Minister decides to cancel or suspend the notice the Minister shall state –
  - (a) the date from which the cancellation is to take effect; or
  - (b) the date from which and the period for which the suspension is to take effect,and shall require the holder to deliver the certificate to the Minister not later than the date so specified, unless before that date the holder has required the case to be dealt with by an inquiry under Article 41.
- (5) If, before the date specified in the notice, the holder requires the case to be dealt with by such an inquiry, then, unless he or she withdraws the requirement, the suspension or cancellation is not to take effect except as ordered under the inquiry.
- (6) The Minister may by Order prescribe the procedure to be followed with respect to the making and consideration of representations under this Article, the form of any notice to be given under this Article and the period to be specified in the notice as the period within which any steps are to be taken.

#### **41 Inquiry into fitness or conduct of seaman other than officer**

- (1) If a person has, before the date mentioned in Article 40(4), required his or her case to be dealt with by an inquiry under this Article, the Minister shall cause an inquiry to be held by one or more persons appointed by the Minister.
- (2) An inquiry under this Article shall be conducted in accordance with provisions made under Article 43(1), and those provisions shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.
- (3) The persons holding an inquiry under this Article –
  - (a) may confirm the decision of the Minister and cancel or suspend the certificate accordingly;
  - (b) may, if the decision was to cancel the certificate, suspend it instead;
  - (c) may, if the decision was to suspend the certificate, cancel it or suspend it for a different period;
  - (d) may, instead of confirming the decision of the Minister –
    - (i) censure the holder of the certificate, or

- (ii) take no further action;
  - (e) may make such order with regard to costs of the inquiry as they think just; and
  - (f) shall make a report on the case to the Minister,
- and if the certificate is cancelled or suspended the person who is the subject of the inquiry shall deliver it immediately to the person holding the inquiry or to the Minister.
- (4) Any costs that a person is ordered to pay under paragraph (3)(e) may be recovered from him or her by the Minister.

## **42 Rehearings and appeals**

- (1) If an inquiry has been held under Article 39 or 41, the Minister may order the whole or part of the case to be reheard by a Jurat, or an Advocate of the Royal Court of not less than 10 years' standing, and shall do so –
  - (a) if new and important evidence that could not be produced at the inquiry has been discovered; or
  - (b) if there appear to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.
- (2) A rehearing under this Article is to be conducted in accordance with provisions made under Article 43.
- (3) If the persons holding the inquiry have decided to cancel or suspend the certificate of a person, or found a person to be at fault, then, if no application for an order under paragraph (1) has been made or such an application has been refused, that person or any other person who, having an interest in the inquiry, has appeared at the hearing and is affected by the decision or finding, may appeal within 28 days of the decision or finding to the Royal Court.
- (4) If, after a rehearing under this Article, the cancellation or suspension of the certificate of a person, or finding that the person is at fault, has been confirmed, that person or any other person who, having an interest in the rehearing, has appeared at the rehearing and is affected by the decision or finding, may appeal within 28 days of the decision or finding to the Royal Court on a point of law only.

## **43 Provisions as to inquiries and appeals**

- (1) The Minister may by Order make provision for the conduct of inquiries under Articles 39 and 41 and for the conduct of any rehearing under Article 42 and, without prejudice to the generality of that power, may provide for –
  - (a) the appointment and summoning of assessors;
  - (b) the manner in which a fact may be proved;
  - (c) the persons allowed to appear; and
  - (d) the notices to be given to persons affected.

- (2) Rules of Court made for the purpose of appeals to the Royal Court may require the Court to hold an appeal with the assistance of one or more assessors, subject to any exception that may be allowed by the Rules.

#### **44 Failure to deliver cancelled or suspended certificate**

A person who fails to deliver a certificate as required under Article 39, 40 or 41 commits an offence and is liable to a fine at level 2 on the standard scale.

#### **45 Power to restore certificate**

If a certificate has been cancelled or suspended under Article 39, 40, 41 or 42, the Minister may, if of the opinion that the justice of the case requires it –

- (a) re-issue the certificate;
- (b) reduce the period of suspension and return the certificate; or
- (c) grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

#### **46 Power to summon witnesses to inquiries**

- (1) The persons holding an inquiry under Article 39 or 41, or a rehearing under Article 42, may –

- (a) by summons require a person to attend, at a time and place stated in the summons, to give evidence or to produce a document in his or her custody or under his or her control that relates to a matter in question at the inquiry; and
- (b) take evidence on oath, and for that purpose administer oaths, or, instead of administering an oath, require the person examined to make a solemn affirmation.

- (2) If, on the failure of a person to attend an inquiry in answer to a summons under this Article, the persons holding the inquiry are satisfied by evidence on oath that –

- (a) the person in question is likely to be able to give material evidence or produce a document that relates to a matter in question at the inquiry;
- (b) he or she has been duly served with a summons; and
- (c) a reasonable sum has been paid or tendered to him or her for costs and expenses,

and it appears to them that there is no just excuse for the failure, they may order the Viscount to issue a warrant to arrest him or her and bring the person before the inquiry at a time and place specified in the warrant.

- (3) If a person attending or brought before the inquiry refuses without just excuse to be sworn or give evidence, or to produce a document, the persons holding the inquiry may –

- (a) commit him or her to custody until the end of a period not exceeding 1 month as may be specified in the warrant or until he or

she gives evidence or produces the document, whichever occurs first; or

(b) impose on him or her a fine at level 3 on the standard scale, or both.

(4) A fine imposed under paragraph (3)(b) is to be treated, for the purposes of its collection, enforcement and remission as having been imposed by the Magistrate's Court, and the persons holding the inquiry shall, as soon as practicable after imposing it, give particulars of it to the Judicial Greffier.

#### **47 Official log books**

- (1) Except as provided by an Order under this Article, an official log book in a form approved by the Minister shall be kept in every Jersey ship.
- (2) The Minister may by Order –
  - (a) prescribe the particulars to be entered in an official log book, the persons by whom entries are to be made, signed or witnessed, and the procedure to be followed in the making of entries and in their amendment or cancellation;
  - (b) require the production or delivery of an official log book to persons, in circumstances, and within such times, as may be specified;
  - (c) make contravention of a provision of the Order an offence punishable with a fine not exceeding level 2 on the standard scale.
- (3) A person who intentionally destroys, mutilates, or renders illegible an entry in, an official log book commits an offence and is liable to a fine at level 4 on the standard scale.

#### **48 Handing over of documents by master**

If a person ceases to be a master of a Jersey ship during a voyage of the ship, he or she shall deliver to his or her successor the documents relating to the ship or its crew that are in his or her custody; and if he or she fails to do so without reasonable excuse he or she commits an offence and is liable to a fine at level 3 on the standard scale.

## **PART 5**

### **SAFETY**

#### **49 Safety and health on ships<sup>19</sup>**

- (1) The States may make Regulations –
  - (a) to secure the safety of Jersey ships and persons on them;
  - (b) to protect the health of persons on Jersey ships;

- (c) to secure the safety of other ships and persons on them while they are within Jersey waters;
  - (d) to protect the health of persons on ships other than Jersey ships while they are in Jersey waters;
  - (e) to implement the International Convention for Safety of Life at Sea, 1974 in its application to Jersey.<sup>20</sup>
- (2) The Safety Regulations –
  - (a) are not to apply in relation to a qualifying foreign ship while it is exercising a right of innocent passage, or to persons on it while it is exercising such a right; but
  - (b) are to apply in relation to such a ship, and persons on it, even though the ship is exercising such a right, to the extent that the Regulations give effect to any provisions of an international agreement, ratified by the United Kingdom on behalf of Jersey, so far as it relates to the safety of ships or persons on them or to the protection of the health of persons on ships.
- (3) In paragraph (1) “Jersey ship” means a ship that –
  - (a) is registered in Jersey; or
  - (b) is not registered under the law of any country but is wholly owned by persons each of whom is –
    - (i) a British citizen resident in Jersey, or
    - (ii) a body corporate that is established under Jersey law and has its principal place of business in Jersey.
- (4) The Safety Regulations may make provision with respect to any of the following matters –
  - (a) the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment;
  - (b) the packing, marking, loading, placing, moving, inspection, testing and measuring of cargo and anything on a ship that is not cargo, machinery or equipment;
  - (c) the carrying out of any operation involving a ship;
  - (d) the use of the machinery and equipment of a ship and of anything on a ship that is not cargo, machinery or equipment;
  - (e) the manning of ships, including the employment on ships of persons qualified to attend to the health and safety of persons on the ships;
  - (f) the arrangements to ensure communications between persons in different parts of a ship and between persons in the ship and other persons;
  - (g) the access to, presence in and egress from a ship, and different parts of it, of persons of any description;
  - (h) the ventilation, temperature and lighting of different parts of a ship;

- (i) the steps to be taken to prevent or control noise, vibration and radiation in and from a ship and the emission in or from a ship of smoke, gas and dust;
- (j) the steps to be taken to prevent, detect and deal with outbreaks of fire on a ship;
- (k) the steps to be taken to prevent a collision involving a ship and following a collision involving a ship;
- (l) the steps to be taken if a ship is in distress or stranded or wrecked to save the ship and its machinery, equipment and cargo and the lives of persons on or from the ship, including the steps to be taken by other persons for giving assistance in such a case;
- (m) the removal, by jettisoning or otherwise, of its equipment and of other things from a ship to avoid, remove or reduce danger to persons or property;
- (n) the steps to be taken, if danger of any kind occurs or is suspected on a ship, to remove or reduce the danger and to warn persons who are not on the ship of the danger or suspected danger;
- (o) the records to be made and the documents to be kept relating to ships, and the information to be kept and used on a ship to facilitate the navigation of the ship;
- (p) the registers to be kept and the certificates to be issued where registration or a certificate is required by virtue of the Regulations;
- (q) information to be provided,

but the mention of specific matters in this paragraph is not to be construed as restricting the generality of the power conferred by paragraph (1).

- (5) The power conferred by paragraph (1) extends to the making of Regulations –
  - (a) for the prevention of collisions between seaplanes on the surface of the water and between ships and seaplanes; and paragraphs (4)(k) and (6) to (8) have effect accordingly;
  - (b) making it an offence, subject to any defence prescribed by the Regulations, for a master of, or a seaman employed or engaged in, a ship, while on board the ship, to be under the influence of drink or a drug or both to such an extent that his or her capacity to fulfil his or her responsibility for the ship, or to carry out the duties of his or her employment or engagement, is impaired.
- (6) The Safety Regulations –
  - (a) may authorize the making of Orders for the purposes of this Article;
  - (b) may make provision in terms of approvals given by the Minister or another person and in terms of documents that the Minister or another person considers relevant from time to time;

- (c) may provide for the cancellation of an approval given under the Regulations and for the alteration of the terms of such an approval; and
  - (d) shall provide for an approval under the Regulations to be given in writing and to specify the date on which it takes effect and the conditions, if any, on which it is given.
- (7) Without prejudice to Article 50(1)(b), the Safety Regulations may provide –
  - (a) for the Minister or another person to grant, on any terms the Minister or other person may specify, an exemption for a class of cases or an individual case from a specified provision of the Regulations; and
  - (b) for the alteration or cancellation of an exemption granted under the Regulations.
- (8) The Safety Regulations may provide –
  - (a) that where prescribed by the Regulations a ship shall be liable to be detained and that Article 177 shall have effect, with any modifications prescribed by the Regulations, in relation to the ship;
  - (b) that a contravention of the Regulations shall be an offence punishable with imprisonment for 2 years and a fine, or such lesser penalty as is prescribed by the Regulations;
  - (c) that where prescribed by the Regulations prescribed persons shall each be guilty of an offence created by virtue of sub-paragraph (b).

## **50 Provisions supplementary to Article 49: general**

- (1) The Safety Regulations may –
  - (a) be made so as to apply outside Jersey;
  - (b) provide that if a signal is used or displayed otherwise than in accordance with the Regulations for compensation to be paid for any expense or loss caused in consequence of the signal being taken for a signal of distress,  
  
and any compensation required to be paid by virtue of Regulations under sub-paragraph (b) may, without prejudice to another remedy, be recovered in the same manner as salvage.
- (2) The States may, by Regulations –
  - (a) repeal or modify a provision of this Law, and of an instrument made under it, as they consider appropriate in consequence or in anticipation of the making of the Safety Regulations;
  - (b) repeal or modify a provision of another enactment in force in Jersey, or that applies to Jersey ships, as they consider appropriate in connection with any repeal or modification made or to be made under sub-paragraph (a);
  - (c) provide for anything done under a provision repealed or otherwise modified by virtue of sub-paragraph (a) or (b) to have effect as if done under the Safety Regulations.



- (3) Nothing in Article 49(4) to (7), or in paragraph (1) of this Article, is to be construed as prejudicing the generality of Article 49(1).

## **51 Provisions supplementary to Article 49: dangerous goods**

- (1) If dangerous goods have been sent or carried, or attempted to be sent or carried, on board a ship, whether or not a Jersey ship –
- (a) without being marked as required by the Safety Regulations;
  - (b) without notice having been given as is required by the Safety Regulations; or
  - (c) with a false description of their sender or carrier,
- the Royal Court may declare the goods, and any package or receptacle in which they are contained, to be forfeited; and on a declaration of forfeiture being made the goods may be disposed of as the Court directs.
- (2) The power of the Court under paragraph (1) is exercisable notwithstanding that the owner of the goods –
- (a) has not committed an offence under the Safety Regulations relating to dangerous goods;
  - (b) is not before the Court; and
  - (c) has no notice of the proceedings,
- and notwithstanding that there is no evidence to show to whom the goods belong; but the Court may require such notice as it directs to be given to the owner or shipper of goods before they are forfeited.
- (3) In this Article “dangerous goods” means goods so designated by the Safety Regulations.

## **52 Safety of submersible and supporting apparatus**

- (1) This Article applies to submersible or supporting apparatus –
- (a) operated within Jersey waters; or
  - (b) launched or operated from, or comprising, a Jersey ship.
- (2) The Minister may by Order provide –
- (a) for the safety of submersible and supporting apparatus;
  - (b) for the prevention of accidents in or near submersible or supporting apparatus;
  - (c) for the safety, health and welfare of persons on or in submersible and supporting apparatus;
  - (d) for prohibiting or otherwise restricting the operation of submersible apparatus except in accordance with the conditions of a licence granted under the Order;
  - (e) for the registration of submersible apparatus,
- and Schedule 3 has effect for supplementing this Article.
- (3) In this Article –

“apparatus” includes a vessel, vehicle or hovercraft, and any structure, diving plant or equipment, or other form of equipment;

“submersible apparatus” means apparatus used, or designed for use, in supporting human life on or under the bed of any waters or elsewhere under the surface of any waters;

“supporting apparatus” means apparatus used, or designed for use, in connection with the operation of submersible apparatus.

### **53 Charts and other information**

- (1) The Minister may by Order specify charts, directions or information and other aids to navigation that appear to the Minister necessary or expedient for the safe operation of ships, and the Order may require –
  - (a) Jersey ships; or
  - (b) Jersey ships of any descriptions specified in the Order,to carry, either at all times or on any voyage specified in the Order, copies of the charts, directions or information, or aids to navigation so specified.
- (2) If a ship goes to sea without carrying copies of the charts, directions or information that it is required to carry by an Order under this Article, the master, the owner and charterer each commits an offence and is liable to a fine at level 3 on the standard scale.

### **54 Report of dangers to navigation**

- (1) The master of a Jersey ship, on meeting with a danger to navigation shall send information accordingly by all means of communication at his disposal and in accordance with any Order made by the Minister for the purpose of this Article to ships in the vicinity and to such authorities on shore as are prescribed by the Order.
- (2) A danger to navigation referred to in paragraph (1) includes –
  - (a) dangerous ice;
  - (b) a dangerous derelict;
  - (c) a tropical storm;
  - (d) air temperatures below freezing point associated with gale force winds causing severe ice accretion on the superstructure of ships;
  - (e) winds of force 10 or above on the Beaufort scale for which no storm warning has been received.
- (3) A master of a ship who fails to comply with this Article or an Order made under it commits an offence and is liable to a fine at level 4 on the standard scale.
- (4) A person in charge of a controlled station for wireless telegraphy shall, on receiving the signal prescribed by the Order for indicating that a message is about to be sent under this Article, refrain from sending messages for a time sufficient to allow other stations to receive the message, and, if so

required by the Minister, shall transmit the message in the manner required by the Minister.

- (5) Compliance with paragraph (4) is to be regarded as a condition of every wireless telegraphy licence.
- (6) In this Article –
  - “controlled station for wireless telegraphy” means a station controlled by the Secretary of State; and “controlled” includes control by means of a licence granted by the Secretary of State;
  - “Secretary of State” has the meaning given to that expression in Schedule 1 to the Interpretation Act 1978 of the United Kingdom;
  - “tropical storm” means a hurricane, typhoon, cyclone, or other storm of a similar nature;
  - “wireless telegraphy licence” and “station for wireless telegraphy” have the same meanings as in the Wireless Telegraphy (Channel Islands) Order 1952.<sup>21</sup>
- (7) For the purpose of this Article the master of a ship is to be regarded as having met with a tropical storm if he or she has reason to believe that there is such a storm in his or her vicinity.

## **55 Duty of ships to assist each other in case of collision**

- (1) If ships collide, the master of each ship, if and so far as he or she can do so without danger to his or her own ship, crew and any passengers, shall –
  - (a) give the other ship, its master, crew and any passengers all assistance that it is practicable to give and is necessary to save them from any danger caused by the collision;
  - (b) stay by the other ship until he or she has ascertained that it has no need of further assistance; and
  - (c) give the master of the other ship the name of his or her own ship and also the names of the ports from which it comes and to which it is bound.
- (2) The duties imposed on the master by paragraph (1) apply to the masters of Jersey ships and to the masters of foreign ships when in Jersey waters.
- (3) The failure of the master of a ship to comply with this Article does not raise a presumption of law that the collision was caused by his or her wrongful act, neglect or default.
- (4) A master who fails without reasonable excuse to comply with this Article commits an offence and is liable –
  - (a) in the case of an offence under paragraph (1)(a) or (b), to imprisonment for 2 years and a fine;
  - (b) in the case of an offence under paragraph (1)(c) to a fine,

and in either case, if he or she is a certified officer, an inquiry into his or her conduct may be held, and his or her certificate cancelled or suspended.

## **56 Duty to assist ships etc. in distress**

- (1) The master of a ship, on receiving at sea a signal of distress or information that a ship or aircraft is in distress, shall proceed with all speed to the assistance of the persons in distress (and if practicable inform them that he or she is doing so) unless –
  - (a) he or she is unable to do so;
  - (b) in the special circumstances of the case he or she considers it unreasonable or unnecessary to do so; or
  - (c) he or she is released from the duty to do so under paragraph (4).
- (2) If the master of a ship in distress has requisitioned a ship that has answered his or her call, the master of the requisitioned ship shall comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress.
- (3) The duties imposed by paragraphs (1) and (2) apply to the masters of Jersey ships and to the masters of foreign ships when in Jersey waters.
- (4) A master is released –
  - (a) from the duty imposed by paragraph (1) as soon as he or she is informed of the requisition of one or more ships other than his or her own and that that requisition is being complied with by the ship or ships requisitioned;
  - (b) from the duty imposed by paragraph (1) and, if his or her ship has been requisitioned, from that imposed by paragraph (2), if he or she is informed by the persons in distress, or by the master of a ship that has reached the persons in distress, that assistance is no longer required.
- (5) A master who fails to comply with this Article commits an offence and is liable to imprisonment for 2 years and a fine.
- (6) Compliance by the master of a ship with this Article does not affect his or her right, or the right of another person, to salvage.

## **57 Meaning of “dangerously unsafe ship”**

- (1) For the purposes of Articles 58 to 61 –
  - (a) a ship in port is “dangerously unsafe” if, having regard to the nature of the service for which it is intended to be used, the ship is, by reason of matters relevant to the safety of the ship, unfit to go to sea without serious danger to human life;
  - (b) a ship at sea is “dangerously unsafe” if, having regard to the nature of the service for which it is being used or is intended to be used, the ship is, by reason of the matters relevant to the safety of the ship, unfit either –
    - (i) to remain at sea, or

- (ii) to go on a voyage,  
without serious danger to human life.
- (2) In paragraph (1) “matters relevant to the safety of the ship” includes –
  - (a) the condition, or the unsuitability for its purpose, of –
    - (i) the ship or its machinery or equipment; or
    - (ii) any part of the ship or its machinery or equipment;
  - (b) any undermanning of the ship;
  - (c) any overloading or unsafe or improper loading of the ship.
- (3) In Articles 58 to 61 “relevant inspector” means a person mentioned in Article 156(1).

## **58 Power to detain dangerously unsafe ship**

- (1) If a ship that is –
  - (a) in a port in Jersey; or
  - (b) at sea in Jersey waters,appears to a relevant inspector to be a dangerously unsafe ship, the ship may be detained.
- (2) The power of detention conferred by paragraph (1) is exercisable in relation to a foreign ship as well as a Jersey ship, unless it is a qualifying foreign ship exercising the right of innocent passage.
- (3) The officer detaining the ship shall serve on the master of the ship a detention notice that –
  - (a) states that the relevant inspector is of the opinion that the ship is a dangerously unsafe ship;
  - (b) specifies the matter that, in the relevant inspector’s opinion, makes the ship a dangerously unsafe ship; and
  - (c) requires the ship to comply with the terms of the notice until it is released by a competent authority.
- (4) In the case of a ship that is not a Jersey ship or a British ship, the officer detaining the ship shall cause a copy of the detention notice to be sent as soon as possible to the nearest consular officer for the country to which the ship belongs.
- (5) In this Article –
  - “British ship” means a ship as defined in section 1 of the Merchant Shipping Act 1995 of the United Kingdom, other than a Jersey ship;
  - “competent authority” means an officer mentioned in Article 177(1).

## **59 Reference of detention notices to arbitration**

- (1) Paragraph (2) applies if –

- (a) an officer has served a detention notice in respect of a ship in accordance with Article 58(3); and
  - (b) there is a question as to whether the matter specified in the notice in accordance with Article 58(3)(b) constitutes a valid basis for the opinion of the relevant inspector that the ship is a dangerously unsafe ship.
- (2) If the master, owner or any charterer of the ship so requires by a notice given to the relevant inspector within 21 days from the service of the detention notice, the question is to be resolved by a single arbitrator appointed –
  - (a) by agreement between the parties; or
  - (b) failing agreement, by the Bailiff.
- (3) If the master, owner or charterer of a ship gives notice under paragraph (2), the detention of the ship is not suspended unless the arbitrator, on the application of the master, owner or charterer, so directs.
- (4) The arbitrator shall, in resolving the question, have regard to any other matter not specified in the detention notice that appears to him or her to be relevant as to whether the ship is a dangerously unsafe ship.
- (5) If the arbitrator decides that the ship is not a dangerously unsafe ship he or she shall cancel the detention notice.
- (6) If the arbitrator decides that the ship is a dangerously unsafe ship (whether by virtue of the matter that formed the basis of the relevant inspector's opinion or by virtue of another matter) he or she shall affirm the detention notice.
- (7) Article 162(4) applies to qualification for appointment as an arbitrator under this Article.
- (8) In connection with his or her functions under this Article an arbitrator has the powers conferred on an inspector by Article 157.

#### **60 Compensation in connection with invalid detention of ship**

- (1) If, on a reference under Article 59 relating to a detention notice in relation to a ship, the arbitrator decides –
  - (a) that the ship was not a dangerously unsafe ship; and
  - (b) that there were no reasonable grounds on which the inspector could have formed an opinion that it was,the arbitrator may award the owner of the ship such compensation in respect of any loss suffered by him or her in consequence of the detention as the arbitrator thinks fit.
- (2) Compensation awarded under this Article shall be paid by the Minister.

#### **61 Owner and master liable in respect of dangerously unsafe ship**

- (1) If a ship that –
  - (a) is in a port in Jersey; or

(b) is a Jersey ship and is in another port,

is dangerously unsafe, then, subject to paragraphs (4) and (5), the master and the owner each commits an offence and is liable to imprisonment for 2 years and a fine.

(2) If, at the time when a ship is dangerously unsafe, any responsibilities of the owner with respect to the matters relevant to its safety have been assumed, whether wholly or in part, by a person other than the owner, and have been so assumed by that person either –

(a) directly, under the terms of a charter-party or management agreement made with the owner; or

(b) indirectly, under the terms of a series of charter-parties or management agreements,

the reference to the owner in paragraph (1) is to be construed as a reference to the other person.

(3) It is a defence in proceedings for an offence under this Article to prove that at the time of the alleged offence –

(a) arrangements had been made that were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters relevant to its safety that are specified in the charge or summons; or

(b) it was reasonable for those arrangements not to have been made.

(4) It is also a defence in those proceedings to prove –

(a) that, under the terms of one or more charter-parties or management agreements entered into by the defendant, the following responsibilities –

(i) if the defendant is the owner, his or her responsibilities with respect to matters relevant to the ship's safety, or

(ii) if the defendant is liable to proceedings under this Article by virtue of paragraph (2), so much of those responsibilities as had been assumed by him or her as mentioned in that paragraph,

had at the time of the alleged offence been wholly assumed by some other person or persons party to the charter-party or management agreement; and

(b) that in all the circumstances of the case the defendant had taken such steps as it was reasonable for the defendant to take, and exercised such diligence as it was reasonable for him or her to exercise, to secure the proper discharge of those responsibilities during the period during which they had been assumed by the other person or persons,

and, in determining whether the defendant had done so, regard is to be had in particular to the matters mentioned in paragraph (5).

(5) Those matters are –

- (a) whether before the time of the alleged offence the defendant was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the responsibilities mentioned in paragraph (4)(a); and
  - (b) the extent to which the defendant was or was not able, under the terms of any such charter-party or management agreement mentioned in paragraph (4)(a) –
    - (i) to terminate it, or
    - (ii) to intervene in the management of the ship,in the event of any such deficiency, and whether it was reasonable for the defendant to place himself or herself in that position.
- (6) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.
- (7) In this Article –
- (a) “management agreement” in relation to a ship means an agreement, other than a charter-party or a contract of employment, under which the ship is managed, either wholly or in part, by a person other than the owner, whether on behalf of the owner or on behalf of some other person; and
  - (b) a reference to responsibilities being assumed by a person under the terms of a charter-party or management agreement is a reference to their being so assumed by him or her, whether or not he or she has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

## **62 Use of unsafe lighters etc.**

- (1) A person who uses or causes or permits to be used in navigation a lighter, barge or similar vessel when, because of –
- (a) the defective condition of its hull or equipment;
  - (b) overloading or improper loading; or
  - (c) undermanning,
- it is so unsafe that human life is endangered commits an offence and is liable to a fine.
- (2) Proceedings for an offence under this Article shall not be instituted except by, or with the consent of, the Attorney General.
- (3) This Article does not affect the liability of the owner or any charterer of a lighter, barge or similar vessel in respect of loss of life or personal injury caused to a person carried in the vessel.

## **63 Owner liable for unsafe operation of ship**

- (1) This Article applies to –
- (a) a Jersey ship; and
  - (b) a ship that –



- (i) is registered under the law of a country outside Jersey, and
- (ii) is within Jersey waters while proceeding to or from a port in Jersey,

unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.

- (2) If the owner of a ship to which this Article applies fails to take all reasonable steps to secure that the ship is operated in a safe manner he or she commits an offence and is liable to imprisonment for 2 years and a fine.
- (3) If such a ship –
  - (a) is chartered by demise; or
  - (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of Article 61(7),

the reference to the owner of the ship in paragraph (2) of this Article is to be construed as a reference –

- (c) to the charterer under the charter by demise; or
- (d) to a manager referred to in sub-paragraph (b); or
- (e) if the ship is both so chartered and managed, to both the charterer and any such manager,

and accordingly the reference in paragraph (2) to the taking of all reasonable steps is, in relation to the owner, the charterer or manager, to be construed as a reference to the taking of all steps that it is reasonable for him or her to take in the circumstances of the case.

- (4) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.

#### **64 Power to establish temporary exclusion zones**

- (1) Paragraph (2) applies if a ship, structure or other thing is in Jersey waters and is wrecked, damaged or in distress.
- (2) If it appears to the Minister that –
  - (a) significant harm will or may occur as a direct or indirect result of the ship, structure or thing being wrecked, damaged or in distress; and
  - (b) if access to an area round the ship, structure or thing were restricted in accordance with Article 65, that harm, or the risk of it, would be prevented or reduced,

the Minister may by direction identify an area to which access is so restricted (in this Article and Article 65 called a “temporary exclusion zone”).

- (3) A temporary exclusion zone –
  - (a) shall not include an area outside Jersey waters;

- (b) may be identified by reference to the position of the ship, structure or other thing.
- (4) If it appears to the Minister after a temporary exclusion zone is established that the zone –
  - (a) is larger than is needed for the purpose of preventing or reducing the harm, or the risk of it; or
  - (b) is not needed for that purpose,the Minister shall by direction, in a case within sub-paragraph (a), vary the direction establishing the zone accordingly or, in a case within sub-paragraph (b), revoke the direction.
- (5) If the Minister gives a direction under this Article the Minister shall –
  - (a) as soon as practicable publish it in a manner that the Minister considers appropriate for bringing it to the attention of persons likely to be affected by it; and
  - (b) within 24 hours from the giving of the direction send a copy of it to the International Maritime Organisation.
- (6) In this Article –
  - “significant harm” means significant pollution in Jersey or Jersey waters, or significant damage to persons or property;
  - “pollution” includes the introduction directly or indirectly into Jersey or Jersey waters of any substance, or energy, where its introduction results or is likely to result in –
    - (a) a hazard to human health;
    - (b) harm to any living resource or ecosystem;
    - (c) damage to any amenity; or
    - (d) interference with any legitimate use of Jersey waters,and whether or not its introduction is or would be the only contributing factor to that hazard, harm, damage or interference.

## **65 Offences relating to temporary exclusion zones**

- (1) If a temporary exclusion zone is established, a ship shall not enter or remain in the zone except –
  - (a) in accordance with the directions establishing the zone;
  - (b) with the consent of the Minister; or
  - (c) in accordance with an Order made by the Minister for the purposes of this Article.
- (2) If a ship enters or remains in a temporary exclusion zone in contravention of paragraph (1) its owner, master and any charterer each commits an offence and is liable to imprisonment for 2 years and a fine.
- (3) It is a defence for a person charged with an offence under this Article to prove that the existence of the temporary exclusion zone was not and would not on reasonable enquiry have become known to the master.

**66 Power to require ships to be moved**

- (1) The powers conferred by this Article are exercisable if a ship in Jersey waters –
  - (a) is not a qualifying foreign ship; or
  - (b) is a qualifying foreign ship but appears to the Minister not to be exercising a right of innocent passage.
- (2) The Minister may –
  - (a) to secure the safety of a ship or of other ships, of persons on the ship or other ships, or of other persons or property;
  - (b) to prevent or reduce the risk to the safety of a ship or of other ships, of persons on the ship or other ships, or of other persons or property; or
  - (c) to prevent or reduce pollution, or the risk of pollution, in Jersey or Jersey waters,give a direction to the owner or any person in possession or control of the ship, or the master of the ship, requiring –
  - (d) that the ship be moved, or be removed from a specified area or locality or from Jersey waters; or
  - (e) that the ship not be moved to a specified place or area within Jersey waters, or over a specified route within those waters.
- (3) The power under paragraph (2)(d) to require that a ship be removed from Jersey waters is not exercisable in relation to a Jersey ship.
- (4) If in the opinion of the Minister the powers conferred by paragraph (2) are, or have proved to be, inadequate for a purpose mentioned in that paragraph, the Minister, acting through persons specifically authorized by him or her, may for that purpose take any such action as the Minister has power to require to be taken by a direction given under paragraph (2).
- (5) A person concerned with compliance with a direction given, or action taken, under paragraph (2) shall use his or her best endeavours to avoid risk to human life.
- (6) Action taken as respects a ship that is under arrest, or as respects the cargo of such a ship, does not constitute a contempt of court if it is –
  - (a) duly taken in accordance with a direction given under paragraph (2); or
  - (b) taken under paragraph (4).
- (7) In this Article –

“pollution” includes the introduction directly or indirectly into Jersey or Jersey waters of any substance, or energy, where its introduction results or is likely to result in –

  - (a) a hazard to human health;
  - (b) harm to any living resource or ecosystem;
  - (c) damage to any amenity; or
  - (d) interference with any legitimate use of Jersey waters,

and whether or not its introduction is or would be the only contributing factor to that hazard, harm, damage or interference;

“specified” means specified by the direction.

#### **67 Service of directions under Article 66**

- (1) If the Minister is satisfied that a company or other body is not one to which Article 72 of the Companies (Jersey) Law 1991<sup>22</sup> applies so as to authorize the service of a direction on that body, the Minister may give a direction under Article 66 of this Law to that body as –
  - (a) the owner of; or
  - (b) the person in possession of,a ship by serving the direction on the master of the ship.
- (2) A person acting on behalf of the Minister may go on board a ship to give or serve a direction under Article 66 to or on a person on the ship.

#### **68 Offences in relation to Article 66**

- (1) A person to whom a direction is duly given under Article 66 commits an offence if he or she contravenes a requirement of the direction.
- (2) A person commits an offence if he or she intentionally obstructs a person who is acting –
  - (a) on behalf of the Minister in connection with the giving or service of a direction under Article 66;
  - (b) in compliance with a direction under that Article; or
  - (c) under Article 66(4).
- (3) A person who commits an offence under this Article is liable to a fine; but in proceedings for an offence under paragraph (1) it is a defence for the defendant to prove that he or she –
  - (a) used all due diligence to ensure compliance with the direction; or
  - (b) had reasonable cause to believe that compliance with the direction would have involved a serious risk to human life.

#### **69 Offences in connection with passenger ships**

- (1) This Article applies to –
  - (a) a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognized by the Safety Regulations;
  - (b) a ship carrying more than 12 passengers that is –
    - (i) a Jersey ship, or
    - (ii) a ship not registered in Jersey that is on a voyage that begins or ends in Jersey, including a voyage in which the ship does not call at a port outside Jersey.

- 
- (2) A person commits an offence if, in relation to a ship to which this Article applies, he or she does any of the following things –
- (a) if, being drunk or disorderly, the person has been on that account refused permission to board the ship by the owner or a person in his or her employment and, after having the amount of any fare he or she has paid returned or tendered to him or her, the person nevertheless persists in attempting to board the ship;
  - (b) if, being drunk or disorderly on board the ship, the person is requested by the owner or a person in his or her employment to leave the ship at any place in Jersey at which the person can conveniently do so and, after having the amount of any fare he or she has paid returned or tendered to him or her, the person does not comply with the request;
  - (c) if, on board the ship, after a warning by the master or other officer of the ship, the person molests or continues to molest a passenger;
  - (d) if, after having been refused permission to board the ship by the owner or a person in his or her employment on account of the ship being full, and having had the amount of any fare he or she has paid returned or tendered to him or her, the person nevertheless persists in attempting to board the ship;
  - (e) if, having boarded the ship at any place, and being requested by the owner or a person in his or her employment to leave the ship, on account of the ship being full, before it has left that place, and having had the amount of any fare he or she has paid returned or tendered to him or her, the person does not comply with that request;
  - (f) if, on arriving in the ship at a point to which the person has paid his or her fare, the person intentionally refuses or neglects to leave the ship;
  - (g) if on board the ship the person fails, when requested by the master or other officer of the ship, either –
    - (i) to pay his or her fare, or
    - (ii) to show a ticket or a receipt showing the payment of his or her fare, of a kind that is usually given to a person paying a fare for the passage,
- but the person's liability in respect of any such offence does not prejudice the recovery of any fare payable by him or her.
- (3) A person commits an offence if, on board a ship to which this Article applies, he or she intentionally does or causes to be done anything in such a manner as –
- (a) to obstruct or damage a part of the machinery or equipment of the ship; or
  - (b) to obstruct, impede or molest a member of the crew in the navigation or management of the ship, or otherwise in the execution of his or her duty on or about the ship.
-

- (4) The master or other officer of a ship to which this Article applies, and any person called by him or her to his or her assistance –
  - (a) may detain a person who commits an offence against paragraph (2) or (3) and whose name and address are unknown to the master or officer; and
  - (b) shall deliver the person to a police officer.
- (5) A person who commits an offence against paragraph (2) or (3) is liable to a fine at level 2 on the standard scale.
- (6) If a person commits an offence against paragraph (2) or (3) and on the application of the master of the ship, or another person in the employment of the owner of the ship, the person refuses to give his or her name and address, or gives a false name or address, that person commits a further offence and is liable to a fine at level 2 on the standard scale.
- (7) References in this Article to the owner of a ship include any charterer of the ship.

#### **70 Power to exclude drunken passengers from certain passenger ships**

- (1) This Article applies to a ship carrying more than 12 passengers that is –
  - (a) a Jersey ship; or
  - (b) a ship not registered in Jersey that is on a voyage that begins or ends in Jersey, including a voyage in which the ship does not call at a port outside Jersey.
- (2) The master of a ship to which this Article applies –
  - (a) may refuse to receive on board the ship a person who by reason of drunkenness or otherwise is in such a state, or misconducts himself or herself in such a manner, as to be likely to cause annoyance or injury to passengers on board the ship; and
  - (b) if such a person is on board the ship may put him or her on shore at a convenient place.
- (3) A person so refused admission or put ashore is not entitled to the return of any fare he or she has paid.

#### **71 Stowaways**

- (1) A person who goes or attempts to go to sea in a ship without the consent of its master or of another person authorized to give it commits an offence and is liable to a fine at level 3 on the standard scale.
- (2) Nothing in Article 173 is to be construed as limiting the jurisdiction of a court in Jersey to deal with an offence under this Article that has been committed in a country outside Jersey by a person who is not a British citizen.

**72 Unauthorized presence on board ship**

- (1) This Article applies if a Jersey ship or a ship registered in another country is in a port in Jersey.
- (2) A person who is neither in Her Majesty's service nor authorized by law to do so who –
  - (a) goes on board a ship to which this Article applies without the consent of its master or of another person authorized to give it; or
  - (b) remains on board such a ship after being requested to leave by its master, a police officer, an officer authorized by the Minister or a customs officer,

commits an offence and is liable to a fine at level 4 on the standard scale.

**73 Master's power of arrest**

The master of a Jersey ship may cause a person on board the ship to be put under restraint if and for so long as it appears to him or her necessary or expedient to do so in the interest of safety or for the preservation of good order or discipline on board the ship.

**74 Unauthorized persons: offences relating to safety**

If a person goes to sea in a ship without the consent of the master or of another person authorized to give it, Articles 37 and 38 apply as if he or she were a seaman employed in the ship.

**75 Return to be furnished by masters of ships as to passengers**

- (1) The master of a ship, whether or not a Jersey ship, that carries passengers to a place in Jersey from a place outside Jersey, or from a place in Jersey to a place outside Jersey, shall, if so directed by the Minister, furnish to such person and in such manner as the Minister directs a return giving the total number of passengers so carried.
- (2) The return shall –
  - (a) distinguish between the total number of any class of passengers carried; and
  - (b) give such particulars with respect to passengers as may for the time being be required by the Minister.
- (3) A passenger shall furnish the master with any information required by him or her for the purpose of the return.
- (4) If –
  - (a) the master fails to make a return as required by this Article, or makes a false return;
  - (b) a passenger refuses to give information required by the master for the purpose of a return required by this Article or, for that purpose,

gives to the master information that the passenger knows to be false or recklessly gives to him or her information that is false,

the master or passenger, as the case may be, commits an offence and is liable to a fine at level 3 on the standard scale.

## **76 Returns of births and deaths in ships etc.**

- (1) The Minister may, in relation to births and deaths, by Order require –
  - (a) the master of a Jersey ship to make a return to a shipping master or proper officer of –
    - (i) the birth or death of a person occurring in the ship, and
    - (ii) the death of a person employed in the ship, wherever occurring outside Jersey, and to notify any such death to any person the deceased may have named to the master as next of kin;
  - (b) the master of a ship not registered in Jersey but that calls at a port in Jersey in the course of or at the end of a voyage to make a return to a shipping master of any birth or death of a British citizen, a British Dependent Territories citizen or a British Overseas citizen that has occurred in the ship during the voyage,and require that the returns be transmitted to the Registrar.
- (2) The Order may require the Registrar to record such information as may be specified in the Order about a death referred to in paragraph (1)(a)(ii) if it appears to him or her that the master of the ship cannot do so because the master has himself or herself died or is incapacitated or missing.
- (3) The Order may require the Registrar to record such information as may be specified in the Order about a death referred to in paragraph (1)(a)(ii) if –
  - (a) the death has been the subject of –
    - (i) an inquest, or
    - (ii) an inquiry held under Article 170,and the findings of the inquest or inquiry include a finding that the death occurred;
  - (b) the deceased's body has been the subject of a post mortem examination and in consequence the Viscount is satisfied that an inquest is unnecessary.
- (4) The Order may require the Registrar to send a certified copy of a return or record made under this Article to the Registrar of the Parish of St. Helier.
- (5) The Registrar of the Parish of St. Helier, on receiving the certified copy –
  - (a) shall record the information contained in it as if the birth or death had occurred in the Parish of St. Helier; and
  - (b) may record such additional information as appears to him or her to be desirable for the purpose of ensuring the completeness and correctness of the register.



- (6) The enactments relating to the registration of births and deaths in Jersey shall, for the purposes of this Article, have effect as if –
  - (a) where a certified copy of a return or record made under this Article is sent to the Registrar of the Parish of St. Helier the birth or death occurred in the Parish of St. Helier; and
  - (b) the certified copy had been transmitted to the Registrar of the Parish of St. Helier in accordance with those enactments.
- (7) An Order under this Article may make a contravention of a provision of it an offence punishable with a fine not exceeding level 2 on the standard scale.
- (8) In this Article a reference to a death occurring in a ship includes a reference to a death occurring in a ship's boat.

## **PART 6**

### **FISHING VESSELS**

#### *Chapter 1 – Skipper and seamen*

#### **77 Hours of work**

- (1) The Minister may by Order prescribe maximum periods of duty and minimum periods of rest for seamen employed in Jersey fishing vessels.
- (2) If a provision of an Order made under this Article is contravened the persons employing the seaman, the master of the fishing vessel and any charterer each commits an offence and is liable to a fine at level 3 on the standard scale.

#### **78 Manning and qualifications**

- (1) A person who is serving or engaged to serve in a Jersey fishing vessel and who holds a certificate or other document that is evidence that he or she is qualified for the purposes of Article 29 shall produce the certificate or document to a fishery officer upon being requested to do so.
- (2) A person who fails without reasonable excuse to comply with a request made under paragraph (1) commits an offence and is liable to a fine at level 2 on the standard scale.
- (3) In this Article “fishery officer” means a person so designated for the purposes of the Sea Fisheries (Jersey) Law 1994.<sup>23</sup>

#### **79 Drunkenness etc. on duty**

- (1) The skipper of, or a seaman employed or engaged in, a Jersey fishing vessel who, while on board the vessel, is under the influence of drink or a drug or both to the extent that his or her capacity to fulfil his or her

responsibility for the vessel, or to carry out the duties of his or her employment or engagement, is impaired, commits an offence and is liable to imprisonment for 2 years and a fine.

- (2) In proceedings for an offence under this Article it is a defence to prove that at the time of the act or omission alleged –
- (a) the defendant was under the influence of a drug taken by him or her for medical purposes; and
  - (b) either that –
    - (i) he or she took it on medical advice and complied with any directions given as part of that advice, or
    - (ii) he or she had no reason to believe that the drug might have the influence it had.

## **80 Unauthorized liquor**

- (1) A person who, in Jersey or elsewhere –
- (a) takes unauthorized liquor on board a Jersey fishing vessel;
  - (b) has unauthorized liquor in his or her possession on board the vessel;
  - (c) permits another person to take unauthorized liquor on board the vessel, or to have it in his or her possession on board the vessel; or
  - (d) intentionally obstructs another person in the exercise of powers conferred on the other person by paragraph (3),
- commits an offence and is liable to imprisonment for 2 years and a fine.
- (2) It is a defence to prove –
- (a) in proceedings for an offence under paragraph (1)(a),(b) or (c), that the defendant believed that the liquor in question was not unauthorized liquor in relation to the vessel in question and that he or she had reasonable grounds for that belief; or
  - (b) in proceedings for an offence under paragraph (1)(a) or (b), that the defendant did not know that the liquor in question was in his or her possession.
- (3) If an authorized person has reason to believe that an offence under paragraph (1)(a) or (b) has been committed by another person in relation to a fishing vessel, the authorized person may –
- (a) go on board the vessel and search it and any property on it and, if the other person is on board the vessel, search him or her there in an authorized manner; and
  - (b) take possession of any liquor that he or she finds on the vessel and has reason to believe is unauthorized liquor, and detain the liquor for the period needed to ensure that the liquor is available as evidence in proceedings for the offence.
- (4) The Minister may by Order make provisions as to the authorized manner of searches under paragraph (3)(a).
- (5) In this Article –

“authorized person”, in relation to a vessel, means –

- (a) a shipping master;
- (b) a proper officer;
- (c) a person appointed under Article 156(1)(d);
- (d) the skipper of the vessel in question;
- (e) the owner or any charterer of the vessel in question;
- (f) a person instructed by the skipper or owner to prevent the commission of offences under paragraph (1) in relation to the vessel;

“liquor” means spirits, wine, beer, cider, perry and any other fermented, distilled or spirituous liquor;

“unauthorized liquor” means, in relation to a vessel, liquor as to which permission to take it on board the vessel has been given neither by the skipper nor the owner or any charterer of the vessel nor by a person authorized by the owner or any charterer of the vessel to give that permission.

- (6) A reference in paragraph (5) to the owner of a vessel is to be construed –
  - (a) as excluding a member of the crew of the vessel; and
  - (b) subject to that, as a reference to the person or all the persons who, in the certificate of registration of the vessel, is or are stated to be the registered owner or owners of the vessel.

## **81 Exemptions and non-application of provisions**

- (1) Article 38(1)(a) and (b) does not apply to fishing vessels and to persons serving in them.
- (2) The Minister may by Order grant an exemption from a requirement of Part 4 or this Chapter –
  - (a) with respect to a fishing vessel or to a fishing vessel of a specified description; or
  - (b) with respect to a person or a person of a specified description serving in a fishing vessel or in a fishing vessel of a specified description.
- (3) Nothing in another provision of Part 4 or this Chapter that confers a power to provide for or grant exemptions is to be taken to restrict the power conferred by this Article.

### *Chapter 2 – Safety*

## **82 Interpretation of Chapter**

In this Chapter –

“fishing vessel certificate” means a certificate granted under Article 85;

“fishing vessel construction and equipment provisions” means the fishing vessel construction provisions and provisions of the Safety Regulations relating to life-saving, radio and navigational equipment for fishing vessels;

“fishing vessel construction provisions” means provisions made by an Order under Article 83;

“fishing vessel survey provisions” means provisions made by an Order under Article 84.

### **83 Provisions for the construction of fishing vessels**

- (1) The Minister may by Order make provisions for the construction of fishing vessels prescribing requirements for the hull, equipment and machinery of Jersey fishing vessels of any description.
- (2) The Minister may exempt any fishing vessel or description of fishing vessel from any requirement of those provisions –
  - (a) generally or for a specified time; or
  - (b) with respect to a specified voyage, or voyages in a specified area,and may do so subject to any specified conditions.
- (3) A surveyor of ships may inspect a fishing vessel to see that it complies with the fishing vessel construction provisions.
- (4) If, in respect of a fishing vessel –
  - (a) the fishing vessel construction provisions are contravened; or
  - (b) the vessel is, under paragraph (2), exempted from a requirement subject to a condition and the condition is not complied with,the owner, any charterer and the skipper of the vessel each commits an offence and is liable to a fine.

### **84 Provisions for the surveying of fishing vessels**

The Minister may by Order make provisions for the surveying and periodical inspection of Jersey fishing vessels or any description of those vessels to ensure their compliance with the requirements of the fishing vessel construction and equipment provisions.

### **85 Fishing vessel certificates**

- (1) If the Minister or a person authorized by the Minister for the purpose is satisfied, on receipt of a declaration of survey in respect of a fishing vessel surveyed under the fishing vessel survey provisions, that the vessel complies with such of the requirements of the fishing vessel construction and equipment provisions as are or will be applicable to the vessel, the Minister or the person authorized by the Minister shall, on the application of its owner, issue a fishing vessel certificate showing that the vessel complies with those requirements.

- (2) The fishing vessel survey provisions may require, in the case of a fishing vessel certificate specified in the provisions, that the Minister or person authorized by the Minister to issue the certificate shall not do so unless satisfied that the vessel in respect of which it is to be issued is provided with lights, shapes and means of making fog signals required by the Safety Regulations to prevent collisions.
- (3) A fishing vessel certificate shall be in the form prescribed by the fishing vessel survey provisions.
- (4) The fishing vessel survey provisions may provide for –
  - (a) the duration, extension or cancellation of fishing vessel certificates; and
  - (b) the endorsement on a fishing vessel certificate –
    - (i) of information relating to the inspection, in accordance with the provisions, of the vessel to which it relates, and
    - (ii) of any extension of the period for which the certificate was issued.

#### **86 Provisions supplementary to Article 85**

- (1) The Minister may require a fishing vessel certificate that has expired, or been cancelled, to be delivered up as the Minister directs.
- (2) The owner, any charterer or skipper of a fishing vessel to whom a fishing vessel certificate is issued shall, as soon as practicable after receipt of it by him or her or his or her agent, cause a copy of it to be –
  - (a) put in a conspicuous place on board the vessel so as to be legible to everybody on board; and
  - (b) kept so put up and legible while the certificate remains in force and the vessel is in use.
- (3) If the owner, any charterer or skipper fails without reasonable excuse to comply with a requirement under paragraph (1), or to comply with paragraph (2), each commits an offence and is liable to a fine at level 2 on the standard scale.
- (4) A person who intentionally makes, or assists in making, or procures to be made, a false or fraudulent fishing vessel certificate commits an offence and is liable to imprisonment for 2 years and a fine.
- (5) A fishing vessel certificate is admissible in evidence.

#### **87 Prohibition on going to sea without appropriate certificate**

- (1) A fishing vessel required to be surveyed under the fishing vessel survey provisions shall not be taken to sea unless there are in force fishing vessel certificates showing that the vessel complies with such of the requirements of the fishing vessel construction and equipment provisions as are applicable to it.

- (2) If a fishing vessel is taken to sea in contravention of paragraph (1) the owner, any charterer and the skipper of the vessel each commits an offence and is liable to a fine.
- (3) The skipper of a Jersey fishing vessel shall produce a certificate required by this Chapter on being requested to do so by a customs officer or by a person authorized by the Minister.
- (4) If a skipper fails to comply with a request made under paragraph (3) and the vessel is in Jersey waters it may be detained until the certificate is produced.

## **88 Notice of alterations**

- (1) This Article applies if a fishing vessel certificate is in force in respect of a fishing vessel that shows that the vessel complies with the requirements of the fishing vessel construction provisions and –
  - (a) an alteration is made in the vessel's hull, equipment or machinery that affects the vessel's efficiency or seaworthiness; or
  - (b) an alteration is made affecting the efficiency or completeness of the appliances or equipment that the vessel is required to carry by those provisions.
- (2) If this Article applies the owner, any charterer or skipper of the vessel shall, as soon as possible after the alteration is made, give written notice containing full particulars of the alteration to the Minister or, if the certificate was issued by another person, to that person.
- (3) If the notice required by paragraph (2) is not given the owner, any charterer and the skipper each commits an offence and is liable to a fine at level 3 on the standard scale.
- (4) In this Article –

“alteration” includes a renewal;

“fishing vessel equipment provisions” means the provisions of the fishing vessel construction and equipment provisions other than the fishing vessel construction provisions.

## **89 Training in safety matters**

- (1) The Minister may make Orders for the purpose of securing that the skipper of, and each seaman employed or engaged in, a Jersey fishing vessel is trained in safety matters.
- (2) Orders may provide that if a person goes to sea on a fishing vessel in contravention of a requirement of the Order –
  - (a) the person commits an offence and is liable to a fine at level 2 or, if he or she is the skipper or an owner of the vessel, at level 4, on the standard scale, and
  - (b) the skipper and each owner and any charterer of the vessel commits an offence and is, except if he or she is the person going

to sea in contravention of a requirement of the Order, liable to a fine at level 4 on the standard scale.

## PART 7

### PREVENTION OF POLLUTION

#### *Chapter 1 – Pollution generally*

#### **90 Prevention of pollution from ships etc.**

- (1) The States may by Regulations make such provision as they consider necessary to give effect in Jersey to any international agreements ratified by the United Kingdom on behalf of Jersey that relate to the prevention, reduction or control of pollution from ships.
- (2) The international agreements referred to in paragraph (1) include –
  - (a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices), that constitutes attachment 1 to the Final Act of the International Conference on Marine Pollution signed in London on 2nd November 1973;
  - (b) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil, that constitutes attachment 2 to that final act;
  - (c) the Protocol relating to that Convention that constitutes attachment 2 to the Final Act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th February 1978;
  - (d) the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (including the Final Act of the Conference and the attached resolutions) signed in London on 30th November 1990.
- (3) The reference in paragraph (1) to an international agreement includes an international agreement that provides for the modification of another international agreement including an international agreement mentioned in paragraph (2).
- (4) The power in paragraph (1) to make provision to give effect to an international agreement includes power to provide for the provision to come into force although the agreement has not itself come into force.
- (5) Regulations made under paragraph (1) may apply the provisions of an international agreement to any areas of land or sea, despite the fact that the agreement in question does not itself apply to those areas.
- (6) Without prejudice to the generality of paragraph (1), Regulations under it may in particular include provisions –

- (a) for applying for the purpose mentioned in that paragraph any enactment or instrument relating to the pollution of the sea or other waters and also Article 52 or 167;
  - (b) with respect to –
    - (i) the carrying out of surveys and inspections, and
    - (ii) the issue, duration and recognition of certificates,for that purpose;
  - (c) for repealing the provisions of any enactment or instrument so far as it appears to the States that those provisions are not required having regard to any provision made or proposed to be made by virtue of this Article;
  - (d) with respect to the application of the Regulations to the Crown and the extra-territorial operation of any provision made by or under the Regulations;
  - (e) that a contravention of a provision made by or under the Regulations is to be an offence punishable with imprisonment for 2 years and a fine, or any lesser penalty prescribed by the Regulations;
  - (f) in connection with offences created by or under the Regulations, corresponding to that made in connection with offences under Article 98 by Articles 110(2), 111 and 112, whether by applying, or making provision for the application of, any of those Articles, subject to such modifications as may be specified by or under the Regulations, or otherwise;
  - (g) for detaining a ship in which such a contravention is suspected to have occurred and, in relation to such a ship, for applying Article 177 with such modifications, if any, as are prescribed by the Regulations.
- (7) Nothing in a single sub-paragraph of paragraph (6) is to be construed as prejudicing the generality of another of those sub-paragraphs.
- (8) Regulations under paragraph (1) may –
- (a) make provision in terms of a document that the States or any person considers relevant from time to time;
  - (b) provide for the delegation of functions exercisable by virtue of the Regulations;
  - (c) authorize the making of Orders for the purposes of this Article, except for the purposes of paragraphs (6)(a) and (c);
  - (d) provide that any enactment or instrument applied by the Regulations is to have effect as so applied subject to such modifications as may be specified in the Regulations.
- (9) If Regulations under paragraph (1) authorize the making of Orders to give effect to an international agreement, the Regulations may also authorize the making of Orders to give effect to an international agreement that provides for the modification of such an agreement.
- (10) Paragraph (9) applies in relation to Regulations and international agreements whenever made.



- (11) Orders made by virtue of paragraph (8)(c) may make provision corresponding to the provision authorized for Regulations by paragraph (1).

**91 Further provision for prevention of pollution from ships**

- (1) The States may by Regulations make provision as they consider appropriate for giving effect to any provision of the United Nations Convention on the Law of the Sea 1982 for the protection and preservation of the marine environment from pollution by matter from ships.
- (2) Without prejudice to the generality of paragraph (1), Regulations under it may in particular include provision corresponding to any provision authorized for the purpose of Article 90 by paragraphs (6), (7) and (8) of that Article; and a provision that authorizes the making of Regulations authorizes the amendment or revocation of Orders made by virtue of paragraph (8)(c) of that Article.

**92 Regulation of transfers between ships in territorial waters**

- (1) The Minister may by Order make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within Jersey waters, provision to prevent –
- (a) pollution, danger to health or to navigation; or
  - (b) hazards to the environment or to natural resources.
- (2) An Order under this Article may, in particular, do all or any of the following –
- (a) prohibit transfers of a specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;
  - (b) make provision about –
    - (i) the design of, and standards to be met by, ships and equipment,
    - (ii) the manning of ships, including the qualifications and experience to be possessed by persons of a specified description employed on board, and
    - (iii) the qualifications and experience to be possessed by persons, whether masters or not, who control the carrying out of transfers or operations ancillary to transfers;
  - (c) provide for proposed transfers to be notified to and approved by persons appointed by the Minister or by another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
  - (d) provide –
    - (i) for the procedure to be followed in relation to the approval of transfers to be as may be prescribed by any document specified in the Order, and

- (ii) for references in the Order to any document so specified to operate as references to that document as revised or re-issued from time to time;
  - (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
  - (f) provide for the granting by the Minister or by another person of exemptions from specified provisions of the Order, on such terms, if any, as the Minister or that person may specify, and for altering or cancelling exemptions.
- (3) An Order under this Article may provide that –
- (a) a contravention of the Order is to be an offence punishable with imprisonment for 2 years and a fine, or any lesser penalty prescribed by the Order;
  - (b) in circumstances prescribed by the Order, persons so prescribed are each to be taken to have committed an offence created by virtue of sub-paragraph (a).

*Chapter 2 – Waste reception facilities at harbours*

### **93 Interpretation of Chapter**

- (1) In this Chapter –
- “Order” means an Order made under Article 94(1);
- “terminal” means a terminal, jetty, pier, floating structure or other works within a harbour at which ships can obtain shelter or can ship and unship goods or passengers;
- “waste reception facilities” means facilities of the type referred to in Article 94(1).
- (2) For the purposes of this Chapter a person operates a terminal if activities at the terminal are under his or her control.

### **94 General**

- (1) The Minister may by Order make provisions in relation to –
- (a) the installation at harbours of facilities for the reception of waste from ships; and
  - (b) the use of waste reception facilities provided at harbours.
- (2) In making the Order the Minister shall take into account the need to give effect to provisions relating to waste reception facilities that are contained in an international agreement mentioned in Article 90(1).

**95 Charges for, and use of, waste reception facilities**

- (1) The Order may provide for the imposition of charges to recover the whole or part of the costs of the provision by or on behalf of the Minister of waste reception facilities at a harbour.
- (2) The Order may require the master of a ship –
  - (a) if reasonably required to do so by an officer authorized by the Minister; or
  - (b) in prescribed circumstances,to deposit in a waste reception facility provided at a harbour waste or prescribed waste carried by the ship.
- (3) The Order may provide for –
  - (a) a question as to whether a requirement made under paragraph (2)(a) was reasonable to be referred to arbitration; and
  - (b) compensation to be paid by the Minister if the requirement is found to have been unreasonable.
- (4) The Order may regulate charges to deposit waste, or prescribed waste, in a waste reception facility provided at a harbour by –
  - (a) prohibiting the imposition of a charge; or
  - (b) authorizing the imposition of a charge subject to prescribed restrictions.
- (5) The Order may permit a charge to be imposed under sub-paragraph (4) even though the charge –
  - (a) is for the deposit of waste in compliance with a requirement imposed under paragraph (2); and
  - (b) it is in addition to a charge imposed under paragraph (1).
- (6) The Order may provide for the recovery of a charge imposed under this Article.

**96 Supplementary**

The Order may provide for –

- (a) contravention of a requirement under it to be an offence punishable with imprisonment for up to 2 years and a fine;
- (b) references in it to a specified document to operate as references to that document as revised or re-issued from time to time.

*Chapter 3 – Oil pollution***97 Interpretation of Chapter**

- (1) In this Chapter –  
“harbour” means –

- (a) a port, haven, dock or other place the waters of which are within Jersey waters; and
- (b) if an enactment empowers the making of a charge (other than in respect of navigational aids or pilotage) in respect of the entry into or the use of the port, haven, dock or other place by ships;

“oil” means any description of oil and of spirit produced from oil, and includes tar;

“oil residues” means waste consisting of, or arising from, oil or a mixture containing oil;

“place on land” has the meaning given in Article 98;

“transfer”, in relation to oil, means transfer in bulk.

- (2) A reference in a provision of this Chapter to a mixture containing oil is to be construed as a reference to a mixture of oils or, as the case may be, of oil of a description referred to in the provision, with water or another substance.
- (3) A reference in this Chapter, other than in Article 103, to the discharge of oil or a mixture containing oil, or to its being discharged, from a ship, place or thing, except if the reference is to its being discharged for a specific purpose, includes a reference to the escape of oil or mixture, or, as the case may be, to its escaping, from that ship place or thing.
- (4) A floating craft, other than a ship, that is attached to a ship is to be treated as part of the ship for the purposes of a provision of this Chapter relating to the discharge of oil or a mixture containing oil from a ship.
- (5) A power conferred by Article 157 in its application to this Chapter to test equipment on board a ship is to be construed as including power to require persons on board the ship to carry out any work that may be required for the purpose of testing the equipment; and a provision of that Article as to submitting equipment for testing is to be construed accordingly.
- (6) Subject to Article 12 of the Interpretation (Jersey) Law 1954<sup>24</sup>, nothing in this Chapter –
  - (a) affects a restriction imposed by or under another enactment; or
  - (b) derogates from a right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under this Chapter.

## **98 Discharge of oil from ships into Jersey waters**

- (1) If oil or a mixture containing oil is discharged into Jersey waters as mentioned in sub-paragraph (a) or (b), then, subject to the following provisions of this Chapter, those persons mentioned in the sub-paragraph commit an offence and are liable to a fine –
  - (a) if the discharge is from a ship, the owner, any charterer and the master of the ship, unless it is proved that the discharge took place and was caused as mentioned in sub-paragraph (b);

- (b) if the discharge is from a ship but takes place in the course of a transfer of oil to or from another ship or a place on land, and is caused by the act or omission of a person in charge of apparatus in that other ship or that place, the owner, any charterer and the master of that other ship or, as the case may be, the occupier of that land.
- (2) Paragraph (1) does not apply to a discharge that –
  - (a) is made at sea; and
  - (b) is of a kind or is made in circumstances for the time being prescribed by an Order made by the Minister.
- (3) In this Article –
  - “occupier”, in relation to anything in the definition of “place on land” that has no occupier, means the owner of it;
  - “place on land” includes anything resting on the bed or shore of the sea in Jersey waters, and also includes anything afloat, other than a ship, if it is anchored or attached to the bed or shore of the sea in those waters.

#### **99 Defences of owner and master charged with offence under Article 98**

If a person is charged with an offence under Article 98 as the owner, a charterer or master of a ship, it is a defence to prove that –

- (a) the oil or mixture was discharged –
  - (i) to secure the safety of the ship,
  - (ii) to prevent damage to a ship or cargo, or
  - (iii) to save life,unless the court is satisfied that the discharge was not necessary for that purpose or was not a reasonable step to take in the circumstances;
- (b) the oil or mixture escaped as a consequence of damage to the ship, and that as soon as practicable after the damage occurred all reasonable steps were taken to prevent or, if it could not be prevented, to stop or reduce the escape of the oil or mixture; or
- (c) the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken to stop or reduce it.

#### **100 Defence of occupier charged with offence under Article 98**

If a person is charged, in respect of the escape of oil or a mixture containing oil, with an offence under Article 98 as the occupier of a place on land, it is a defence to prove –

- (a) that neither the escape nor any delay in discovering it was due to want of reasonable care; and

- (b) that as soon as practicable after it was discovered all reasonable steps were taken to stop or reduce it.

### **101 Protection for acts done in exercise of powers of the Minister**

If –

- (a) oil, or a mixture containing oil, is discharged in consequence of –
  - (i) the exercise of a power conferred by Article 153 (power in relation to wrecks), or
  - (ii) the exercise, to prevent obstruction or danger to navigation, of a power to dispose of sunk, stranded or abandoned ships that is exercisable by the Minister under an enactment; and
- (b) apart from this Article, the Minister or a person in an administration of the States for which the Minister is assigned responsibility would commit an offence under Article 98 in respect of that discharge,

the Minister or person is not to be convicted unless it is shown that he or she failed to take such steps, if any, as were reasonable in the circumstances to prevent, stop or reduce the discharge.

### **102 Restrictions on transfer of oil at night**

- (1) Between sunset and sunrise oil shall not be transferred to or from a ship in a harbour in Jersey unless –
  - (a) the requisite notice has been given in accordance with this Article; or
  - (b) the transfer is for the purposes of emergency services during an emergency.
- (2) A general notice may be given to the Harbour Master that transfers of oil will frequently be carried out between sunset and sunrise at a place in the harbour specified in the notice within a period ending not later than 12 months after the date on which the notice is given.
- (3) If oil is transferred to or from a ship in contravention of this Article the master of the ship and, if the oil is transferred from or to a place on land, the occupier of that place each commits an offence and is liable to a fine at level 3 on the standard scale.
- (4) In this Article “requisite notice” means a notice that –
  - (a) is given in compliance with paragraph (2), in relation to transfers of oil at the place and within the period specified in the notice; or
  - (b) is given to the Harbour Master not less than 3 hours nor more than 96 hours before the transfer of the oil is to begin.

### **103 Duty to report discharge of oil into waters of harbours**

- (1) If oil or a mixture containing oil –
  - (a) is discharged from a ship into the waters of a harbour; or

- (b) is found to be escaping or to have escaped from a ship into waters of a harbour,
- the owner, any charterer or the master of the ship shall immediately report the occurrence to the Harbour Master.
- (2) The notice shall state whether the occurrence falls within paragraph (1)(a) or (b).
- (3) A person who fails to make a report as required by this Article commits an offence and is liable to a fine at level 4 on the standard scale.

#### **104 Shipping casualties**

- (1) The Harbour Master may exercise the powers conferred by this Article if –
  - (a) an accident has occurred to or in a ship; and
  - (b) the Harbour Master is of the opinion that –
    - (i) oil from the ship will or may cause significant pollution in Jersey or in Jersey waters, and
    - (ii) the use of the powers conferred by this Article is urgently needed.
- (2) The Harbour Master may, to prevent or reduce oil pollution or the risk of oil pollution, give directions in respect of the ship or its cargo –
  - (a) to the owner, to any charterer of the ship, or to a person apparently in possession of the ship;
  - (b) to the master of the ship;
  - (c) to the pilot of the ship; or
  - (d) to a salvor in possession of the ship, or to a person who is an employee or agent of that salvor and who is in charge of the salvage operation.
- (3) Directions given under paragraph (2) may require the person to whom they are given to take, or refrain from taking, any action and may, in particular, require –
  - (a) that the ship is, or is not, to be –
    - (i) moved,
    - (ii) moved to a specific place or area,
    - (iii) removed from a specific area or locality,
    - (iv) moved over a specified route;
  - (b) that oil or other cargo is, or is not, to be unloaded or discharged; or
  - (c) that specified salvage measures are, or are not, to be taken.
- (4) If in the opinion of the Harbour Master the powers otherwise conferred by this Article are, or have proved to be, inadequate, the Harbour Master may, to prevent or reduce oil pollution, take, in respect of the ship or its cargo, any action whatsoever including –
  - (a) sinking or destroying the ship;

- (b) taking control of the ship.
- (5) A person concerned with compliance with directions given, or with action taken, under this Article shall do his or her best to avoid risk to human life.
- (6) The provisions of this Article are without prejudice to any rights or powers of Her Majesty or the States exercisable under international law or otherwise.
- (7) Action taken under this Article in respect of a ship under arrest or in respect the cargo of such a ship –
  - (a) does not constitute contempt of court; and
  - (b) does not make the Harbour Master liable in civil proceedings.
- (8) A direction under this Article does not to apply to a ship of Her Majesty's navy and action shall not be taken under paragraph (4) in respect of such a ship.
- (9) In this Article –
  - “accident” means a collision of ships, a stranding or another incident of navigation, or other occurrence on board a ship or external to it that causes material damage to a ship or cargo or the imminent threat of such damage;
  - “pilot” means a person not belonging to a ship who has the conduct of the ship;
  - “specified”, in relation to a direction under this Article, means specified by the direction.

#### **105 Right to recover in respect of unreasonable loss or damage**

- (1) If action taken by a person in accordance with a direction given to him or her under Article 104, or action taken under paragraph (4) of that Article –
  - (a) was not reasonably necessary to prevent or reduce oil pollution, or the risk of oil pollution; or
  - (b) was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered, as a result of the action,a person who incurred expense or suffered damage as a result of, or by himself or herself taking, the action is entitled to recover compensation from the Minister.
- (2) In considering whether paragraph (1) applies, account is to be taken of –
  - (a) the extent and risk of oil pollution if the action had not been taken;
  - (b) the likelihood of the action being effective; and
  - (c) the extent of the damage that has been caused by the action.
- (3) A reference in this Article to the taking of action includes a reference to compliance with a direction not to take some specified action.



- (4) The admiralty jurisdiction of the Royal Court includes jurisdiction to hear and determine a claim arising under this Article.

**106 Application of Articles 104 and 105 to pollution by substances other than oil**

In Articles 104 and 105 a reference to oil pollution includes a reference to pollution by another substance that –

- (a) is prescribed by the Minister by Order for the purposes of this Article; or
- (b) although not so prescribed, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea,

and, accordingly, a reference in those Articles to oil includes a reference to a substance falling within sub-paragraph (a) or (b) of this Article.

**107 Offences in relation to Article 104**

- (1) A person to whom a direction is given under Article 104 and who contravenes a requirement of it commits an offence.
- (2) In proceedings for an offence under paragraph (1) it is a defence for the defendant to prove that –
  - (a) the defendant used all due diligence to ensure compliance with the direction; or
  - (b) the defendant had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.
- (3) A person commits an offence if he or she intentionally obstructs a person who is –
  - (a) acting on behalf of the Harbour Master in connection with the giving or service of a direction under Article 104;
  - (b) acting in compliance with a direction under that Article; or
  - (c) acting under paragraph (4) of that Article.
- (4) A person who commits an offence under this Article is liable to a fine.

**108 Service of directions under Article 104**

- (1) If the Harbour Master is satisfied that a company or other body is not one to whom Article 72 of the Companies (Jersey) Law 1991<sup>25</sup> applies so as to authorize the service of a direction on that body, he or she may give a direction under Article 104 of this Law –
  - (a) to that body, as the owner or charterer of, or the person in possession of, a ship, by serving the direction on the master of the ship; or
  - (b) to that body, as a salvor, by serving the direction on the person in charge of the salvage operations.

- (2) A person acting on behalf of the Harbour Master may go on board a ship to give or serve a direction under Article 101 to or on a person on the ship.

### **109 Oil records**

- (1) The Minister may by Order require that an oil record book is carried in a Jersey ship or any class of Jersey ships specified in the Order.
- (2) The Order may require the master of a Jersey ship required to carry an oil book to record in it –
- (a) the carrying out, either on board or in connection with the ship, of any of the following operations –
    - (i) the loading of oil cargo,
    - (ii) the transfer of oil cargo during a voyage,
    - (iii) the discharge of oil cargo,
    - (iv) the ballasting of oil tanks, whether cargo or bunker fuel tanks, and the discharge of ballast from, and cleaning of, those tanks,
    - (v) the separation of oil from water, or from other substances, in a mixture containing oil,
    - (vi) the disposal of oil or water, or another substance, arising from operations relating to any of the matters specified in clauses (i) to (v), or
    - (vii) the disposal of any other oil residues;
  - (b) any occasion on which oil or a mixture containing oil –
    - (i) was discharged from the ship to secure the safety of any ship, or to prevent damage to any ship or cargo, or to save life,
    - (ii) was found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage.
- (3) The Minister may by Order also require a record to be kept relating to the transfer of oil to and from a ship while it is in Jersey waters.
- (4) A record required to be kept by an Order made under paragraph (3) shall be kept –
- (a) if the ship is not a barge, by the master of the ship; and
  - (b) if the ship is a barge –
    - (i) so far as the record relates to the transfer of oil to the barge, by the person supplying the oil, and
    - (ii) so far as it relate to the transfer of oil from the barge, by the person to whom the oil is delivered.
- (5) An Order made under this Article may –
- (a) prescribe the form of an oil record book or record and the entries to be made in it;

- (b) require the person providing or keeping the book or record to keep it for a prescribed period;
  - (c) require that person, at the end of the prescribed period, to transmit the book or record to a place or person specified in the Order;
  - (d) provide for the custody or disposal of books and records after their transmission to the place or person.
- (6) If an oil record book is not carried in a ship required by the an Order made under this Article to carry one, both the owner and the master commits an offence and is liable to a fine at level 4 on the standard scale.
- (7) A person who fails to comply with a requirement imposed on him or her by or under this Article commits an offence and is liable to a fine at level 4 on the standard scale.
- (8) A person who makes an entry in an oil record book or record required to be carried or kept under an Order made under this Article that is to his or her knowledge false or misleading in a material particular commits an offence and is liable to imprisonment for 2 years and a fine.
- (9) In proceedings under this Chapter –
  - (a) an oil record book or record required to be carried or kept under an Order made under this Article is admissible in evidence of the facts stated in it;
  - (b) a copy of an entry in such an oil record book or record that is certified to be a true copy of the entry by the master of the ship in which the book is carried, or by the person by whom the record is required to be kept is admissible as evidence of the facts stated in the entry;
  - (c) a document that purports to be an oil record book or record required to be carried or kept under an Order made under this Article, or that purports to be a certified copy mentioned in subparagraph (b) is to be presumed to be such a book, record or copy unless the contrary is proved.
- (10) In this Article “barge” includes a lighter and any similar vessel.

#### **110 Prosecutions and service of documents**

- (1) Proceedings for an offence under this Chapter may be brought only by or with the consent of the Attorney General.
- (2) A document required or authorized, by virtue of any enactment, to be served on an external company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under Article 98 alleged to have been committed by the company as owner or charterer of the ship, is to be treated as duly served on that company if served on the master of the ship.
- (3) A person authorized to serve a document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Chapter may, for that purpose, go on board the ship in question.

- (4) In this Article “external company” has the same meaning as in Article 1 of the Companies (Jersey) Law 1991.

### **111 Power to detain ships for Article 98 offences**

- (1) The Harbour Master may detain a ship if he or she has reason to believe that the owner, charterer or master of the ship has committed an offence under Article 98 by the discharge from the ship of oil, or a mixture containing oil, into the waters of a harbour.
- (2) Article 177, in its application to the detention of a ship under this Article, has effect with the omissions of paragraphs (1), (6) and (7) and as if –
- (a) in paragraph (3), the reference to a competent authority were a reference to the Harbour Master; and
  - (b) in paragraph (5), the persons in relation to whom that paragraph applies were the Harbour Master or a person acting on his or her behalf.
- (3) If the Harbour Master detains a ship other than a Jersey ship under this Article he or she shall immediately inform the Lieutenant Governor who shall thereupon notify –
- (a) if the ship is a British ship, the Secretary of State; or
  - (b) in any other case, the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.
- (4) In paragraph (3) “Jersey ship” has the same meaning as in Article 49(3).
- (5) If the Harbour Master has detained a ship under this Article he or she shall immediately release the ship –
- (a) if proceedings for the offence are not instituted within the period of 7 days beginning with the day on which the ship was detained;
  - (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted;
  - (c) if –
    - (i) £255,000 is paid to the Minister by way of security, or
    - (ii) other security is provided to the Minister that in the opinion of the Harbour Master is satisfactory and is worth at least £255,000,by or on behalf of the master, charterer or owner; or
  - (d) if the master, charterer or owner is convicted of the offence, when any costs or expenses ordered to be paid by him or her, and any fine imposed on him or her, are paid.
- (6) The Minister shall repay any sum paid or release any security provided under paragraph (5)(c) –
- (a) if proceedings for the offence are not instituted within the period of 7 days beginning with the day on which the sum was paid; or

- (b) if proceedings for the offence, having been instituted within that period, are concluded without the master, charterer or owner being convicted.
- (7) If a sum has been paid or security provided under paragraph (5)(c) and the master, charterer or owner is convicted of the offence, that sum or security shall be applied –
  - (a) first, in payment of any costs or expenses ordered by the court to be paid by the master, charterer or owner;
  - (b) next, in payment of any fine imposed by the court; and
  - (c) finally, in respect of any balance, to the person who paid the sum or provided the security.
- (8) This Article does not apply in relation to a ship of Her Majesty's navy or a Government ship.
- (9) For the purposes of this Article –
  - (a) proceedings for an offence under Article 98 are to be taken to have been instituted when –
    - (i) a person is charged with the offence, or
    - (ii) the Attorney General issues a summons in respect of the offence;
  - (b) proceedings for an offence under Article 98 are to be taken to have been concluded without the master, charterer or owner of the ship having been convicted if –
    - (i) the proceedings are discontinued,
    - (ii) the owner, charterer or master or, if more than one are charged, those charged are acquitted,
    - (iii) the conviction of the owner, charterer or master or, if more than was convicted, those convicted are quashed,
    - (iv) Her Majesty grants a pardon in respect of the conviction of the owner, charterer or master or, if more than was convicted, each of the convictions.

## **112 Application of fines**

If –

- (a) a court convicts a person of an offence under Article 98 and imposes a fine in respect of the offence; and
- (b) it appears to the court that a person has incurred, or will incur, expenses in removing pollution, or in making good damage attributable to the offence,

the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

**113 Enforcement of Conventions relating to oil pollution**

- (1) The Minister may by Order authorize a person specified in the Order to board a Convention ship while in a harbour, and to require production of an oil record book required to be carried on the ship in accordance with the Convention.
- (2) The Order may, with necessary modifications, apply –
  - (a) provisions of this Chapter relating to –
    - (i) the production and inspection of an oil record book and the taking of a copy of an entry in it, and
    - (ii) the admissibility in evidence of an oil record book and of a copy of any entry in one;
  - (b) penal provisions of this Chapter relating to those matters; and
  - (c) Article 157.
- (3) In this Article –

“the Convention” means any Convention accepted by Her Majesty’s Government in the United Kingdom so far as it relates to the prevention of pollution of the sea by oil;

“Convention ship” means a ship registered in –

  - (a) a country the government of which has been declared by an Order made by Her Majesty in Council to have accepted the Convention, and has not been so declared to have denounced it; or
  - (b) a territory to which it has been so declared that the Convention extends, not being a territory to which it has been so declared that the Convention has ceased to extend.

**114 Power of the Minister to grant exemptions**

The Minister may by Order exempt from all or any of the provisions of this Chapter or of an Order made under it, either absolutely or subject to compliance with conditions –

- (a) a ship or class of ship;
- (b) a discharge of oil or of a mixture containing oil.

**115 Application to Government ships**

- (1) This Chapter does not apply to –
  - (a) ships of Her Majesty’s navy;
  - (b) Government ships in the service of the Secretary of State while employed for the purposes of Her Majesty’s navy.
- (2) Subject to paragraph (1), and to Articles 104(8) and 111(8) –
  - (a) provisions of this Chapter that are expressed to apply to Jersey ships only apply to Government ships registered in Jersey;
  - (b) provisions of this Chapter that are expressed to apply to ships generally apply to Government ships.

*Chapter 4 – Carriage of hazardous and noxious substances***116 Interpretation of Chapter and Schedule 4**

- (1) In this Chapter 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.
- (2) The text of the Convention, excluding the annexes, is set out in Schedule 4.
- (3) In interpreting the definition of “hazardous and noxious substances” in Article 1, paragraph 5 of the Convention, a reference in that paragraph to a particular convention or code as amended is to be taken as a reference to that convention or code as amended from time to time, whether before or after the commencement of this Chapter.

**117 Power to give effect to Convention**

- (1) The States may make Regulations to give effect to –
  - (a) the Convention on or after its ratification by the United Kingdom on behalf of Jersey; or
  - (b) a revision of the Convention that appears to the Minister to have been agreed to by the Government of the United Kingdom on behalf of Jersey.
- (2) The Regulations may provide that they may come into force even though the Convention or agreement has not come into force.
- (3) The Regulations may include provisions that –
  - (a) require contributions to be paid in accordance with the Convention to the International Hazardous and Noxious Substances Fund established under it;
  - (b) apply, with or without modification, an enactment relating to the pollution of the sea or other waters, including a provision that creates an offence;
  - (c) amend an enactment in so far as it is necessary to do so for the purposes specified in paragraph (1);
  - (d) relate to the application of the Regulations to the Crown or to the States;
  - (e) provide for the detention of a ship in respect of which a contravention of a provision made by or under the Regulations is suspected to have occurred and, in relation to such a ship, apply Article 17 with or without modification;
  - (f) provide for a certificate issued by or on behalf of the States that states that at a time specified in the certificate a substance also specified in the certificate was, or was not, a hazardous or noxious substance for the purposes of the Convention to be conclusive evidence of the matter.

- (3) Regulations that give effect to a revision of the Convention may modify Schedule 4 in accordance with the revision.
- (4) Regulations under paragraph (1) may –
  - (a) authorize the making of Orders for the purposes of this Article;
  - (b) make provision for references in the Regulations to a specified document to operate as references to that document as revised or re-issued from time to time;
  - (c) provide for the delegation of functions exercisable by virtue of the Regulations.

## **PART 8**

### **LIABILITY OF SHIPOWNERS AND OTHERS**

#### **118 Scheduled Convention to have force of law**

- (1) The provisions of the Convention relating to the Carriage of Passengers and their Luggage by Sea set out in Part 1 of Schedule 5 (in this Article and in Part 2 of Schedule 5 referred to as the “Convention”) have the force of law in Jersey.
- (2) Part 2 of Schedule 5 has effect in connection with the Convention, and paragraph (1) of this Article has effect subject to that Part.
- (3) The States may make Regulations that modify this Article or Schedule 5 to resolve any conflict between –
  - (a) the provisions of this Article, or of Part 1 or 2 of Schedule 5; and
  - (b) any provisions relating to the carriage of passengers or luggage for reward by land, sea or air –
    - (i) in a convention that was signed or ratified on behalf of Jersey by or on behalf of the government of the United Kingdom before 4 April 1979 (excluding the Convention),
    - (ii) any enactment of the Parliament of the United Kingdom which is in force in Jersey giving effect to such a convention.
- (4) If the government of the United Kingdom has agreed to a revision of the Convention, the States may by Regulations modify Parts 1 and 2 of Schedule 5 in consequence of the revision.
- (5) Nothing in paragraph (1) or (2), or in a modification made by virtue of paragraphs (3) and (4), affects any rights or liabilities arising out of an occurrence that took place before paragraph (1) or (2) came into force or, as the case may be, any modification made by virtue of paragraph (3) or (4), comes into force.
- (6) This Article binds the Crown, and any Regulations made by virtue of this Article may provide that the Regulations or specified provisions of them bind the Crown.



**119 Limitation of liability for maritime claims**

- (1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 set out in Part 1 of Schedule 6 (in this Article, in Article 120 and in Part 2 of Schedule 6 referred to as the “Convention”) have the force of law in Jersey.
- (2) Part 2 of Schedule 6 has effect in connection with the Convention, and paragraph (1) of this Article has effect subject to that Part.
- (3) The provisions that have the force of law under this Article do not apply in respect of loss of life or personal injury caused to, or loss of or damage to any property of, a person who is on board the ship in question or employed in connection with that ship or with salvage operations in question if –
  - (a) he or she is so on board or employed under a contract of service governed by Jersey law; and
  - (b) the liability arises from an occurrence that took place after the commencement of this Law,and in this paragraph “ship” and “salvage” have the same meanings as in the Convention.
- (4) The States may by Regulations modify Parts 1 and 2 of Schedule 6 in consequence of –
  - (a) a revision agreed to on behalf of Jersey by the Government of the United Kingdom of the Convention or of Article 8 of the Protocol of 1996 amending it; or
  - (b) an amendment of a limit for the time being specified in Article 6(1), or Article 7(1), of the Convention that is adopted on behalf of Jersey in accordance with Article 8 of that Protocol.
- (5) A modification made by virtue of paragraph (4) does not affect a right or liability arising out of an occurrence that took place before the modification comes into force.

**120 Exclusion of liability**

- (1) The owner of a Jersey ship is not liable for loss or damage if –
  - (a) property on board the ship is lost or damaged by fire on board the ship; or
  - (b) gold, silver, watches, jewels or precious stones on board the ship –
    - (i) are lost or damaged by reason of theft, robbery or other dishonest conduct, and
    - (ii) their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.
- (2) If the loss or damage arose from anything done or omitted to be done by a person in his or her capacity as master or member of the crew or, otherwise than in that capacity, in the course of his or her employment as

an employee of the owner of the ship, paragraph (1) also excludes the liability of –

- (a) the master, member of the crew or employee; and
  - (b) if the master or member of the crew is the employee of a person whose liability would not be excluded by paragraph (1) apart from this sub-paragraph, the person whose employee he or she is.
- (3) This Article does not exclude the liability of a person for loss or damage resulting from a personal act or omission mentioned in Article 4 of the Convention.
- (4) In this Article “owner”, in relation to a ship, includes a part owner and a charterer, manager or operator of the ship.

### **121 Apportionment of liability for damage or loss**

- (1) If, by the fault of 2 or more ships, damage or loss is caused to –
- (a) one or more of those ships;
  - (b) their cargoes or freight; or
  - (c) property on board,
- liability to make good the loss or damage is to be in proportion to the degree in which each ship was at fault.
- (2) If it is not possible, having regard to all the circumstances, to establish different degrees of fault, the liability is to be apportioned equally.
- (3) This Article applies, as well as to the owner of a ship, to a person other than its owner who is responsible for the fault of the ship.
- (4) If, by virtue of a charter or demise, or for another reason, the owner of a ship is not responsible for its navigation and management, this Article applies to the charterer or other person for the time being so responsible instead of its owner.
- (5) This Article does not –
- (a) make a ship liable for loss or damage to which the fault of the ship has not contributed;
  - (b) affect the liability of a person under a contract of carriage or any contract;
  - (c) impose a liability on a person from which he or she is exempted by a contract or provision of law;
  - (d) affect the right of a person to limit his or her liability in a manner provided by law.
- (6) For the purposes of this Article damage or loss caused by the fault of a ship is to be taken to include salvage or other expenses, consequent on that fault, recoverable at law by way of damages.
- (7) In this Article “freight” includes passage money and hire.

**122 Joint and several liability for loss of life and personal injuries**

- (1) If a person loses his or her life or suffers a personal injury on board a ship owing to the fault of that ship and of another ship or ships, the liability of the owners of the ships is joint and several.
- (2) This Article does not –
  - (a) deprive a person of a right of defence on which, apart from this Article, he or she might have relied in an action brought against him or her by the injured person, or a person entitled to sue in respect of the loss of life; or
  - (b) affect the right of a person to limit his or her liability in a manner provided by law.
- (3) Articles 121(3), (4) and (6) apply in respect of this Article.

**123 Right of contribution for loss of life and personal injuries**

- (1) If –
  - (a) a person loses his or her life or suffers a personal injury on board a ship owing to the fault of that ship and of another ship or ships; and
  - (b) the proportion of any damages recovered in respect of the loss of life or injury from the owner of one of the ships exceeds the proportion in which the ship was at fault,that owner may recover by way of contribution the amount of the excess from the owner or owners of the other ship or ships to the extent to which that ship or those ships were respectively at fault.
- (2) This Article does not authorize the recovery of an amount that –
  - (a) because of a statutory or contractual limitation of, or exemption from, liability; or
  - (b) for another reason,could not be recovered in the first instance as damages by the person entitled to sue for them.
- (3) In addition to any other remedy provided by law, a person entitled to a contribution recoverable under this Article has, for the purpose of recovering it, the same rights and powers as the person entitled to sue for the damages had in the first instance.
- (4) Articles 121(3) and (4) apply in respect of this Article.

**124 Time limit for proceedings against owners or ship**

- (1) Except as provided by paragraphs (3) and (4), proceedings to enforce a claim or lien against a ship or its owner cannot be brought, irrespective of the extent of the fault –
  - (a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or

- (b) for damages for loss of life or personal injury caused by the fault of that ship to a person on board another ship,

after 2 years from the date when the damage was caused or the loss of life or injury was suffered.

- (2) Except as provided by paragraphs (3) and (4), proceedings under Article 121, 122 or 123 to enforce a contribution in respect of an overpaid proportion of damages for loss of life or personal injury cannot be brought after one year from the date of payment.
- (3) The Royal Court may, in accordance with Rules of Court, extend the period allowed for bringing proceedings referred to in paragraph (1) or (2) to the extent, and on such conditions, as it thinks fit.
- (4) If the Royal Court is satisfied that there has not, during the period allowed for bringing proceedings referred to in paragraph (1) or (2), been a reasonable opportunity to arrest the defendant ship –
  - (a) in the jurisdiction of the court; or
  - (b) in the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his or her principal place of business,

it shall extend that period to an extent sufficient to give a reasonable opportunity of so arresting the ship.

## **125 Limitation of liability of Minister**

- (1) The liability of the Minister for loss or damage to a ship, or to goods, merchandise or any other things whatever on board a ship is limited in accordance with paragraph (4) by reference to the tonnage of the largest ship that, at the time of the loss or damage is, or within the preceding 5 years has been, within the area over which the Minister is responsible for discharging any functions.
- (2) The limitation of liability under this Article –
  - (a) relates to the whole of any loss and damage that may arise on any one distinct occasion, although the loss and damage may be sustained by more than one person; and
  - (b) applies whether the liability arises under customary law or under an enactment, and despite anything contained in the enactment.
- (3) This Article does not –
  - (a) exclude the liability referred to in paragraph (1) for loss or damage resulting from a personal act or omission mentioned in Article 4 of the Convention;
  - (b) impose a liability for loss or damage if no liability exists apart from this Article.
- (4) The limit of liability is to be ascertained by applying to the ship by reference to which the liability is to be determined the method of calculation specified in Article 6(1)(b) of the Convention read with paragraph 5(1) and (2) of Part 2 of Schedule 6.

- (5) Articles 11 and 12 of the Convention and paragraphs 8 and 9 of Part 2 of Schedule 6 apply for the purposes of this Article.
- (6) For the purposes of paragraph (1) of this Article a ship is not to be treated as having been within the area over which the Minister is responsible for discharging a function by reason only that it –
  - (a) has been built or fitted out within the area;
  - (b) has taken shelter within or passed through the area on a voyage between 2 places both situated outside that area; or
  - (c) has loaded or unloaded mail or passengers within the area.
- (7) In this Article the “Convention” means the Convention on Limitation of Liability for Maritime Claims 1976 set out in Part 1 of Schedule 6.

#### **126 Application to Crown and its ships**

- (1) Articles 119 to 124, except Article 124(4), apply in the case of Her Majesty’s ships as they apply in relation to other ships.
- (2) In this Article “Her Majesty’s ships” means –
  - (a) ships of which the beneficial interest is vested in Her Majesty;
  - (b) ships that are registered in Jersey, the United Kingdom or a relevant British possession as Government ships;
  - (c) ships that are for the time being demised or sub-demised to or in the exclusive possession of the Crown;

but does not include a ship in which Her Majesty is interested otherwise than in right of Her Government in the United Kingdom, unless that ship is for the time being demised or sub-demised to Her Majesty in right of Her Government in the United Kingdom or in the exclusive possession of Her Majesty in that right.

#### **127 Compulsory insurance or security**

- (1) The States may make Regulations that require, in specified cases, that while a ship is in Jersey waters there shall be in force in respect of the ship –
  - (a) a contract of insurance that –
    - (i) insures a specified person or specified persons against specified liabilities, and
    - (ii) satisfies any specified requirements; or
  - (b) other security relating to those liabilities that satisfies specified requirements.
- (2) Regulations cannot be made under this Article so as to apply to –
  - (a) a qualifying foreign ship while it is exercising the right of innocent passage;
  - (b) a warship; or

- (c) a ship being used by the government of a State for other than commercial purposes.
- (3) Regulations cannot be made under this Article so as to require insurance or security to be maintained in respect of a ship in relation to liability in a case where an obligation to maintain insurance or security in respect of that ship in relation to that liability is imposed –
  - (a) by section 163 of the Merchant Shipping Act 1995 of the United Kingdom, as applied by the Merchant Shipping (Oil Pollution) (Jersey) Order 1997;<sup>26</sup> or
  - (b) by Regulations made under Article 117 (power to give effect to the Convention set out in Schedule 6).
- (4) Regulations made under this Article may –
  - (a) require that if a person is obliged to have in force in respect of a ship a contract of insurance or other security, specified documentary evidence of the existence of the contract of insurance or other security shall be –
    - (i) carried on the ship by a specified person, and
    - (ii) produced on demand to specified persons;
  - (b) provide that in specified cases a ship that contravenes the Regulations is liable to be detained and that Article 177 is to have effect with any specified modifications that relate to the ship;
  - (c) provide that a contravention of the Regulations is to be an offence punishable by a fine.
- (5) Regulations under this Article may make provision in terms of any document that the States or any person considers relevant from time to time.
- (6) In this Article “specified” means specified by or under Regulations made under this Article.

## PART 9

### SALVAGE AND WRECK

#### *Chapter 1 – Interpretation*

#### **128 Interpretation of Part**

- (1) In this Part –
  - “officer”, in the definition of Receiver, means an officer appointed under Article 2(1) of the Harbours (Administration) (Jersey) Law 1961<sup>27</sup> to deputise for the Harbour Master in the event of his or her absence from duty;
  - “Receiver” means –
    - (a) the Harbour Master; but

- (b) if the Minister considers in any specific case that it would be inappropriate (whether by reason of a conflict of interests or otherwise) for the Harbour Master to act, means in respect of that case the officer appointed by the Minister to act in that case;

“salvage” includes, subject to the Salvage Convention, all expenses properly incurred by the salvor in the performance of salvage services;

“the Salvage Convention” means the International Convention on Salvage 1989, as set out in Part 1 of Schedule 7;

“salvor”, in the case of salvage services rendered by the officers or crew or part of the crew of a ship belonging to Her Majesty, means the person in command of the ship;

“tidal water” means a part of the sea within the ebb and flow of the tide at ordinary spring tides, not being a harbour;

“vessel” includes a ship, boat or other description of vessel used in navigation;

“wreck” includes jetsam, flotsam, lagan and derelict found in, or on the shores of, the sea or tidal water.

- (2) For the purposes of this Part, a fishing boat or fishing gear lost or abandoned at sea and either –
- (a) found or taken possession of within Jersey waters; or
- (b) found or taken possession of beyond those waters and brought within those waters,
- is to be treated as wreck.
- (3) In so far as it is inconsistent with this Part, the customary law relating to wreck is abrogated.

### *Chapter 2 – Salvage*

#### **129 Salvage Convention 1989 to have force of law**

- (1) The Salvage Convention has the force of law in Jersey.
- (2) Part 2 of Schedule 7 has effect in connection with the Salvage Convention, and paragraph (1) of this Article has effect subject to that Part.
- (3) If it appears to the States that the Government of the United Kingdom has agreed to a revision of the Salvage Convention on behalf of Jersey, they may by Regulations modify Parts 1 and 2 of Schedule 7 as they consider appropriate in consequence of the revision.
- (4) Nothing –
- (a) in paragraph (1) or (2) affects rights or liabilities arising out of salvage operations started or other acts done before the date of coming into force of this Chapter;

- (b) in any modification made under paragraph (3) affects rights or liabilities arising out of salvage operations started or other acts done before the day on which the modification comes into force.
- (5) The reference in Article 2 of the Salvage Convention to a “State Party” includes a reference to Jersey.

### **130 Valuation of property by Receiver**

- (1) If a dispute as to salvage arises, the Receiver may, on the application of either party, appoint a valuer to value the property.
- (2) When the valuation has been made the Receiver shall give copies of it to both parties.
- (3) A copy of the valuation, purporting to be signed by the valuer, and to be certified as a true copy by the Receiver, is admissible in evidence in any subsequent proceedings.
- (4) The person applying for the valuation shall pay in respect of it a fee that the Minister may direct.

### **131 Detention of property liable for salvage by Receiver**

- (1) If salvage is due to a person under this Chapter, the Receiver shall –
  - (a) if the salvage is due in respect of services rendered –
    - (i) in assisting the vessel,
    - (ii) in saving life from a vessel, or
    - (iii) in saving the cargo and equipment of a vessel;detain the vessel and cargo or equipment; and
  - (b) if the salvage is due in respect of the saving of a wreck, and the wreck is not sold as unclaimed under this Chapter, detain the wreck.
- (2) Subject to paragraph (3), the Receiver shall detain the vessel and the cargo and equipment, or the wreck, as the case may be, until –
  - (a) payment is made for salvage; or
  - (b) process is issued for the arrest or detention of the property by the Royal Court.
- (3) The Receiver may release property detained under paragraph (2)(b) if security is given –
  - (a) to his or her satisfaction; or
  - (b) if the claim for salvage exceeds £5,000 and a question is raised as to the sufficiency of the security, to the satisfaction of the Court.
- (4) Security given for salvage under this Article to an amount exceeding £5,000 may be enforced by the Court in the same manner as if bail had been given in that Court.



**132 Sale of detained property by Receiver**

- (1) The Receiver may sell detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, in the following cases –
  - (a) if the amount is not disputed, and payment of the amount due is not made within 20 days after the amount is due;
  - (b) if the amount is disputed, but no appeal lies from the first court to which the dispute is referred, and payment is not made within 20 days after the decision of the first court;
  - (c) if the amount is disputed, and an appeal lies from the decision of the first court to some other court, and within 20 days of the decision of the first court neither payment of the sum due is made nor proceedings commenced for an appeal.
- (2) The proceeds of sale of detained property, after payment of the expenses of sale, are to be applied by the Receiver in payment of the expenses, fees and salvage, and any excess is to be paid to the owners of the property immediately before the sale or other persons entitled to the excess.
- (3) In this Article “detained property” means property detained by the Receiver under Article 131(2).

**133 Apportionment of salvage under £5,000 by Receiver**

- (1) If –
  - (a) the aggregate amount of salvage payable in respect of salvage services rendered in Jersey waters has been finally determined and does not exceed £5,000; but
  - (b) a dispute arises as to the apportionment of the amount among several claimants,the person liable to pay the amount may apply to the Receiver for leave to pay it to him or her.
- (2) The Receiver may receive the amount and, if the Receiver does, he or she shall give the person paying it a certificate stating the amount paid and the services in respect of which it is paid.
- (3) A certificate under paragraph (2) is a full discharge and indemnity to the person by whom it was paid, and to his or her vessel, cargo, equipment and effects against the claims of all persons in respect of the services mentioned in the certificate.
- (4) The Receiver shall as soon as possible distribute an amount received by him or her under this Article among the persons entitled to it, on such evidence, and in such shares and proportions, as he or she thinks fit; and a decision under this paragraph is to be made on the basis of the criteria contained in Article 13 of the Salvage Convention.
- (5) The Receiver may retain money that appears to him or her to be payable to a person who is absent.

- (6) A distribution made by the Receiver under this Article is final and conclusive as against all persons claiming to be entitled to any part of the amount distributed.

### **134 Apportionment of salvage by the Royal Court**

- (1) If –
- (a) the aggregate amount of salvage payable in respect of salvage services rendered in Jersey waters has been finally determined and exceeds £5,000; or
  - (b) the aggregate amount of salvage payable in respect of salvage services rendered outside Jersey waters (of whatever amount) has been finally determined,
- but, in either case, a delay or dispute arises as to the apportionment of the amount, the Royal Court may cause the amount of salvage to be apportioned among the persons entitled to it as it thinks just.
- (2) A decision of the Royal Court under this Article is to be made on the basis of the criteria contained in Article 13 of the Salvage Convention.
- (3) For the purpose of making the apportionment, the Royal Court may –
- (a) appoint a person to carry the apportionment into effect;
  - (b) compel any person in whose hands or under whose control the amount may be to distribute it or to pay it into Court to be dealt with as the Court directs; and
  - (c) issue such process as it thinks fit.

### **135 Salvage claims against the Crown and Crown rights of salvage**

- (1) So far as consistent with the Salvage Convention, the law relating to civil salvage, whether of life or property, except Articles 130, 131 and 132, applies in relation to salvage services in assisting any of Her Majesty's ships, or in saving life from them, or in saving cargo or equipment belonging to Her Majesty in right of Her Government in the United Kingdom, as if the ship, cargo or equipment belonged to a private person.
- (2) If salvage services are rendered by or on behalf of Her Majesty, whether in right of Her Government in the United Kingdom or otherwise, Her Majesty, in respect of those services –
- (a) is entitled to claim salvage to the same extent; and
  - (b) has the same rights and remedies,
- as any other salvor.
- (3) A claim for salvage services by the commander or crew, or part of the crew, of any of Her Majesty's ships shall not be finally adjudicated upon without the consent of the Secretary of State to the prosecution of the claim; and if a claim is prosecuted without that consent it shall be dismissed with costs.

- (4) A document purporting to give the consent of the Secretary of State for the purposes of paragraph (3) and to be signed by an Officer of the United Kingdom Ministry of Defence is evidence of that consent.
- (5) In this Article “Her Majesty’s ships” has the same meaning as in Article 126.

*Chapter 3 – Wreck*

**136 Application of, and discharge of functions under, Articles 137 to 140**

- (1) Articles 137 to 140 apply in circumstances if a Jersey or foreign vessel is wrecked, stranded or in distress at a place on or near the coast of Jersey or in tidal water within Jersey waters.
- (2) The Receiver may authorize a customs officer or any officer appointed for the time being under Article 2(1) of the Harbours (Administration) (Jersey) Law 1961 to discharge a function conferred on the Receiver by any of those Articles.
- (3) An officer discharging a function of the Receiver in accordance with paragraph (2) is to be treated as the agent of the Receiver with respect to goods or articles belonging to a vessel the delivery of which to the Receiver is required by a provision of this Chapter; but the officer so discharging a function is not deprived of any right to salvage to which he or she would otherwise be entitled.
- (4) In those Articles “shipwrecked persons”, in relation to a vessel, means persons belonging to the vessel.

**137 Duty of Receiver if vessel in distress**

- (1) In circumstances in which this Article applies by virtue of Article 136 in relation to a vessel, the Receiver shall, on being informed of the circumstances, but subject to paragraphs (2) and (3), discharge the following functions –
  - (a) immediately proceed to the place where the vessel is;
  - (b) take command of all persons present; and
  - (c) assign duties and give directions to each person as he or she thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons.
- (2) The Receiver shall not interfere between the master and crew of the vessel in reference to the management of the vessel unless he or she is requested to do so by the master.
- (3) Subject to paragraph (2), a person who intentionally disobeys a direction of the Receiver commits an offence and is liable to a fine at level 3 on the standard scale.

**138 Powers of Receiver in relation to vessel in distress**

- (1) In circumstances in which this Article applies by virtue of Article 136 in relation to a vessel, the Receiver may, for the purpose of the preservation of shipwrecked persons or of the vessel, cargo and equipment –
  - (a) require persons he or she thinks necessary to assist him or her;
  - (b) require the master, or other person having the charge, of any vessel near at hand to give any assistance with his or her men or vessel as may be in his or her power; and
  - (c) require the use of any vehicle that may be near at hand.
- (2) The receiver does not have the power under paragraph (1) to impose a requirement on the master or other person having the charge of a vessel owned or operated by the Royal National Lifeboat Institution.
- (3) A person who refuses, without reasonable excuse, to comply with a requirement made under paragraph (1) commits an offence and is liable to a fine at level 3 on the standard scale.

**139 Power to pass over adjoining land**

- (1) In circumstances in which this Article applies by virtue of Article 136 in relation to a vessel, a person may –
  - (a) to render assistance to the vessel;
  - (b) to save the lives of shipwrecked persons; or
  - (c) to save the cargo or equipment of the vessel,without interruption by the owner or occupier of adjoining land, pass and repass over it, with or without vehicles, and deposit on it cargo or other articles recovered from the vessel.
- (2) A right of passage is not conferred by paragraph (1) if there is a public road equally convenient.
- (3) A right of passage conferred by paragraph (1) shall be exercised so as to do as little damage as possible.
- (4) Any damage sustained by the owner or occupier of land in consequence of the exercise of a right of passage conferred by paragraph (1) is a charge on the vessel, cargo or articles in respect of or by which the damage is caused.
- (5) The amount payable in respect of any damage is –
  - (a) in case of dispute, to be determined; and
  - (b) in default of payment, recoverable,in the same manner as salvage is determined and recoverable.
- (6) An owner or occupier of land commits an offence if he or she –
  - (a) impedes or hinders a person in the exercise of the rights conferred by this Article;
  - (b) impedes or hinders the deposit on the land of cargo or other articles recovered from the vessel;

- (c) prevents or attempts to prevent cargo or other articles recovered from the vessel from remaining deposited on the land for a reasonable time until they can be moved to a safe place of public deposit,

and is liable to a fine at level 3 on the standard scale.

#### **140 Duties of finder etc. of wreck**

If a person finds or takes possession of wreck in Jersey waters, or finds or takes possession of wreck outside Jersey waters and brings it within those waters, he or she shall –

- (a) if he or she is the owner of it, give notice to the Receiver stating that he or she has found or taken possession of it and describing the marks by which it may be recognized;
- (b) if he or she is not the owner of it, give notice to the Receiver that he or she has found or taken possession of it and, as directed by the Receiver, either hold it to the Receiver's order or deliver it to the Receiver.

#### **141 Failure by finder etc. of wreck to carry out duties**

- (1) A person who –
  - (a) finds or takes possession of wreck in Jersey waters; or
  - (b) finds or takes possession of wreck outside Jersey waters and brings it within those waters;

and who, without reasonable excuse, fails to comply with Article 140 commits an offence and is liable to a fine not exceeding level 4 on the standard scale.

- (2) If the person is not the owner of the wreck he or she also –
  - (a) forfeits any claim to salvage; and
  - (b) is liable to pay twice the value of the wreck –
    - (i) if it is claimed, to the owner of it, or
    - (ii) if it is unclaimed, to the Receiver.

#### **142 Provisions as to cargo etc.**

- (1) If a vessel is wrecked, stranded, or in distress on or near the coast of Jersey or in tidal water within Jersey waters, any cargo or other articles belonging to or separated from the vessel that are washed on shore or otherwise lost or taken from the vessel shall be delivered to the Receiver.
- (2) A person, whether the owner or not, commits an offence if he or she –
  - (a) conceals or keeps possession of any such cargo or article; or
  - (b) refuses to deliver it to the Receiver or to a person authorized by the Receiver to require delivery,

and is liable to a fine at level 4 on the standard scale.

- (3) The Receiver or a person authorized by him or her may take any such cargo or article, if necessary by force, from a person who refuses to deliver it.

#### **143 Receiver to give notice of wreck**

- (1) If the Receiver takes possession of wreck he or she shall, within 48 hours –
  - (a) make a record describing the wreck and any marks by which it is distinguished; and
  - (b) if in his or her opinion the value of the wreck exceeds £5,000, also transmit a copy of the record to the chief executive officer of Lloyds in London, to be posted in a conspicuous place there for inspection.
- (2) The Receiver shall make the record under paragraph (1)(a) available for inspection by any person during reasonable hours without charge.

#### **144 Claims of owners to wreck**

- (1) The owner of wreck in the possession of the Receiver who establishes his or her claim to the wreck to the satisfaction of the Receiver within one year from the time when the wreck came into the Receiver's possession is entitled, on paying the salvage, fees and expenses due, to have the wreck delivered or the proceeds of sale paid to him or her.
- (2) If –
  - (a) a foreign ship has been wrecked on or near the coast of Jersey; or
  - (b) articles belonging to or forming part of, or of the cargo of, a foreign ship that has been wrecked on or near the coast of Jersey are found on or near the coast or are brought into a port,the appropriate officer is, in the absence of the owner and of the master or other agent of the owner, to be treated as the agent of the owner for the purposes of the custody and disposal of the wreck and the articles.
- (3) In paragraph (2) "appropriate officer" means –
  - (a) in relation to a foreign ship that is not a British ship registered outside Jersey, the consul general of the country to which the ship or, as the case may be, the owners of the cargo may have belonged or a consular officer of that country authorized for the purpose by any treaty or arrangement with that country;
  - (b) in relation to a British ship registered outside Jersey, the Registrar of Shipping in the port of registry of the ship.

#### **145 Immediate sale of wreck in certain cases**

- (1) The Receiver may at any time sell wreck in his or her possession if, in his or her opinion –
  - (a) it is under the value of £5,000;

- (b) it is so much damaged, or of so perishable a nature, that it cannot with advantage be kept; or
  - (c) it is not of sufficient value to pay for storage.
- (2) The Receiver may also sell wreck in his or her possession before the end of the year referred to in Article 144(1) if in his or her opinion it is unlikely that an owner will establish a claim to the wreck within that year.
- (3) Subject to paragraph (4), the proceeds of sale, after defraying the expenses of the sale, are to be held by the Receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.
- (4) If the Receiver sells wreck under paragraph (2), he or she may make an advance payment to the salvors, of an amount and subject to conditions as the Receiver thinks fit, on account of salvage that may become payable to them in accordance with Article 144(2)(b).
- (5) The Minister may increase the amount specified in paragraph (1)(a) by Order.

#### **146 Right to unclaimed wreck**

- (1) This Article applies where wreck that was found in Jersey or Jersey waters is in the possession of the Receiver one year after it came into his or her possession and no person has established ownership of it.
- (2) Where this Article applies the wreck shall form part of the property of the States of Jersey.
- (3) Where wreck has become the property of the States of Jersey the Minister may –
  - (a) direct the Receiver to sell or otherwise dispose of the wreck on behalf of the States of Jersey; or
  - (b) retain the wreck.
- (4) Where the Receiver sells wreck on behalf of the States of Jersey the Receiver shall –
  - (a) deduct from the amount realised by the sale –
    - (i) the expenses of the sale, and
    - (ii) any other expenses incurred by him or her;
  - (b) pay the salvors the amount of salvage directed by the Minister either generally or in the particular case; and
  - (c) pay the balance to the States as part of the income of the States.
- (5) The States shall not retain possession of wreck to the detriment of any salvor but if it retains possession of wreck the Minister shall pay fair compensation to any salvor.

**147 Effect of delivery of wreck etc. under this Chapter**

- (1) Delivery of wreck or payment of the proceeds of sale of wreck by the Receiver under this Chapter discharges the Receiver from all liability in respect of the delivery or payment.
- (2) Delivery of wreck by the Receiver under this Chapter does not, however, prejudice or affect any question that may be raised by third parties concerning the right or title to the wreck or concerning the title to the soil of the place where the wreck was found.

**148 Taking wreck etc. to foreign port**

A person who takes into a foreign port and sells –

- (a) a vessel stranded, derelict or otherwise in distress found on or near the coast of Jersey or in tidal water within Jersey waters;
- (b) the whole or part of the cargo or equipment of, or anything belonging to, such a vessel; or
- (c) wreck found within Jersey waters,

commits an offence and is liable to imprisonment for 5 years or a fine.

**149 Interfering with wrecked vessel or wreck**

- (1) A person commits an offence if, not being –
  - (a) the Receiver or a person lawfully acting as the Receiver;
  - (b) a person acting on the instruction of a person referred to in sub-paragraph (a); or
  - (c) a person authorized by the master to do so,he or she boards or attempts to board a vessel that is wrecked, stranded or in distress, and is liable to a fine at level 3 on the standard scale.
- (2) The master of a vessel may forcibly repel a person committing or attempting to commit an offence under paragraph (1).
- (3) A person commits an offence if the person –
  - (a) impedes or hinders, or attempts to impede or hinder, the saving of –
    - (i) a vessel stranded or in danger of being stranded, or otherwise in distress, on or near the coast or tidal water,
    - (ii) the whole or part of the cargo or equipment of such a vessel,
    - (iii) wreck;
  - (b) conceals wreck;
  - (c) defaces or obliterates any mark on a vessel;
  - (d) wrongfully carries away or removes –
    - (i) any part of a vessel stranded or in danger of being stranded, or otherwise in distress, on or near the coast or tidal water,
    - (ii) the whole or part of the cargo or equipment of such a vessel,



(iii) wreck;

and is liable to a fine at level 4 on the standard scale.

#### **150 Powers of entry etc.**

- (1) If the Receiver has reason to believe that wreck –
  - (a) is being concealed by, or is in the possession of, a person who is not the owner of it; or
  - (b) is being otherwise improperly dealt with,he or she may apply to the Bailiff or a Jurat for a search warrant.
- (2) If a search warrant is granted under paragraph (1) the Receiver may, by virtue of the warrant –
  - (a) enter a house or other place, wherever situated, or a vessel; and
  - (b) search for, seize and detain any wreck found there.
- (3) When executing a warrant granted under paragraph (1) the Receiver –
  - (a) may be accompanied by a police officer or a customs officer or any person named in the warrant, who shall have the same powers as the Receiver when executing the warrant; and
  - (b) may use such force as may be reasonably necessary to carry out the search.
- (4) If a seizure of wreck is made under this Article in consequence of information given by a person to the Receiver, the person giving the information is entitled, by way of salvage, to a sum, not exceeding £100, that the Receiver may allow.

#### *Chapter 4 – Supplemental*

#### **151 Expenses of Receiver**

- (1) There shall be paid to the Receiver the expenses properly incurred by the Receiver in the discharge of his or her functions and any prescribed fees in respect of matters prescribed by the Minister by Order.
- (2) The Receiver is not entitled to any other remuneration in respect of his or her functions under this Law.
- (3) The Receiver has, in addition to all other rights and remedies for the recovery of those expenses and fees, the same rights and remedies in respect of those expenses and fees as a salvor has in respect of salvage due to him or her.
- (4) If a dispute arises as to the amount payable to the Receiver in respect of expenses or fees, the dispute is to be determined by the Minister, whose decision on it is final.

**152 Release of goods from customs control**

The Agent of the Impôts shall, subject to taking security for the protection of the revenue in respect of the goods, permit all goods saved from a ship stranded or wrecked –

- (a) to be forwarded to the port of its original destination if it was on its homeward voyage;
- (b) to be returned to the port at which they were shipped if it was on its outward voyage.

**153 Powers of Harbour Master in relation to wrecks**

- (1) If a vessel is sunk, stranded or abandoned –

- (a) in, or in or near an approach to, a harbour or tidal water; or
- (b) in a fairway, on the seashore, or on or near a rock, shoal, bank or island in Jersey waters,

in a manner that, in the opinion of the Harbour Master, is, or is likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service, he or she may exercise any of the powers in paragraph (2).

- (2) Those powers are –

- (a) to take possession of, and raise, remove or destroy the whole or part of the vessel and its property;
- (b) to light or buoy the vessel or part of the vessel and its property until it is raised, removed or destroyed;
- (c) subject to paragraph (3), to sell, in such manner as he or she thinks fit, the vessel or part of the vessel so raised or removed and any property recovered in the exercise of the power conferred by sub-paragraph (a) or (b);
- (d) to reimburse himself or herself, out of the proceeds of the sale, for the expenses incurred by him or her in relation to the sale.

- (3) The following provisions attach to a sale under paragraph (2)(c) –

- (a) except in the case of property that is of a perishable nature or that would deteriorate in value by delay, no sale is to be made until at least 7 days notice of the intended sale has been given by advertisement in a newspaper circulating in Jersey;
- (b) at any time before property is sold the owner of it is entitled to have it delivered to him or her on payment of its fair market value;
- (c) the proceeds of a sale of a vessel and any other property recovered from the vessel are to be treated as a common fund;
- (d) any surplus of the proceeds of a sale is to be held by the Harbour Master in trust for the persons entitled to it.

- (4) For the purposes of paragraph (3)(b) –

- (a) the market value of property is that agreed on between the Harbour Master and the owner or, failing agreement, that determined by a person appointed for the purpose by the Bailiff;

- (b) the sum paid to the Harbour Master is to be treated for the purposes of this Article as the proceeds of sale of the property.
- (5) This Article is without prejudice to any other powers of the Harbour Master.
- (6) In this Article “property”, in relation to a vessel, means an article, thing or collection of things being or forming part of the equipment, cargo, stores or ballast of the vessel.

## **PART 10**

### **ENFORCEMENT OFFICERS AND POWERS**

#### **154 Appointment of inspectors and surveyors**

- (1) The Minister may appoint a person as an inspector to report to the Minister –
  - (a) on the nature and causes of an accident or damage that a ship has or is alleged to have sustained or caused;
  - (b) whether a requirement, restriction or prohibition imposed by or under this Law has been complied with or, as the case may be, contravened;
  - (c) whether the hull and machinery of a ship are sufficient and in good condition;
  - (d) what measures have been taken to prevent the escape of oil or mixtures containing oil.
- (2) The Minister may appoint persons to be surveyors of ships for the purposes of this Law.
- (3) A surveyor of ships may be appointed as a ship surveyor, an engineer surveyor, or both.
- (4) A surveyor of ships may be appointed either generally or for a particular case or purpose.
- (5) The Minister may also appoint a Chief Marine Surveyor for Jersey and other officers in connection with the survey of ships and other matters incidental to it as the Minister thinks fit.
- (6) Each surveyor of ships is to be treated as a person appointed generally under paragraph (1) to report to the Minister in every kind of case falling within sub-paragraphs (b) and (d) of that paragraph in relation to Chapter 3 of Part 7.
- (7) The Minister may appoint persons to be inspectors for the purposes of Articles 159 to 164.
- (8) An inspector appointed under paragraph (1) is to be treated as also appointed under paragraph (7).

**155 Powers to require production of ships' documents**

- (1) The powers conferred by this Article are conferred in relation to Jersey ships and are available to the following officers –

- (a) the Harbour Master;
- (b) a commissioned naval officer;
- (c) a British consular officer;
- (d) the Registrar or a person discharging the functions of the Registrar;
- (e) the Agent of the Impôts or his or her deputy;
- (f) an inspector;
- (g) a surveyor of ships;
- (h) a shipping master,

whenever the officer has reason to suspect that this Law or any law for the time being in force relating to seamen or navigation is not being complied with.

- (2) Those powers are –

- (a) to require the owner, any charterer, the master, or any of the crew to produce an official log-book, or other document relating to the crew or a member of the crew, in his or her possession or control, and to take copies of or extracts from that log-book or other document;
- (b) to require the master to appear and give any explanation required concerning the ship or her crew or an official log-book or document produced or required to be produced;
- (c) to require the master to produce a list of all persons on board his or her ship;
- (d) to muster the crew.

- (3) A person who, on being required by an officer under this Article to produce a log-book or document, fails without reasonable excuse to produce it, commits an offence and is liable to a fine at level 2 on the standard scale.

- (4) A person who, on being required by an officer under this Article –

- (a) to produce a log-book or document, refuses to allow it to be inspected or copied;
  - (b) to give an explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer; or
  - (c) to muster the crew, fails or refuses to do so or impedes the muster,
- commits an offence and is liable to a fine at level 2 on the standard scale.

**156 Powers to inspect ships and their equipment etc.**

- (1) To ensure that the provisions of this Law, other than Articles 98 to 108 and 110 to 115, and the provisions of Regulations and Orders made under this Law (other than under those Articles) or that the terms of an

approval, licence, consent, direction or exemption given by virtue of those Regulations or Orders are duly complied with –

- (a) a surveyor of ships;
- (b) a shipping master;
- (c) a proper officer;
- (d) a person appointed by the Minister, either generally or in a particular case, to exercise powers under this Article,

may, on production of his or her authority to do so, if requested, at all reasonable times go on board a ship in Jersey or Jersey waters and inspect the ship and its equipment or a part of the equipment, an article on board and a document carried in the ship in accordance with this Law or Regulations or Orders made under it.

- (2) The powers conferred by paragraph (1) –
  - (a) are not exercisable in relation to a qualifying foreign ship while the ship is exercising the right of innocent passage;
  - (b) are also exercisable outside Jersey waters if the ship is a Jersey ship.
- (3) A person exercising powers under this Article shall not unnecessarily detain or delay a ship, but may, if he or she considers it necessary in consequence of an accident or for another reason, require a ship to be taken into dock for a survey of its hull and machinery.
- (4) If a person mentioned in paragraph (1) has reasonable grounds for believing that there are on premises provisions or water intended for supply to a Jersey ship that, if provided to the ship, would not comply with applicable Safety Regulations, he or she may enter those premises and inspect the provisions or water to ascertain whether they would so comply.
- (5) A person who –
  - (a) obstructs a person in the exercise of his or her powers under this Article; or
  - (b) fails to comply with a requirement made under paragraph (3),commits an offence and is liable to a fine at level 4 on the standard scale.

### **157 Powers of inspectors in relation to premises and ships**

- (1) The powers conferred by this Article are conferred in relation to –
  - (a) premises in Jersey; or
  - (b) a Jersey ship wherever it may be and any other ship that is present in Jersey or Jersey waters,and are available to an inspector for the purpose of performing his or her functions.
- (2) An inspector –

- (a) may at any reasonable time (or, in a situation that in his or her opinion is or may be dangerous, at any time) –
  - (i) enter premises, or
  - (ii) board a ship,if the inspector has reason to believe that it is necessary for him or her to do so;
- (b) may on entering premises or boarding a ship by virtue of sub-paragraph (a), take with the inspector any other person authorized for the purpose by the Minister and any equipment or materials he or she requires;
- (c) may make such examination and investigation as the inspector considers necessary;
- (d) may give a direction requiring that the premises or ship, or a part of either, or anything in either, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of an examination or investigation under sub-paragraph (c);
- (e) may take measurements and photographs and make recordings the inspector considers necessary for the purpose of an examination or investigation under sub-paragraph (c);
- (f) may take a sample of an article or a substance found in the premises or ship, and of the atmosphere in or in the vicinity of the premises or ship;
- (g) may, in the case of an article or substance that he or she finds in the premises or ship and that appears to the inspector to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to a process or test (but not so as to damage or destroy it unless that is in the circumstances necessary);
- (h) may in the case of an article or substance mentioned in sub-paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes –
  - (i) to examine it and do anything to it that the inspector has the power to do under that sub-paragraph,
  - (ii) to ensure that it is not tampered with before his or her examination of it is completed,
  - (iii) to ensure that it is available for use as evidence in proceeding for an offence under this Law or subsidiary legislation made under it;
- (i) may require a person whom the inspector has reasonable cause to believe is able to give information relevant to an examination or investigation under sub-paragraph (c) –
  - (i) to attend at a place and time specified by the inspector,
  - (ii) to answer (in the absence of persons other than those whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) questions that the inspector thinks fit to ask, and

- (iii) to sign a declaration of the truth of his or her answers;
  - (j) may require the production of, and inspect and take copies of, or of an entry in –
    - (i) a book or document that is required to be kept by virtue of this Law, or
    - (ii) any other book or document that he or she considers it necessary for him or her to see for the purposes of an examination or investigation under sub-paragraph (c);
  - (k) may require a person to afford him or her facilities and assistance with respect to a matter or thing within that person's control or in relation to which that person has responsibility as the inspector considers are necessary to enable him or her to exercise any of the powers conferred on him or her by this paragraph.
- (3) The powers conferred –
- (a) by paragraph (2) –
    - (i) to require the production of a document and to copy it, include, in relation to oil record books required to be carried under Article 109, the power to require the master to certify the copy as true,
    - (ii) to inspect premises, are also exercisable, for the purpose of Chapter 3 of Part 7, in relation to apparatus used for transferring oil;
  - (b) by paragraph (2)(a), (c) and (j) are also exercisable, in relation to a ship in a harbour in Jersey, by the Harbour Master or other persons appointed by the Minister, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the ship into the harbour.
- (4) Nothing in paragraphs (1) to (3) authorizes a person –
- (a) to take any action under those articles if upon being requested to do so by a person apparently in charge of the premises or ship they fail to produce their authority to take that action; or
  - (b) unnecessarily to prevent a ship from proceeding on a voyage.
- (5) The Minister may by Order make provision as to –
- (a) the procedure to be followed in connection with the taking of a sample under paragraphs (2)(f) and (7); and
  - (b) the way in which a sample that has been so taken is to be dealt with.
- (6) If an inspector proposes to exercise a power conferred by paragraph (2)(g) in the case of an article or substance found in premises or a ship, he or she shall –
- (a) consult any person who appear to him or her appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything that he or she proposes to do under that power; and
  - (b) if so requested by a person who at the time is present in and has a responsibility in relation to the premises or ship, cause anything

that is to be done by virtue of that power to be done in the presence of that person, unless the inspector considers that its being so done would be prejudicial to the safety of that person.

- (7) If, under the power conferred by paragraph (2)(h), an inspector proposes to take possession of an article or substance found in premises or a ship, he or she shall –
  - (a) before taking possession of it, if it is practical for him or her to do so, take a sample of the substance and give a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it;
  - (b) on taking possession of it, leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he or she has taken possession of it under that power.
- (8) With regard to the exercise of a power under paragraph (2)(i) –
  - (a) an answer given by a person in accordance with a requirement imposed is not admissible in evidence against that person or the husband or wife of that person in proceedings except proceedings under Article 158(1)(c) in respect of a statement in, or a declaration relating to, the answer;
  - (b) a person nominated as mentioned in that paragraph is entitled, when the questions mentioned there are asked, to make representations to the inspector on behalf of the person who nominated him or her.

### **158 Provisions supplementary to Article 157**

- (1) A person commits an offence if he or she –
  - (a) intentionally obstructs an inspector in the exercise of a power available to him or her under Article 157;
  - (b) without reasonable excuse, fails to comply with a requirement imposed under Article 157 or prevents another person from complying with such a requirement; or
  - (c) without prejudice to the generality of sub-paragraph (b), makes a statement or signs a declaration that he or she knows is false, or recklessly makes a statement or signs a declaration that is false, in purported compliance with a requirement made under Article 157(2)(i),and is liable to imprisonment for 2 years and a fine.
- (2) Nothing in Article 157 compels the production by a person of a document of which he or she would, on the ground of legal professional privilege, be entitled to withhold production on an order for discovery in an action in the Royal Court.
- (3) A person who complies with a requirement imposed on him or her under Article 157(2)(i) or (k) is entitled to recover from the person who



imposed the requirement expenses reasonably incurred in complying with the requirement.

### **159 Improvement notices**

- (1) If an inspector appointed under Article 154(7) is of the opinion that a person –
  - (a) is contravening one or more of the relevant statutory provisions; or
  - (b) has contravened one or more of those provisions in circumstances that make it likely that the contraventions will continue or be repeated,he or she may serve on that person a notice (referred to in this and the following Articles of this Part as an “improvement notice”).
- (2) An improvement notice shall –
  - (a) state that the inspector is of that opinion;
  - (b) specify the provision or provisions as to which he or she is of that opinion;
  - (c) give particulars as to why he or she is of that opinion; and
  - (d) require the person on whom it is served to remedy the contravention in question or, as the case may be, the matters occasioning it within the period specified in the notice.
- (3) The period specified in paragraph (2)(d) shall not expire before the end of the period within which a notice can be given under Article 162 requiring questions relating to the improvement notice to be referred to arbitration.
- (4) In this Article and Articles 160 to 164 the “relevant statutory provisions” means –
  - (a) the following Articles –
    - (i) 29 to 36 (manning and crew),
    - (ii) 49, 50, 52 and Schedule 3, 53 and 62 (safety and health),
    - (iii) 77, 78 and 83 to 88 (manning, health and safety on fishing vessels),
    - (iv) 90 to 115 (pollution generally and oil pollution), and
    - (v) 171 (inquiries into injuries);
  - (b) the provisions of any instrument of a legislative character having effect under any of those provisions.<sup>28</sup>

### **160 Prohibition notices**

- (1) If, as regards relevant activities that are being or are likely to be carried on on board ship by or under the control of a person, an inspector appointed under Article 154(5) is of the opinion that, as so carried on or likely to be carried on, the activities involve or will involve the risk of –
  - (a) serious personal injury to a person, whether on board the ship or not; or

- (b) serious pollution of navigable waters,  
the inspector may serve on the first-mentioned person a notice (referred to in this and the following Articles of this Part as a “prohibition notice”).
- (2) In paragraph (1) “relevant activities” means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned in that paragraph, apply.
- (3) A prohibition notice shall –
  - (a) state that the inspector is of that opinion;
  - (b) specify the matters that in his or her opinion give or will give rise to the risk;
  - (c) if in his or her opinion any of those matters involve or will involve a contravention of any of the relevant provisions –
    - (i) state that he or she is of that opinion,
    - (ii) specify the provision or provisions as to which he or she is of that opinion, and
    - (iii) give particulars as to why he or she is of that opinion;
  - (d) direct –
    - (i) that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served,
    - (ii) that the ship shall not go to sea, or
    - (iii) both of those things,unless the matters specified in the notice under sub-paragraph (b), and any associated contraventions of any provision so specified under sub-paragraph (c), have been remedied.
- (4) A direction contained in a prohibition notice under paragraph (3)(d) takes effect –
  - (a) at the end of a period specified in the notice; or
  - (b) if the direction is given in pursuance of paragraph (3)(d)(ii) or (iii), or the notice so declares, immediately.

#### **161 Provisions supplementary to Articles 159 and 160**

- (1) An improvement notice or a prohibition notice may, but need not, include directions as to the measures to be taken to remedy a contravention or matter to which the notice relates; and the directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (2) An improvement notice or a prohibition notice shall not direct a measure to be taken to remedy the contravention of a relevant statutory provision that is more onerous than is necessary to secure compliance with that provision.
- (3) If an improvement notice or a prohibition notice that is not to take immediate effect has been served –

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it under Article 159(2)(d) or 160(4); and
- (b) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending under Article 162.

## **162 References of notices to arbitration**

### **(1) A question –**

- (a) as to whether a reason or matter specified in an improvement notice or a prohibition notice in pursuance of Article 159(2)(b) or (c), or 160(3)(b) or (c) in connection with an opinion formed by the inspector constituted a valid basis for that opinion; or
- (b) as to whether a direction included in the notice in pursuance of Article 161(1) was reasonable,

shall, if the person on whom the notice was served so requires by a counter-notice given to the inspector within 21 days from the service of the notice, be referred to a single arbitrator appointed by agreement between the parties or, failing agreement, by the Bailiff, for that question to be decided by the arbitrator.

### **(2) If a counter-notice is given under paragraph (1) –**

- (a) in the case of an improvement notice, the giving of the counter-notice has the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by the person giving the counter-notice;
- (b) in the case of a prohibition notice, the giving of the counter-notice has the effect of so suspending the operation of the prohibition notice if, but only if, on the application of the person giving the counter-notice, the arbitrator so directs, and then only from the giving of the direction.

### **(3) If on a reference under this Article the arbitrator decides as respects a reason, matter or direction to which the reference relates, that in all the circumstances –**

- (a) the reason or matter did not constitute a valid basis for the inspector's opinion; or
- (b) the direction was unreasonable,

he or she shall either cancel the notice or affirm it with such modifications as in the circumstances he or she thinks fit; and in any other case the arbitrator shall affirm the notice in its original form.

### **(4) A person is qualified as an arbitrator under this Article if he or she is –**

- (a) a person holding –
  - (i) a certificate of competency as a master mariner or as a marine engineer officer class 1, or

- (ii) a certificate equivalent to that certificate;
- (b) a naval architect;
- (c) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports;
- (d) a person who is –
  - (i) a Jurat,
  - (ii) an Advocate of the Royal Court of at least 10 years' standing,
  - (iii) a member of the bar of England and Wales, or Northern Ireland, or a solicitor of the Supreme Court of England and Wales, or Northern Ireland, of at least 10 years' standing,
  - (iv) an advocate or solicitor in Scotland of at least 10 years' standing.

### **163 Compensation in connection with invalid prohibition notices**

- (1) If on a reference under Article 162 relating to a prohibition notice the arbitrator decides –
  - (a) that –
    - (i) a reason or matter did not constitute a valid basis for the inspector's opinion, and
    - (ii) it appears to him or her that there were no reasonable grounds for the inspector to form that opinion; or
  - (b) that a direction included in the notice was unreasonable,

the arbitrator may, subject to paragraph (3), award compensation to the person on whom the notice was served in respect of loss suffered by him or her in consequence of the service of the notice or direction as the arbitrator thinks fit.
- (2) An arbitrator shall not award compensation under paragraph (1) unless –
  - (a) the direction given under Article 160(3)(d) contained a requirement that the ship should not go to sea; or
  - (b) it appears to him or her that –
    - (i) the inspector was of the opinion that there would be such a risk of injury or pollution as is referred to in the notice if the ship went to sea, and
    - (ii) the effect of the direction given under Article 160(3)(d) was to prohibit the departure of the ship unless the matter or (as the case may be) the matter and contravention, referred to in the direction were remedied.
- (3) Compensation awarded under this Article is payable by the Minister.

### **164 Offences**

- (1) A person who contravenes a requirement imposed by an improvement notice or a prohibition notice commits an offence and is liable –

- (a) in the case of an improvement notice, to a fine;
  - (b) in the case of a prohibition notice, to imprisonment for 2 years and a fine.
- (2) It is a defence for a person charged with an offence under this Article to prove that he or she exercised all due diligence to avoid a contravention of the requirement or the prohibition in question.
- (3) In this Article a reference to an improvement notice or a prohibition notice includes a reference to a notice as modified under Article 162(3).

## **PART 11**

### **ACCIDENT INVESTIGATIONS AND INQUIRIES**

#### *Chapter 1 – Marine accident investigations*

#### **165 Application and interpretation of Chapter**

- (1) An accident referred to in this Chapter means an accident that involves a ship or ship's boat if, at the time of the accident –
  - (a) the ship is a Jersey ship; or
  - (b) the ship or, in the case of an accident that involves a ship's boat, that boat, is in Jersey waters.
- (2) In this Chapter, unless the context otherwise requires, a reference to an accident is a reference to –
  - (a) an incident that involves, or occurs on board, a Jersey ship or other ship in Jersey or Jersey waters whereby –
    - (i) a ship is lost or presumed to be lost,
    - (ii) a ship is abandoned,
    - (iii) a ship is disabled, stranded, in collision or seriously damaged,
    - (iv) there is loss of life or serious injury to a person on board, or a person is lost from, a ship or ship's boat; or
  - (b) any other hazardous incident.
- (3) In this Article –
  - “disabled” means not under command for a period of more than 12 hours, or for a lesser period if, as a result, the ship needs assistance to reach port;
  - “hazardous incident” means an incident, other than one under paragraph (2)(a) –
    - (a) by which the safety of a ship or a person on board is imperilled; or
    - (b) as a result of which serious damage to another ship, a structure or the environment might be caused;
  - “serious injury” means –

- (a) fracture of the skull, spine or pelvis;
- (b) fracture of a bone in the arm other than in the wrist or hand;
- (c) fracture of a bone in the leg other than in the ankle or foot;
- (d) amputation of a hand or foot; or
- (e) other physical injury that results in the person being admitted to hospital as an in-patient for more than 24 hours or, if the ship is at sea, that would have so resulted had it been in port;

“ship’s boat” includes a life-raft and a painting punt;

“stranded” means having made involuntary contact with the ground in circumstances whereby a ship cannot immediately refloat.

### **166 Investigation of marine accidents**

- (1) The Minister may, if there has been an accident, appoint a person to hold an inquiry to determine the circumstances of the accident and its cause.
- (2) A person appointed under paragraph (1) has, for the purposes of the inquiry, the powers conferred on an inspector by Article 157 and may conduct the inquiry at a time, place and in such manner, as he or she thinks fit.
- (3) An inquiry under this Article may cover –
  - (a) events and circumstances preceding the accident that in the opinion of the person holding the inquiry may have been relevant to its cause or outcome;
  - (b) the consequences of the accident.
- (4) On completion of an inquiry the person appointed to hold it shall submit to the Minister a report that contains –
  - (a) his or her findings as to the facts of the accident and, if the facts cannot be clearly established, his or her opinion as to the most probable facts, clearly distinguishing between established facts and conjecture;
  - (b) his or her analysis and conclusions; and
  - (c) such observations and recommendations concerning the accident as he or she thinks fit to make.
- (5) Except as provided by paragraph (6), the Minister may publish a report submitted to the Minister under paragraph (4).
- (6) If the report indicates that there was or may have been a breach of the law and that as a consequence a prosecution should be considered, the Minister shall not publish the report until –
  - (a) if it is decided to prosecute, the prosecution, including any appeal, has been concluded; or
  - (b) it is decided not to prosecute.
- (7) The Minister may at any time during the course of an inquiry under this Article direct that the inquiry should be discontinued; and in that case the person appointed to hold the inquiry need not submit a report.

- (8) The Minister shall pay the expenses reasonably incurred by a person required to attend before an inquiry under this Article.

**167 Investigation by marine accident tribunal**

- (1) The Minister may, if there has been an accident, and whether or not an inquiry under Article 166 has been instituted or completed in respect of the accident, cause an investigation to be held by a marine accident tribunal consisting of a chairman and, subject to paragraph (5), one or more assessors, all of whom are to be appointed by the Bailiff.
- (2) The chairman shall be a person who is qualified to be an arbitrator under Article 162(4)(d), and an assessor shall be a person so qualified under Article 162(4)(a), (b) or (c).
- (3) The tribunal has, in holding its investigation, all the powers, including power to award and enforce the payment of costs, of the Magistrate's Court, and in particular it has the power –
- (a) to inquire into the conduct of an officer or seaman; and
  - (b) if it is satisfied that any of the matters mentioned in paragraph (1)(a) to (c) of Article 39 apply and if, in the case of a matter mentioned in paragraph (1)(a) or (b) of that Article, it is further satisfied that the conduct caused or contributed to the accident, to –
    - (i) cancel or suspend a certificate issued to the officer or seaman under Article 29, or
    - (ii) censure him or her.
- (4) Articles 39(4), 41(3) and 44 apply with regard to the delivery up of a certificate that has been cancelled or suspended by the tribunal except that each reference to “the person holding the inquiry” shall be read as a reference to the “tribunal”.
- (5) If a question of the cancellation or suspension of a certificate of an officer or seaman is likely to arise the tribunal shall comprise a chairman and 2 or more assessors.
- (6) If the tribunal orders the cancellation or suspension of a certificate of an officer or seaman under this Article, the officer or seaman may appeal against the order within 28 days to the Royal Court.
- (7) Article 43(2) applies with regard to the making of Rules of Court relating to appeals under paragraph (6).
- (8) The tribunal shall, on the conclusion of the investigation, prepare a report on it and submit the report to the Minister.
- (9) The Minister may exercise a power in Article 45(a) to (c) if he or she is of the opinion that the justice of the case requires it.
- (10) The Minister may by Order make provisions for the conduct of investigations under this Article.

- (11) Without prejudice to the generality of paragraph (10), Orders made under that paragraph may provide for the matters referred to in Article 43(1)(a) to (d).

### **168 Rehearings and appeals from investigation**

If an investigation has been held under Article 167, the powers and rights set out in Article 42 apply to –

- (a) the Minister; and
- (b) to a person –
  - (i) whose certificate the tribunal has ordered be cancelled or suspended, or
  - (ii) whom the tribunal has found to be at fault,

as though for references to an inquiry under Article 39 or 41 there were substituted references to the investigation and for references to persons holding the inquiry there were substituted the marine accident tribunal.

### **169 Duties of owners, masters etc. in relation to accidents**

- (1) If there is an accident, other than an incident referred to in Article 165(2)(b), that involves a Jersey ship (other than a pleasure vessel) –
  - (a) whereby the ship is lost, presumed lost or abandoned, the owner, master or senior surviving officer shall send a report of the accident to the Minister as soon as is practicable by the quickest means available; or
  - (b) in the case of any other accident, the master shall so send a report and in any case not later than 24 hours after the ship next arrives in port.
- (2) The Minister may require the owner or master of a Jersey ship involved in an accident to provide information or further information that the Minister considers necessary before deciding whether to cause –
  - (a) an inquiry to be held under Article 166; or
  - (b) an investigation to be carried out by a marine accident tribunal under Article 167.
- (3) An owner or master shall provide to the best of his or her ability and knowledge information he or she is required to provide under paragraph (2).
- (4) The owner and the master of a ship shall so far as possible ensure that –
  - (a) a chart, log-book or other document that might reasonably be considered relevant to an inquiry or investigation of an accident referred to in paragraph (1) is safely kept and that no alteration is made to it; and
  - (b) any equipment that might reasonably so be considered relevant is left undisturbed,until either –



- 
- (c) notification is received from the Minister that an inquiry under Article 166 or an investigation under Article 167 is not to take place; or
  - (d) if notification is received that such an inquiry or investigation is to take place, the person appointed under Article 166(1) or, as the case may be, the tribunal convened under Article 167, indicates that it is no longer required.
- (5) An owner, master or officer commits an offence if, without reasonable excuse, he or she fails –
- (a) to send a report under paragraph (1);
  - (b) to provide information or further information in accordance with paragraph (3);
  - (c) to comply with paragraph (4),
- and is liable to a fine at level 4 on the standard scale.
- (6) In this Article –
- “pleasure vessel” means –
- (a) a vessel that at the time it is being used is –
    - (i) in the case of a vessel wholly owned by an individual or individuals, used only for sport or pleasure of the owner or the immediate family or friends of the owner or, in the case of a vessel owned by a body corporate, the persons on the vessel are employees or officers of the body corporate, or their immediate family or friends, and
    - (ii) on a voyage or excursion that is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or
  - (b) a vessel wholly owned by or on behalf of a members’ club formed for the purpose of sport or pleasure that, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate families, and for the use of which any charges are paid into club funds and applied for the general use of the club,
- and, in the case of a vessel referred to in either sub-paragraph (a) or (b) no other payment is made by or on behalf of the users of the vessel, other than by the owner;
- “immediate family” in the definition of “pleasure vessel” means, in relation to an individual, the husband or wife of the individual and a brother, sister, ancestor or lineal descendant of the individual or the individual’s husband or wife.

*Chapter 2 – Inquiries into and Reports on Deaths and Injuries***170 Inquiries into deaths of crew members and others**

- (1) If –
- (a) a person dies in a Jersey ship or in a boat or life-raft from such a ship; or
  - (b) the master of, or a seaman employed in, such a ship dies in a country outside Jersey,
- an inquiry into the cause of death shall be held by a shipping master or proper officer at the next port the ship calls after the death where there is a shipping master or proper officer, or at another place that the Minister may direct.
- (2) If it appears to the Minister that –
- (a) in consequence of an injury sustained or a disease contracted by a person when he or she was master of, or a seaman employed in, a Jersey ship, he or she ceased to be employed in the ship and subsequently died; and
  - (b) the death occurred in a country outside Jersey during the period of one year beginning with the day on which he or she ceased to be employed in the ship,
- the Minister may arrange for an inquiry into the cause of the death to be held by a shipping master or proper officer.
- (3) If it appears to the Minister that a person –
- (a) may have died in a Jersey ship or in a boat or life-raft from such a ship; or
  - (b) may have been lost from such a ship, boat or life-raft and may have died in consequence of being so lost,
- the Minister may arrange for an inquiry to be held by a shipping master or proper officer into whether the person died in that way and, if the shipping master or proper officer finds that he or she did, into the cause of death.
- (4) The person holding the inquiry has, for that purpose, the powers conferred on an inspector by Article 157.
- (5) The person holding the inquiry shall make a report of his or her findings to the Minister which shall make the report available –
- (a) if the person to whom the report relates was employed in the ship and a person was named as next of kin in the crew agreement or list of the crew in which the name of the person to whom the report relates last appeared, to the person so named;
  - (b) in any case, to any person requesting it who appears to the Minister to be interested.
- (6) This Article does not apply if an inquest is to be held.

**171 Reports of and inquiries into injuries**

- (1) If the master or a member of the crew of a Jersey fishing vessel is injured during a voyage a shipping master or proper officer may hold an inquiry into the cause and nature of the injury.
- (2) The shipping master or proper officer has, for the purpose of the inquiry, the powers conferred on an inspector by Article 157 and shall make a report of his or her findings to the Minister.

**172 Transmission of particulars of certain deaths on ships**

If –

- (a) an inquest is held into the death or a post mortem examination is made of a dead body as a result of which the Viscount is satisfied that an inquest is unnecessary; and
- (b) it appears to the Viscount that the death in question is such as is mentioned in Article 76(1)(a)(ii),

the Viscount shall send to the Registrar particulars in respect of the deceased of a kind prescribed in an Order made by the Minister.

## **PART 12**

### **LEGAL PROCEEDINGS**

**173 Jurisdiction in case of offences on board ship, etc.**

- (1) This Article applies where –
  - (a) a person being a British citizen ordinarily resident in Jersey is charged with having committed an offence –
    - (i) on board a Jersey ship on the high seas or in a foreign port or harbour, or
    - (ii) on board a foreign ship to which the person does not belong; or
  - (b) a person is charged with having committed an offence on board a Jersey ship on the high seas,and that person is found in Jersey.
- (2) It also applies where a person is charged with having committed an offence within the territorial waters adjacent to Jersey, whether or not on board a ship.
- (3) Where this Article applies a court in Jersey has jurisdiction to deal with the offence referred to in paragraph (1) or (2).
- (4) For the purpose of investigating and prosecuting the offence it shall be assumed that the offence was committed in St. Helier.

- (5) In paragraphs (1) and (2) “charged with having committed an offence” includes being accused of having committed the offence.

#### **174 Offences committed by Jersey masters and seamen**

- (1) An act in relation to property or person done in or at a place (ashore or afloat) outside Jersey by a master or seaman who is at the time employed in a Jersey ship, that if done in Jersey would be an offence under Jersey law –
- (a) is an offence under that law; and
  - (b) is to be treated, for the purposes of jurisdiction and trial, as if it had been done in Jersey.
- (2) Paragraph (1) also applies in relation to a person who had been so employed within the period of 3 months immediately before the act was done.
- (3) Paragraphs (1) and (2) apply to omissions as they apply to acts.

#### **175 Offences by officers of bodies corporate**

- (1) Where an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
- (a) a person who is a director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,
- the person shall also be guilty of the offence and liable in the same manner as the body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

#### **176 Secondary offenders**

- (1) A person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (2) Paragraph (1) does not prejudice Article 175 or a provision in this Law that imposes liability expressly on a master, owner or other person.

#### **177 Enforcing detention of ship**

- (1) If under this Law a ship shall or may be detained, it may be detained by –
- (a) a commissioned naval or military officer;
  - (b) the Harbour Master;

- (c) an inspector;
  - (d) a surveyor of ships;
  - (e) a customs officer; or
  - (f) a British consular officer.
- (2) A notice of detention of a ship may –
  - (a) include a direction that it shall remain in a particular place, or shall be moved to a particular anchorage or berth;
  - (b) if it includes such a direction, specify the circumstances (that must relate to safety or the prevention of pollution) in which the master may move his or her ship from that place, anchorage or berth.
- (3) If a ship in respect of which notice of detention has been served on the master –
  - (a) proceeds to sea, otherwise than in accordance with such a notice, before it is released by a competent authority; or
  - (b) fails to comply with a direction given under paragraph (2)(a),  
the master of the ship commits an offence and is liable to a fine.
- (4) If an offence is committed under paragraph (3) –
  - (a) the owner of the ship;
  - (b) any charterer of the ship; and
  - (c) a person who sends the ship to sea,  
if party or privy to the offence, also commit the offence and are liable accordingly.
- (5) If a ship proceeds to sea in contravention of paragraph (3) and carries away without his or her consent a person authorized under paragraph (1) to detain the ship who is on board in the execution of his or her duty, the owner, any charterer and the master each –
  - (a) is liable to pay the expenses of and incidental to the person being carried away; and
  - (b) commits an offence and is liable to a fine.
- (6) If under this Law a ship –
  - (a) must be detained; or
  - (b) may be detained,  
a customs officer in a case falling within sub-paragraph (a) shall, and in a case falling within sub-paragraph (b) may, refuse to clear the ship outwards or grant a transire to the ship.
- (7) If a provision of this Law provides that a ship may be detained until a document is produced to the proper customs officer, the officer able to grant a clearance or transire of the ship is, unless the context otherwise requires, that officer.

**178 Sums ordered to be paid leviable by distraint on the ship**

- (1) If a court has power to make an order directing payment to be made of a sum of money, then, if –
  - (a) the person directed to pay is the master, charterer or owner of a ship; and
  - (b) the money directed to be paid is not paid in accordance with the order,the court that made the order may direct the Viscount to realise the amount unpaid by distraint and sale (for which no further confirmation of the court is required) on the ship and its equipment.
- (2) The remedy made available by this Article is in addition to any other power for compelling the payment of money ordered to be paid.

**179 Written statements of persons abroad admissible**

- (1) If –
  - (a) the evidence of a person is required in the course of proceedings before a court in Jersey; and
  - (b) it is proved that that person cannot be found in Jersey,any written statement that he or she may have previously made outside Jersey in relation to the same subject matter is admissible in evidence in those proceedings if the conditions in paragraph (2) have been complied with.
- (2) Those conditions are that the statement was –
  - (a) taken on oath before a justice or magistrate in the United Kingdom or a relevant British possession, or a British consular officer in any other place;
  - (b) authenticated by the signature of the justice, magistrate or officer; and
  - (c) if the proceedings are criminal proceedings, taken in the presence of the defendant.
- (3) Proof need not be given of the signature or official character of the person appearing to have signed the deposition.
- (4) In criminal proceedings a certificate stating that the deposition was taken in the presence of the defendant is evidence of that fact unless the contrary is proved.
- (5) This Article also applies to proceedings before a person authorized by law or consent of the parties to receive evidence.
- (6) Nothing in this Article affects the admissibility in evidence of statements under another enactment or the practice of a court.

**180 Admissibility in evidence and inspection of certain documents**

- (1) The following documents are admissible in evidence –
  - (a) a certificate issued under Article 29;

- (b) the official log book of a ship kept under Article 47 and, without prejudice to Article 181(2), a document purporting to be a copy of an entry in it and to be certified as a true copy by the master of the ship;
  - (c) returns or reports under Article 76;
  - (d) documents transmitted to the Registrar under Article 190.
- (2) If a document mentioned in paragraphs (1)(b) to (d) is in the custody of the Registrar he or she shall make it available for public inspection at reasonable times.

### **181 Admissibility of documents in evidence**

- (1) If a document is declared by this Law to be admissible in evidence, the document is, on its production from proper custody –
  - (a) admissible in evidence in a court, or before a person having by law or consent of parties authority to receive evidence; and
  - (b) subject to all just exceptions, evidence of the matters stated in the document.
- (2) A copy of, or extract from, a document so made admissible in evidence is also admissible in evidence and is evidence of the matters stated in the document if the conditions in paragraph (3) are complied with.
- (3) Those conditions are –
  - (a) that it is proved to be an examined copy or extract; or
  - (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted,and the officer shall furnish the certified copy or extract to a person who applies for it at a reasonable time and pays for it a reasonable price as determined by the Minister.
- (4) A person is entitled to have a certified copy of a declaration or document that is made evidence by this Law on payment of a reasonable price as determined by the Minister.
- (5) An officer who has a duty of certification under paragraph (3) in relation to a document commits an offence if he or she intentionally certifies a document as being a true copy or extract knowing that it is not a true copy or extract, and is liable to imprisonment for 2 years and a fine.

### **182 Inspection and admissibility in evidence of copies of certain documents**

- (1) If under an enactment a document is open to public inspection when it is in the custody of the Registrar –
  - (a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original; but
  - (b) the original is nevertheless to be made available for public inspection if the copy or other reproduction is illegible.

- (2) If the Registrar destroys a document that has been sent to him or her under an enactment, and keeps a copy or other reproduction of that document, then –
  - (a) an enactment providing for that document to be admissible in evidence or open to public inspection; and
  - (b) in the case of a document falling within paragraph (1), that paragraph,apply to the copy or other reproduction as if it were the original.
- (3) For the purposes of this Article, and Article 181(2) in its application to documents in the custody of the Registrar, a copy is to be treated as the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original.

### **183 Proof etc. of exemptions**

- (1) If an exception, exemption, excuse or qualification applies in relation to an offence under this Law –
  - (a) it may be proved by the defendant; but
  - (b) need not be specified or negated in a charge or summons,and, if so specified or negated, is not required to be proved by the informant or complainant.
- (2) This Article applies in relation to an offence whether or not the exception, exemption, excuse or qualification is contained in the Article creating the offence.

### **184 Service of documents**

- (1) A document authorized or required to be served on a person may be so served –
  - (a) by delivering it to the person;
  - (b) by leaving it at the person's proper address; or
  - (c) by sending it by post to the person at his or her proper address.
- (2) Any such document authorized or required to be served on the master of a ship may be served –
  - (a) if there is a master, by leaving it for him or her on board the ship with the person appearing to be in command or charge of the ship;
  - (b) if there is no master –
    - (i) on the managing owner of the ship, or
    - (ii) if there is no managing owner, on an agent of the owner, or
    - (iii) if no such agent is known or can be found, by leaving a copy of the document fixed to the mast of the ship.
- (3) A document authorized or required to be served on a person may –
  - (a) in the case of a body corporate, be served on the secretary or clerk of that body;



- (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.
- (4) A notice or counter-notice –
  - (a) authorized or required by or under Part 3 to be served on the Minister may be served by post;
  - (b) authorized by Article 162 to be given to an inspector may be given by delivering it to him or her or by leaving it at, or sending it by post to, his or her office.
- (5) A document authorized or required by or under an enactment to be served on the registered owner of a Jersey ship is to be treated as duly served on him or her if served on the person, in the circumstances, and by the method, that may be specified in the Registration Regulations.
- (6) For the purposes of this Article, and of Article 7 of the Interpretation (Jersey) Law 1954<sup>29</sup> in its application to this Article, the “proper address” of a person on whom a document is to be served is his or her last known address but –
  - (a) in the case of a body corporate or its secretary or clerk, it is the address of the registered or principal office of that body;
  - (b) in the case of a partnership or a person having the control or management of the partnership business, it is the principal office of the partnership,and for the purposes of this paragraph the principal office of a company registered outside Jersey, or of a partnership carrying on business outside Jersey, is its principal office in Jersey.
- (7) If the person to be served with a notice has, whether under the Registration Regulations or otherwise, specified an address in Jersey other than his or her proper address within the meaning of paragraph (6) as the one at which he or she or someone on his or her behalf will accept notices of the same description as that notice, that address is also his or her proper address for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954.

## PART 13

### SUPPLEMENTAL

#### **185 General functions of Minister**

- (1) The Minister has the general superintendence of all matters relating to shipping and seamen and is authorized to carry into execution the provisions of this Law and of all enactments relating to shipping for the time being in force, except if otherwise provided or so far as relating to revenue.
- (2) The Minister may take legal proceedings under this Law in the name of any officer in an administration of the States for which the Minister is assigned responsibility.

**186 Functions of Minister in relation to marine pollution**

- (1) The Minister shall take or co-ordinate measures to prevent, reduce, and minimise the effects of, marine pollution.
- (2) In particular the Minister shall prepare, review and implement a plan setting out arrangements for responding to incidents that cause or may cause marine pollution with a view to preventing such pollution or reducing or minimising its effects.
- (3) To carry out its functions the Minister may –
  - (a) acquire, maintain, use and dispose of ships, aircraft and other property; and
  - (b) provide services, including research, training and advice.
- (4) The Minister may make reasonable charges for the supply of goods or services.
- (5) If under paragraph (1) the Minister agrees that another person is to take measures to prevent, reduce or minimise the effects of marine pollution, the Minister may agree to indemnify that other person in respect of liabilities incurred by that person in connection with the taking of the measures.
- (6) In this Article –

“marine pollution” means pollution caused by ships, offshore installations or submarine pipelines affecting or likely to affect Jersey or Jersey waters;

“offshore installation” means an installation that is maintained for underwater exploitation or exploration to which the Mineral Working (Offshore Installations) Act 1971 of the United Kingdom applies;

“pipeline” has the same meaning as in Part III of the Petroleum and Submarine Pipelines Act 1975 of the United Kingdom;

“submarine” means in, under or over Jersey waters.

**187 General power to dispense**

- (1) The Minister may, on any conditions he or she thinks fit to impose, exempt a ship from any specified requirement of, or prescribed under, this Law other than Chapter 2 of Part 7, or dispense with the observance of any such requirement in the case of a ship, if the Minister is satisfied, as respects that requirement, of the matters specified in paragraph (2).
- (2) Those matters are –
  - (a) that the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances; and
  - (b) that the action taken or provision made as respects the subject matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement.

**188 Registrar of Shipping**

- (1) There is to be an officer known as the Registrar of Shipping who is to be appointed by, and may be removed by, the Minister.
- (2) The Registrar shall exercise the functions conferred on him or her by this Law and shall keep records and perform other duties as the Minister may direct.
- (3) The Minister may appoint persons to perform on behalf of the Registrar such of his or her functions, other than those under Part 3, as the Minister or the Registrar may direct.
- (4) The Minister may remove a person so appointed.

**189 Shipping masters**

- (1) The Minister may appoint shipping masters to exercise the functions conferred on the Minister by this Law.
- (2) The Minister may remove a person so appointed.

**190 Transmission of documents to Registrar**

- (1) A shipping master or a customs officer shall, with regard to all documents that are delivered or transmitted to, or retained by, him or her under this Law –
  - (a) take charge of them and keep them for such time, if any, as may be necessary for the purpose of settling any business arising at the place where the documents come into his or her possession, or for another purpose;
  - (b) if required, produce them for any of those purposes, and then transmit them to the Registrar.
- (2) The Registrar shall retain documents transmitted to him or her under paragraph (1) for such period as the Minister may direct.

**191 Returns etc. to Minister**

- (1) A shipping master shall –
  - (a) make and send to the Minister any return or report on a matter relating to Jersey shipping or seamen that the Minister may require;
  - (b) when required by the Minister to do so, produce to the Minister any log-book or other document delivered to him or her under this Law.
- (2) A surveyor of ships shall make any return to the Minister that the Minister may require with respect to –
  - (a) the build, dimensions, draught, burden, speed and room for fuel of a ship surveyed by him or her;

- (b) the nature and particulars of machinery and equipment of such a ship.
- (3) The owner, any charterer, master and engineer of a ship being surveyed shall each, when required to do so, give to a surveyor all information and assistance within his or her power that the surveyor requires for the purpose of a return under paragraph (2).
- (4) An owner, any charterer, master or engineer who fails, without reasonable excuse, to comply with a requirement made under paragraph (3) commits an offence and is liable to a fine at level 3 on the standard scale.

## **192 Forms**

- (1) The Minister –
  - (a) may prepare and approve a form for a book, instrument or paper required under this Law, and may alter such a form as the Minister thinks fit;
  - (b) shall –
    - (i) cause such a form to be marked with a distinguishing mark, and
    - (ii) before finally issuing or making an alteration in such a form, cause public notice of the fact to be given in a manner that the Minister thinks suitable in order to avoid inconvenience;
  - (c) shall cause such a form to be supplied –
    - (i) at the offices of the Agent of the Impôts and of the Harbour Master, free of charge or at a reasonable price fixed by the Minister,
    - (ii) by persons licensed by the Minister to print and sell them, or
    - (iii) in both those ways.
- (2) Each book, instrument or paper made under this Law –
  - (a) shall be made in the form, if any, approved by the Minister, or as near as circumstances permit, and unless so made is not admissible in evidence in civil proceedings on the part of the owner, any charterer, or master of a ship;
  - (b) is, if in a form purporting to be the proper form and marked in accordance with paragraph (1)(b)(i), to be treated as being in a form required by this Law unless the contrary is proved.
- (3) Paragraphs (1) and (2) do not apply if special provision is made by this Law.
- (4) A person commits an offence if he or she prints, sells or uses a document purporting to be a form approved by the Minister knowing that the document –
  - (a) is not the form approved for the time being; or
  - (b) has not been prepared or issued by the Minister,and is liable to a fine at level 2 on the standard scale.

**193 Fees**

- (1) The Minister may by Order prescribe fees to be charged in respect of –
  - (a) the issue or recording under this Law of a certificate, licence or other document;
  - (b) the doing of anything under this Law.
- (2) In the case of fees for the measurement of a ship's tonnage, the fees may be prescribed as maximum fees.

**194 Expenses charged on money provided by the States**

The following expenses and other amounts shall be payable out of money provided for the purpose by the States –

- (a) the expenses incurred by the Minister under this Law;
- (b) the salaries, pensions, gratuities and allowances of surveyors of ships, inspectors and shipping masters;
- (c) the expenses of obtaining depositions, reports and returns respecting wrecks and casualties;
- (d) sums that the Minister may think fit to pay in respect of claims on account of the proceeds of wreck;
- (e) the expenses incurred by the Harbour Master or other person performing the duties of Receiver under Part 9;
- (f) expenses that the Minister directs for –
  - (i) establishing and maintaining proper lifeboats with the necessary crews and equipment,
  - (ii) affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea, or
  - (iii) rewarding the preservation of life in those cases;
- (g) any other amounts that are by virtue of this Law payable out of money provided by the States.

**195 Application of Acts of Parliament of the United Kingdom**

The States may by Regulations direct that any provision of an Act of Parliament of the United Kingdom that makes provision for shipping and that amends or extends the Merchant Shipping Act 1995, is, with any modifications, adaptations and exceptions specified in the Regulations, to apply to Jersey and Jersey ships as part of the law of Jersey.

**196 General provisions relating to the making of subordinate legislation**

- (1) A power conferred by this Law to make Regulations or Orders, or to designate or appoint a person to perform an act or carry out a purpose includes –

- (a) power to apply, with any exceptions, adaptations and modifications specified in the Regulations or Order, to Jersey or to Jersey ships, as part of the law of Jersey –
    - (i) an Order made by Her Majesty in Council,
    - (ii) regulations, rules or orders made by a Secretary of State in the United Kingdom,under powers vested in Her Majesty or the Secretary of State by the Merchant Shipping Act 1995 of the United Kingdom;
  - (b) power to direct that, if an instrument mentioned in subparagraph (a)(i) and (ii) is applied, references to the United Kingdom, to British or United Kingdom ships, and to the Secretary of State are, unless otherwise directed, to be construed as references to Jersey, Jersey ships and the Minister respectively,
- and any such instrument is to be regarded as subordinate legislation made under this Law.
- (2) A power conferred by this Law to make Regulations or Orders may be exercised –
    - (a) in relation to –
      - (i) all cases to which the power extends,
      - (ii) all those cases subject to specified exemptions or exceptions,
      - (iii) any specified cases or classes of case;
    - (b) so as to make, as respects the cases in relation to which it is exercised –
      - (i) the full provision to which the power extends or a lesser provision, whether by way of exemption, exception or otherwise,
      - (ii) the same provision for all cases in relation to which the power is exercised,
      - (iii) different provisions for different cases or classes of case,
      - (iv) different provisions as respects the same case or class of case for different purposes of this Law,
      - (v) any such provision either unconditionally or subject to specified conditions;
    - (c) so as to make transitional, incidental or supplementary provisions as appear to be necessary or expedient.
  - (3) The Subordinate Legislation (Jersey) Law 1960<sup>30</sup> applies to all Orders made under this Law.

### **197 Application of Law to non-Jersey ships**

- (1) The Minister may by Order specify any description of non-Jersey ships and direct that a provision of this Law or of subordinate legislation made under this Law specified in the Order extends to non-Jersey ships of that description and to masters and seamen employed in them.

- (2) In this Article “non-Jersey ships” means ships that are not registered in Jersey.

**198 Application of Law to Government ships**

- (1) Except as otherwise provided by this Law, this Law does not apply to ships belonging to Her Majesty’s navy or to Government ships.
- (2) The Minister may by Order make provision with respect to the manner in which Government ships may be registered as Jersey ships under Part 3; and this Law, subject to any exceptions or modifications that may be made in the Order, either generally or as respects any special class of Government ships, then applies to Government ships registered in accordance with the Order as if they were registered in accordance with Part 3.
- (3) In this Article “Government ship” means a ship not forming part of Her Majesty’s navy that –
- (a) belongs to Her Majesty; or
  - (b) is held by a person on behalf of or for the benefit of the Crown.

**199 Application of Law to certain structures etc.**

- (1) The Minister may by Order provide that a thing designed or adapted for use at sea and described in the Order is or is not to be treated as a ship for the purposes of a specified provision of this Law or of subordinate legislation made under it.
- (2) An Order under this Article that provides that a thing is to be treated as a ship for the purposes of a specified provision, may provide that the provision is to have effect in relation to the thing with specified modifications.
- (3) In this Article “specified” means specified in the Order.

**200 Lighthouses**

The arrangements set out in Schedule 10 apply in respect of the lighthouses, buoys and beacon (as defined in that Schedule) in and around Jersey.

**201 Repeals, consequential amendments, transitional and savings provisions**

- (1) The enactments set out in Schedule 8 are repealed.
- (2) A reference in another enactment to an enactment or a provision of an enactment repealed by this Law and, in particular, a reference to the registration of a ship or fishing vessel under Part I of the Merchant Shipping Act 1894 or section 5 of the Merchant Shipping Act 1983 is to be read with the necessary amendments as a reference to, or to registration under, the corresponding provision in this Law.

- (3) Article 17(2) of the Interpretation (Jersey) Law 1954<sup>31</sup> applies to an Act or statutory instrument of the United Kingdom (or a part of any such Act or statutory instrument) applied to Jersey by virtue of its own provision or by Order in Council as if the Act or statutory instrument (or part) were an enactment within the meaning of Article 1(1) of that Law.
- (4) The transitional and savings provisions set out in Schedule 9 apply.

**202 Citation**

This Law may be cited as the Shipping (Jersey) Law 2002.



**SCHEDULE 1**

(Article 19(1))

**PRIVATE LAW PROVISIONS FOR REGISTERED SHIPS<sup>32</sup>***Definitions***1**

In this Schedule –

“mortgage” means an instrument creating a security for the repayment of a loan or for the discharge of another obligation;

“prescribed” means prescribed in the Registration Regulations;

“registered mortgage” means a mortgage registered under paragraph 8(2).

*General***2**

- (1) Subject to any right or power appearing from the register to be vested in another person, the registered owner of a ship or of a share in a ship may absolutely dispose of it in accordance with this Schedule and the Registration Regulations.
- (2) Sub-paragraph (1) does not imply that an interest arising under a contract or another interest cannot subsist in relation to a ship or a share in a ship; and such an interest may be enforced by or against the owner or a mortgagee of a ship in respect of his or her interest in the ship or the share in a ship in the same manner as in respect of any other movable property.
- (3) The registered owner of a ship or of a share in a ship may give an effectual receipt for money paid or advanced by way of consideration on a disposal of the ship or the share in the ship.

*Transfers etc. of registered ships***3**

- (1) A transfer of a registered ship, or of a share in a registered ship, shall be effected by a bill of sale satisfying the prescribed requirements, unless the transfer will result in the ship ceasing to have a British connection.

- (2) If a ship or a share has been transferred under sub-paragraph (1), the transferee shall not be registered as owner of the ship or share unless –
  - (a) he or she has made the prescribed application to the registrar; and
  - (b) the Registrar is satisfied that the ship retains a British connection and that he or she would not refuse to register the ship.
- (3) If an application under sub-paragraph (2) is granted by the Registrar, the Registrar shall register the bill of sale in the prescribed manner.
- (4) Bills of sale shall be registered in the order in which they are produced to the Registrar for the purposes of registration.

#### 4

- (1) If a registered ship, or a share in a registered ship, is transmitted to a person by lawful means other than a transfer under paragraph 3 and the ship continues to have a British connection, that person is not to be registered as owner of the ship or share unless –
  - (a) he or she has made the prescribed application to the Registrar; and
  - (b) the Registrar is satisfied that the ship retains a British connection and that he or she would not refuse to register the ship.
- (2) If an application under sub-paragraph (1) is granted by the Registrar, the Registrar shall cause the applicant's name to be registered as owner of the ship or share.

#### 5

- (1) If the property in a registered ship or a share in a registered ship is transmitted to a person by lawful means other than a transfer under paragraph 3, but as a result the ship no longer has a British connection, the Royal Court may, on application by or on behalf of that person, order a sale of the property so transmitted and direct that the proceeds of sale, after deducting the expenses of the sale, are to be paid to that person or otherwise as the Court directs.
- (2) The Court may require any evidence in support of the application it thinks requisite, and may make the order on any terms and conditions it thinks just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.
- (3) An application shall be made within the period of 28 days beginning with the date of occurrence of the event by which the transmission took place, or within such further time (not exceeding one year) as the Court may allow.
- (4) If –
  - (a) an application is not made within the time allowed by or under sub-paragraph (3); or
  - (b) the Court refuses an order for sale,the ship or share that was transmitted is liable to forfeiture.

**6**

- (1) If a court, whether under paragraph 5 or otherwise, orders the sale of a registered ship or a share in a registered ship, the order of the court shall contain a declaration vesting in a named person the right to transfer the ship or share.
- (2) The person so named may transfer the ship or share in the same manner and to the same extent as if he or she were the registered owner of the ship or share.
- (3) The Registrar shall deal with an application relating to the transfer of the ship or share made by the person so named as if that person were the registered owner.

**7**

- (1) The Royal Court may, without prejudice to the exercise of another power, on the application of an interested person, make an order prohibiting for a specified time any dealing with a registered ship or a share in a registered ship.
- (2) The Court may make the order on any terms or conditions it thinks just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires.
- (3) The order, when a copy is served on the Registrar, is binding on him or her whether or not he or she was made a party to the proceedings.

*Mortgages of registered ships***8**

- (1) A registered ship, or a share in a registered ship, may be made the subject of a mortgage.
- (2) The instrument creating a mortgage shall be in the form prescribed by or approved under the Registration Regulations.
- (3) If a mortgage executed in accordance with sub-paragraph (2) is produced to the Registrar, he or she shall register the mortgage in the prescribed manner.
- (4) Mortgages shall be registered in the order in which they are produced to the Registrar for the purposes of registration.

*Priority of registered mortgages***9**

- (1) If 2 or more mortgages are registered in respect of the same ship or share, the priority of the mortgages between themselves is, subject to sub-

paragraph (2), to be determined by the order in which the mortgages were registered and not by reference to another matter.

- (2) The Registration Regulations may provide for the giving to the Registrar by intending mortgagees of “priority notices” in a form prescribed by or approved under the Regulations that, when recorded in the register, determine the priority of the interest to which the notice relates.

*Registered mortgagee’s power of sale*

**10**

- (1) Subject to sub-paragraph (2), a registered mortgagee may, if the mortgage money or part of it is due, sell the ship or share in respect of which he or she is registered, and give an effectual receipt for the purchase money.
- (2) If 2 or more mortgages are registered in respect of the same ship or share, a subsequent mortgagee may not, except under an order of a court of competent jurisdiction, sell the ship or share without the concurrence of every prior mortgagee.

*Protection of registered mortgages*

**11**

If a ship or share is subject to a registered mortgage, then –

- (a) except in so far as may be necessary to do so to make the ship or share available as a security for the mortgage debt, the mortgagee is not by reason of the mortgage to be treated as owner of the ship or share; and
- (b) the mortgagor is to be treated as not having ceased to be the owner of the ship or share.

*Transfer of registered mortgage*

**12**

- (1) A registered mortgage may be transferred by an instrument made in the form prescribed by or approved under the Registration Regulations.
- (2) If such an instrument is produced to the Registrar, the Registrar shall register the transferee in the prescribed manner.

*Transmission of registered mortgage by operation of law*

**13**

If the interest of a mortgagee in a registered mortgage is transmitted to a person by lawful means other than by a transfer under paragraph 12, the Registrar shall,

on production of the prescribed evidence, cause the name of that person to be entered in the register as mortgagee of the ship or share in question.

*Discharge of registered mortgage*

**14**

If a registered mortgage has been discharged, the Registrar shall, on production of the mortgage deed and such evidence of the discharge of the mortgage as may be prescribed, cause an entry to be made in the register to the effect that the mortgage has been discharged.

**SCHEDULE 3**

(Article 52(2))

**ORDERS RELATING TO SUBMERSIBLE AND SUPPORTING APPARATUS***Interpretation***1**

- (1) In this Schedule “Order” means an Order made under Article 52(2), and “prescribed” means prescribed by the Order.
- (2) Nothing in this Schedule is to be taken as prejudicing the generality of Article 52.

*Registration of submersible apparatus***2**

An Order may provide –

- (a) for all matters relevant to the maintenance of a register of submersible apparatus;
- (b) without prejudice to sub-paragraph (a), for –
  - (i) the period for which a registration or exemption is to remain effective without renewal,
  - (ii) the alteration or cancellation in prescribed circumstances of registration or exemption or a condition attached to either,
  - (iii) the person by whom and the manner in which applications in connection with a registration or exemption are to be made, and
  - (iv) information and evidence to be furnished in connection with any such application;
- (c) for the marking or other means of identification of submersible apparatus;
- (d) for the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of them;
- (e) for matters arising out of the termination of a registration or exemption, or a condition attached to either.

*Offences***3**

An Order may –

- (a) provide for the creation of offences;
- (b) afford, in respect of any description of offence created by the Order, any defence prescribed;
- (c) impose a punishment for an offence created by the Order of imprisonment for 2 years and a fine, or any lesser punishment prescribed.

*Exemptions from Order*

**4**

- (1) Without prejudice to Article 196(3), the operation of an Order may be excluded in whole or in part in relation to any particular submersible or supporting apparatus by the direction of the Minister given in a manner that he or she considers appropriate; and such a direction may be made subject to the imposition of conditions specified by the direction.
- (2) If, under this paragraph, a person is exempted or excluded from the provisions of an Order subject to a condition, and the condition is not observed, the exemption or exclusion does not have effect, and accordingly proceedings may be brought in respect of an offence created by the Order.

*General*

**5**

An Order may provide –

- (a) for its operation outside Jersey and for its application to –
  - (i) any persons,
  - (ii) any companies, whether or not incorporated under the law of Jersey;
- (b) that in proceedings for an offence under the Order an averment in any process that anything was done or situated within Jersey waters is, until the contrary is proved, sufficient evidence of the fact as stated in the averment;
- (c) that proceedings for an offence under the Order may be taken, and the offence treated for all purposes as having been committed, in Jersey;
- (d) for any provisions of Part 11 relating to inquiries and investigations into marine accidents to apply, with any modifications specified, in relation to accidents involving any submersible apparatus that is not a ship as they apply to ships;
- (e) that specified provisions of any enactment, other than Article 52 and this Schedule, are, in circumstances that may be prescribed, not to have effect in relation to any class or description of, or to any particular, submersible or supporting apparatus that may be prescribed.

**SCHEDULE 4**

(Article 116)

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

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:



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- (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 categorized 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 Liquefied 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 minimize 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. “Organization” means the International Maritime Organization.
17. “Secretary-General” means the Secretary-General of the Organization.

#### 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 warships 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 minimize 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 knowledge that such damage would probably result.
3. The owner shall, for the purpose of benefiting 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 minimize 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 official 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 proceedings 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 irresistible 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 subparagraphs, 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 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;



- 
- (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 on 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 a 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 any 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 fulfil 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 carried 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.

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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 deposited 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.

**SCHEDULE 5**

(Article 118)

**CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND  
THEIR LUGGAGE BY SEA****PART 1****TEXT OF CONVENTION****ARTICLE 1***Definitions*

In this Convention the following expressions have the meaning here assigned to them:

1. (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actual performed by him or by a performing carrier;  
(b) “performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;
2. “contract of carriage” means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;
3. “ship” means only a seagoing vessel, excluding an air-cushion vehicle;
4. “passenger” means any person carried in a ship,
  - (a) under a contract of carriage, or
  - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;
5. “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding:
  - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and
  - (b) live animals;
6. “cabin luggage” means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle.

7. “loss of or damage to luggage” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;
8. “carriage” covers the following periods:
  - (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice versa, if the cost of such transport is included in the fare or if the vessel used for the purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;
  - (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
  - (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent onshore or on board until the time of its re-delivery by the carrier or his servant or agent;
9. “international carriage” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract carriage or the scheduled itinerary, there is an intermediate port of call in another State.

## ARTICLE 2

### *Application*

1. This Convention shall apply to any international carriage if:
  - (a) the ship is flying the flag of or is registered in a State Party to the Convention, or
  - (b) the contract of carriage has been made in a State Party to the Convention, or
  - (c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.
2. Notwithstanding paragraph 1 of this Article, this Convention shall apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport to a civil liability regime under the provisions of such

convention, in so far those provisions have mandatory application to carriage by sea.

### ARTICLE 3

#### *Liability of the carrier*

1. The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.
2. The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.
3. Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.

### ARTICLE 4

#### *Performing carrier*

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of the Convention for the part of the carriage performed by him.
2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.
3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.
4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.
5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

## ARTICLE 5

*Valuables*

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed on in accordance with paragraph 1 of Article 10.

## ARTICLE 6

*Contributory fault*

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

## ARTICLE 7

*Limit of liability personal injury*

1. The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 46,666 units of account per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.
2. Notwithstanding paragraph 1 of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher per capita limit of liability.

## ARTICLE 8

*Limit of liability for loss of or damage to luggage*

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 833 units of account per passenger, per carriage.
2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 3,333 units of account vehicle per carriage.
3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 1,200 units of account per passenger, per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deduction not exceeding 117 units of account in the case of damage to a vehicle and not exceeding 13 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

#### ARTICLE 9

##### *Unit of account and conversion*

The Unit of Account mentioned in this Convention is the special drawing right as defined by the International Monetary Fund. The amounts mentioned Articles 7 and 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency on the date the judgment or the date agreed upon by the Parties.

#### ARTICLE 10

##### *Supplementary provisions on limits of liability*

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.
2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

#### ARTICLE 11

##### *Defences and limits for carriers' servants*

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

#### ARTICLE 12

##### *Aggregation of claims*

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.
2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention,

but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limit of liability prescribed in Articles 7 and 8, the aggregate of the amount recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

#### ARTICLE 13

##### *Loss of right to limit liability*

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

#### ARTICLE 14

##### *Basis for claims*

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

#### ARTICLE 15

##### *Notice of loss or damage to luggage*

1. The passenger shall give written notice to the carrier or his agent:
  - (a) in the case of apparent damage to luggage:
    - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
    - (ii) for all other luggage, before or at the time of its re-delivery;
  - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within 15 days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

#### ARTICLE 16

##### *Time-bar for actions*

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.
2. The limitation period shall be calculated as follows:
  - (a) in the case of personal injury, from the date of disembarkation of the passenger;
  - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
  - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.
3. The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.
4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

#### ARTICLE 17

##### *Competent jurisdiction*

1. An action arising under this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court located in a State Party to this Convention:
  - (a) the court of the place of permanent residence or principal place of business of the defendant, or
  - (b) the court of the place of departure or that of the destination according to the contract of carriage, or
  - (c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or



- (d) a court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in the State.
- 2. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

#### ARTICLE 18

##### *Invalidity of contractual provisions*

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability toward the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in paragraph 4 of Article 8, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in paragraph 1 of Article 17 shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

#### ARTICLE 19

##### *Other conventions on limitation of liability*

This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships.

#### ARTICLE 20

##### *Nuclear damage*

No liability shall arise under this Convention for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable to such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions.

## ARTICLE 21

*Commercial carriage by public authorities*

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of Article 1.

**PART 2**

## PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation*

1. In this Part of this Schedule “the Convention” means the Convention as set out in Part 1 of this Schedule, a reference to a numbered article is a reference to the article of the Convention that is so numbered, and an expression to which a meaning is given by article 1 of the Convention has that meaning.

*Provisions adapting or supplementing specified articles of the Convention*

2. For the purposes of paragraph 2 of article 2, provisions of an international convention referred to in that paragraph that apart from this paragraph do not have mandatory application to carriage by sea are to be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.
3. The reference in article 6 to the law of the court is to be construed as a reference to the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960.
4. The Minister may by Order provide that, in relation to a carrier whose principal place of business is in Jersey, paragraph 1 of article 7 is to have effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the Order, that shall not be lower than 46,666 units of account.
- 5.-(1) For the purpose of converting from special drawing rights into sterling the amounts mentioned in articles 7 and 8 in respect of which a judgment is given, one special drawing right is to be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being one special drawing right for –
  - (a) the day on which the judgment is given; or
  - (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.
- (2) A certificate given on behalf of the Minister for Treasury and Resources stating –

- (a) that a particular sum in sterling has been fixed as mentioned in sub-paragraph (1) for a particular day; or
- (b) that no sum has been so fixed for that day and a particular sum in sterling has been so fixed for a day that is the last day for which a sum has been so fixed before the particular day,

is conclusive evidence of those matters for the purposes of articles 7 to 9; and a document purporting to be such a certificate is to be received in evidence in any proceedings and, unless the contrary is proved, is to be treated as such a certificate.

- 6. The limitations on liability mentioned in article 12 in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them that may be brought whether in Jersey or elsewhere.
- 7. Article 16 applies to an arbitration as it applies to an action.
- 8.-(1) The court before which proceedings are brought under article 17 to enforce a liability may at any stage of the proceedings make orders that appear to the court to be equitable in view of –
  - (a) the provisions of article 12; and
  - (b) any other proceedings that have been or are likely to be begun in Jersey or elsewhere to enforce the liability in whole or part.
- (2) Without prejudice to the generality of sub-paragraph (1), if the liability is or may be partly enforceable in other proceedings in Jersey or elsewhere, a court has jurisdiction –
  - (a) to award an amount less than it would have awarded if the limitation applied solely to the proceedings before it; or
  - (b) to make part of its award conditional on the results of any other proceedings.

*Other provisions adapting or supplementing the Convention*

- 9. A reference in the Convention to a contract of carriage excludes a contract of carriage that is not for reward.
- 10. If Her Majesty in Council declares that a State specified in the Order is a party to the Convention in respect of a particular country, the Order is, subject to any subsequent Order made by virtue of this paragraph, conclusive evidence of that fact.
- 11. The Minister may by Order make provision –
  - (a) for requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner specified in the Order, notice of such of the provisions of the Convention as are so specified;
  - (b) for a person who fails to comply with a requirement imposed on him by the Order to commit an offence punishable with a fine of up to level 4 on the standard scale.

*Application of Articles 119 and 120*

- 12.-(1) Nothing in the Convention affects the operation of Article 119 of this Law (*limitation of a shipowner's liability in certain cases of loss of life, injury or damage*).
- (2) Nothing in Article 120 of this Law (*that among other things limits a shipowner's liability for loss or damage of goods in certain cases*) relieves a person of a liability imposed on him by the Convention.

**SCHEDULE 6**

(Article 119)

**CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME  
CLAIMS 1976**

**PART 1**

**TEXT OF CONVENTION**

**CHAPTER I**

**THE RIGHT OF LIMITATION**

**ARTICLE 1**

*Persons entitled to limit liability*

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term “shipowner” shall mean the owner, charterer, manager or operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(d), (e) and (f).
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.
5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.
6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.
7. The act of invoking limitation of liability shall not constitute an admission of liability.

## ARTICLE 2

*Claims subject to limitation*

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, 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 their 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 Convention, and further loss caused by such measures.
2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

## ARTICLE 3

*Claims excepted from limitation*

The rules of this Convention shall not apply to:

- (a) claims for salvage or contribution in general average;
- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29th November 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;

- (e) 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 law governing 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 by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

#### ARTICLE 4

##### *Conduct barring limitation*

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

#### ARTICLE 5

##### *Counterclaims*

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

### CHAPTER II

#### LIMITS OF LIABILITY

#### ARTICLE 6

##### *The general limits*

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) 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):  
for each ton from 501 to 3,000 tons, 500 Units of Account;  
for each ton from 3,001 to 30,000 tons, 333 Units of Account;  
for each ton from 30,001 to 70,000 tons, 250 Units of Account, and  
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):
    - for each ton from 501 to 30,000 tons, 167 Units of Account;
    - for each ton from 30,001 to 70,000 tons, 125 Units of Account; and
    - for each ton in excess of 70,000 tons, 83 Units of Account.
- 2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).
- 4. The limits of liability for any 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.

#### ARTICLE 7

##### *The limit for passenger claims*

- 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 46,666 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate, but not exceeding 25 million Units of Account.
- 2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:
  - (a) under a contract of passenger carriage, or
  - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

#### ARTICLE 8

##### *Unit of Account*

The Unit of Account referred to in Articles 6 and 7 is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.



## ARTICLE 9

*Aggregation of claims*

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:
  - (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are 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; or
  - (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 Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

## ARTICLE 10

*Limitation of liability without constitution of a limitation fund*

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.
2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.
3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

**CHAPTER III**

## THE LIMITATION FUND

## ARTICLE 11

*Constitution of the Fund*

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.
3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

## ARTICLE 12

*Distribution of the fund*

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.
2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.
4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 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 his claim against the fund.

## ARTICLE 13

*Bar to other actions*

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted.
2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:
  - (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; or
  - (d) in the State where the arrest is made.
3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

## ARTICLE 14

*Governing law*

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund constituted.

**CHAPTER IV**

## SCOPE OF APPLICATION

## ARTICLE 15

This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State.

**PART 2**

## PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation***1**

- (1) In this Part of this Schedule “the Convention” means the Convention as set out in Part 1 of this Schedule, and a reference to a numbered article is a reference to the article of the Convention that is so numbered.
- (2) A reference in the Convention and this Part of this Schedule to –
  - (a) a court, is a reference to the Royal Court;
  - (b) a ship, includes a reference to a structure, whether completed or in the course of completion, launched and intended for use in navigation as a ship or part of a ship.

*Right to limit liability***2**

Subject to paragraph 6, the right to limit liability under the Convention applies in relation to any ship, whether seagoing or not, and the definition of “shipowner” in paragraph 2 of article 1 is to be construed accordingly.

*Claims subject to limitation***3**

- (1) Paragraph 1(a) of article 2 has effect as if the reference to “loss of life or personal injury” did not include a reference to loss of life or personal injury to passengers of seagoing ships;
- (2) Paragraph 1(d) of article 2 does not apply in Jersey.

*Claims excluded from limitation***4**

- (1) 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 any amendment of or Protocol to that Convention, that arise from occurrences that take place after the coming into force of the first Regulations made by the States under Article 117 of this Law are to be excluded from the Convention.
- (2) The claims excluded from the Convention by paragraph (c) of article 3 are claims made by virtue of sections 10 or 11 of the Nuclear Installations Act 1965 of the United Kingdom as extended to Jersey by the Nuclear Installations (Jersey) Order 1980.

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*The general limits*

5

- (1) In the application of article 6 to a ship with a tonnage of less than 300 tons that article has effect as if –
  - (a) paragraph 1(a)(i) referred to 1,000,000 Units of Account; and
  - (b) paragraph 1(b)(i) referred to 500,000 Units of Account.
- (2) For the purposes of article 6 and this paragraph, a ship's tonnage is its gross tonnage calculated in a manner that may be prescribed by an Order made by the Minister.

*Limit for passenger claims*

6

- (1) Article 7 of the Convention does not apply in respect of a seagoing ship; and has effect in the case of a ship that is not seagoing as if, in paragraph 1 of that article –
  - (a) after “thereof” there were inserted “in respect of each passenger,”; and
  - (b) the words from “multiplied” onwards were omitted.
- (2) In paragraph 2 of article 7 the reference to claims brought on behalf of a person includes a reference to a claim in respect of the death of a person under the Fatal Accidents (Jersey) Law 1962.

*Units of Account*

7

- (1) For the purpose of converting the amounts mentioned in articles 6 and 7 from special drawing rights into sterling, one special drawing right is to be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being one special drawing right for –
  - (a) the relevant date under paragraph 1 of article 8; or
  - (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.
- (2) A certificate given on behalf of the Minister for Treasury and Resources stating –
  - (a) that a particular sum in sterling has been fixed as mentioned in subparagraph (1) for a particular day; or
  - (b) that no sum has been so fixed for that day and a particular sum in sterling has been so fixed for a day that is the last preceding day for which a sum has been so fixed,

is conclusive evidence of those matters for the purposes of those articles; and a document purporting to be such a certificate is to be received in evidence in any proceedings and, unless the contrary is proved, is to be treated as such a certificate.

*Applicable law*

8

- (1) If an action is brought in Jersey, the reference in paragraph 3 of article 10 to the national law of the State Party is to be construed as a reference to the law of Jersey.
- (2) In article 14, the reference to the law of the State Party is, if the fund is constituted in Jersey, to be construed as a reference to the law of Jersey.

*Constitution of fund*

9

- (1) The Minister may, with the concurrence of the Minister for Treasury and Resources, by Order prescribe the rate of interest to be applied for the purposes of paragraph 1 of article 11; but in the absence of such a prescription the rate of interest is the rate applicable in the United Kingdom under an order made by the Secretary of State for that purpose.
- (2) If a fund is constituted with the court in accordance with article 11 for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to a claim arising out of that occurrence that are pending against the person by whom the fund has been constituted.

*Distribution of fund*

10

A lien or other right in respect of any ship or property does not affect the proportions in which under article 12 the fund is distributed among several claimants.

*Bar to other actions*

11

If the release of a ship or other property is ordered under paragraph 2 of article 13, the person on whose application it is ordered to be released is to be regarded as having submitted to the jurisdiction of the court to adjudicate on the claim for which the property was arrested or attached.

*Meaning of "State Party"*

12

If Her Majesty in Council declares that a State specified in the Order is a party to the Convention as amended by the 1996 Protocol, the Order is, subject to any subsequent Order made by virtue of this paragraph, conclusive evidence of that fact; but the Order shall not have effect in Jersey unless registered by the Royal Court.

**SCHEDULE 7**

(Articles 128 and 129)

**INTERNATIONAL CONVENTION ON SALVAGE 1989****PART 1****TEXT OF CONVENTION****CHAPTER I****GENERAL PROVISIONS****ARTICLE 1***Definitions*

For the purpose of this Convention –

- (a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) Vessel means any ship or craft, or any structure capable of navigation.
- (c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) Payment means any reward, remuneration or compensation due under this Convention.
- (f) Organisation means the International Maritime Organisation.
- (g) Secretary-General means the Secretary-General of the Organisation.

**ARTICLE 2***Application of the Convention*

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

## ARTICLE 3

*Platforms and drilling units*

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

## ARTICLE 4

*State-owned vessels*

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.
2. Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

## ARTICLE 5

*Salvage operations controlled by public authorities*

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.
2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.
3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

## ARTICLE 6

*Salvage contracts*

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.
2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.



3. Nothing in this article shall affect the application of article 7 nor duties to prevent or minimise damage to the environment.

#### ARTICLE 7

##### *Annulment and modification of contracts*

A contract or any terms thereof may be annulled or modified if –

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

### CHAPTER II

#### PERFORMANCE OF SALVAGE OPERATIONS

#### ARTICLE 8

##### *Duties of the salvor and of the owner and master*

1. The salvor shall owe a duty to the owner of the vessel or other property in danger –
  - (a) to carry out the salvage operations with due care;
  - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimise damage to the environment;
  - (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
  - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.
2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor –
  - (a) to co-operate fully with him during the course of the salvage operations;
  - (b) in so doing, to exercise due care to prevent or minimise damage to the environment; and
  - (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

## ARTICLE 9

*Rights of coastal States*

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

## ARTICLE 10

*Duty to render assistance*

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.
3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

## ARTICLE 11

*Co-operation*

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

**CHAPTER III**

## RIGHTS OF SALVORS

## ARTICLE 12

*Conditions for reward*

1. Salvage operations which have had a useful result give right to a reward.

2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

#### ARTICLE 13

##### *Criteria for fixing the reward*

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below –
  - (a) the salvaged value of the vessel and other property;
  - (b) the skill and efforts of the salvors in preventing or minimising damage to the environment;
  - (c) the measure of success obtained by the salvor;
  - (d) the nature and degree of the danger;
  - (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
  - (f) the time used and expenses and losses incurred by the salvors;
  - (g) the risk of liability and other risks run by the salvors or their equipment;
  - (h) the promptness of the services rendered;
  - (i) the availability and use of vessels or other equipment intended for salvage operations;
  - (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.
2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.
3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

#### ARTICLE 14

##### *Special compensation*

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special

compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30 per cent of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100 per cent of the expenses incurred by the salvor.
3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).
4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.
5. If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

#### ARTICLE 15

##### *Apportionment between salvors*

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.
2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

#### ARTICLE 16

##### *Salvage of persons*

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.
2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of

the payment awarded to the salvor for salving the vessel or other property or preventing or minimising damage to the environment.

#### ARTICLE 17

##### *Services rendered under existing contracts*

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

#### ARTICLE 18

##### *The effect of salvor's misconduct*

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

#### ARTICLE 19

##### *Prohibition of salvage operations*

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

### CHAPTER IV

#### CLAIMS AND ACTIONS

#### ARTICLE 20

##### *Maritime lien*

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

## ARTICLE 21

*Duty to provide security*

1. Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2. Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
3. The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

## ARTICLE 22

*Interim payment*

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.
2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

## ARTICLE 23

*Limitation of actions*

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.
2. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.
3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

## ARTICLE 24

*Interest*

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

## ARTICLE 25

*State-owned cargoes*

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings *in rem* against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognized principles of international law.

## ARTICLE 26

*Humanitarian cargoes*

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

## ARTICLE 27

*Publication of arbitral awards*

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

**PART 2**

## PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation***1**

- (1) In this Part of this Schedule “the Convention” means the Convention as set out in Part 1 of this Schedule, and a reference to a numbered article is a reference to the article of the Convention that is so numbered.

- (2) A reference in the Convention to judicial proceedings is a reference to proceedings in the Royal Court; and a reference to the tribunal having jurisdiction, in so far as it refers to judicial proceedings, is to be construed accordingly.

*Assistance to persons at sea*

**2**

- (1) The master of a vessel who fails to comply with the duty imposed on him by paragraph 1 of article 10 commits an offence and is liable to imprisonment for 2 years and a fine.
- (2) Compliance by the master of a vessel with that duty does not affect his right or the right of another person to a payment under the Convention or under any contract.

*The reward and special compensation: the common understanding*

**3**

In fixing a reward under article 13 and assessing special compensation under article 14 the court or arbitrator is under no duty to fix a reward under article 13 up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under article 14.

*Recourse for life salvage payment*

**4**

- (1) This paragraph applies if –
- (a) services are rendered wholly or in part in Jersey waters in saving life from a vessel of any nationality, or elsewhere in saving life from a Jersey ship; and
  - (b) either –
    - (i) the vessel and other property are destroyed, or
    - (ii) the sum to which the salvor is entitled under paragraph 2 of article 16 is less than a reasonable amount for the services rendered in saving life.
- (2) If this paragraph applies, the Minister may pay to the salvor a sum, or as the case may be an additional sum, as the Minister thinks fit in respect of the services rendered in saving life.



*Meaning of “State Party”***5**

If Her Majesty in Council declares that a State specified in the Order is a party to the Convention in respect of a particular country or territory, the Order is, subject to any subsequent Order made by virtue of this paragraph, conclusive evidence of that fact.

**SCHEDULE 8**

(Article 201(1))

**REPEALS****ACTS OF THE UNITED KINGDOM IN SO FAR AS THEY APPLY TO  
JERSEY**

<i>Short title</i>
Merchant Shipping Act 1894
Merchant Shipping (Liability of Shipowners and others) Act 1900
Merchant Shipping Act 1906
Maritime Conventions Act 1911

**SCHEDULE 9**

(Article 201(4))

**TRANSITIONAL AND SAVINGS PROVISIONS<sup>33</sup>****1 Qualifications: certificates of A.B.**

- (1) A seaman engaged in a Jersey ship is not to be rated as A.B. unless he or she is the holder of a certificate of competency –
  - (a) granted in pursuance of an Order made under this paragraph providing for the grant of those certificates of competency; or
  - (b) recognized by the Minister for the purposes of this paragraph.
- (2) An Order under paragraph (1) may make provision in particular for –
  - (a) the payment of prescribed fees in respect of an application for the grant or replacement of a certificate;
  - (b) for applying section 104 of the Merchant Shipping Act 1894 of the United Kingdom to certificates, subject to any adaptations prescribed.
- (3) A shipping master or other officer before whom a seaman is engaged in a Jersey ship shall refuse to enter the person as A.B. on the crew agreement unless the seaman produces a certificate of competency or other proof, that appears to the shipping master to be satisfactory, that he or she is the holder of such a certificate.

**2 Manning: certificates existing in 1979**

- (1) The power to make an Order under Article 29 includes power to provide that pre-1979 certificates are, except for cases specified in the Order, to be treated for the purposes of any provisions of Part 4 that are so specified –
  - (a) as being issued in pursuance of that Article; and
  - (b) to confer on the persons to whom they were issued the qualifications for the purposes of that Article as are so specified.
- (2) In this paragraph “pre-1979 certificate” means a certificate –
  - (a) granted under section 93, 99 or 414 of the Merchant Shipping Act 1894 of the United Kingdom;
  - (b) referred to in an Order in Council made under section 104 of that Act;
  - (c) granted under section 27(2) of the Merchant Shipping Act 1906 of the United Kingdom or by an institution approved in pursuance of that subsection; and

- (d) granted under section 5 of the Merchant Shipping Act 1948 of the United Kingdom.

### **3 Masters and seamen and documents: transitory provisions**

The Minister may by Order appoint a day or days on which Article 190 and paragraph 1 of this Schedule cease to have effect.

### **4 Registration of ships<sup>34</sup>**

- (1) A ship that immediately before the commencement of Part 3 of this Law was on a register maintained in Jersey under the Merchant Shipping Acts 1894 to 1983 of the United Kingdom, as those Acts at that time applied to Jersey (in this paragraph referred to as the “1894 to 1983 Acts”), is to be taken, on that commencement, to have been registered under Part 3 of this Law.
- (2) Likewise, if immediately before the commencement of Part 3 of this Law a mortgage was registered in Jersey on a ship in accordance with the 1894 to 1983 Acts, the mortgage is to be taken, on that commencement, to have been registered in accordance with this Law and, subject to sub-paragraph (3), shall have effect accordingly.
- (3) Paragraph 9 of Schedule 1 (which applies where 2 or more mortgages are registered in respect of the same ship) shall apply where sub-paragraph (2) has effect as if the mortgages had been registered on the date they were registered under the 1894 to 1983 Acts.
- (4) For the purposes of the Registration Regulations a ship to which sub-paragraph (1) applies is to be taken to have been registered on the date on which it was registered under the 1894 to 1983 Acts.
- (5) Despite sub-paragraph (1) –
  - (a) the Registrar may, in accordance with the Registrar’s powers to do so under this Law or the Registration Regulations, cancel the registration of a ship to which that sub-paragraph applies; and
  - (b) the Registrar shall cancel the registration of a ship to which sub-paragraph (1) applies if the ship is not owned to the prescribed extent by a person or persons qualified to own a Jersey ship.

**SCHEDULE 10**

(Article 200)

**LIGHTHOUSES****1 Interpretation**

- (1) In this Schedule the “1995 Act” means the Merchant Shipping Act 1995 of the United Kingdom, as from time to time amended.
- (2) Words and phrases defined in the 1995 Act and used in this Schedule have the same meaning in this Schedule as they do in the 1995 Act.

**2 General lighthouse authority**

Pursuant to paragraph 9(2) of Schedule 14 to the 1995 Act, the Trinity House shall exercise their powers under Part VIII of the 1995 Act with respect to lighthouses, buoys and beacons in Jersey to the same extent as they were authorized to exercise their powers under Part XI of the Merchant Shipping Act 1894 in its application to Jersey immediately before the commencement of this Law.

**3 Light dues**

The Minister may make a fair contribution towards any costs incurred by the Trinity House with respect to lighthouses, buoys and beacon erected or placed in or near Jersey.

**4 Local lighthouse authority**

- (1) Subject to sub-paragraph (2), the Minister shall be the local lighthouse authority and the statutory harbour authority for the purposes of this Law and Part VIII of the 1995 Act in its application to Jersey.
- (2) The Minister may appoint some other person or body to be the local lighthouse authority or statutory harbour authority or both.

**5 General powers of lighthouse authorities**

- (1) The local lighthouse authority shall have the same powers as a general lighthouse authority has under section 197(1) and (7) of the 1995 Act.
- (2) The States may acquire land by compulsory purchase in accordance with the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961<sup>35</sup> if the States are satisfied that the land should be acquired for a purpose specified in section 197(5) of the 1995 Act in its application to the local lighthouse authority by virtue of sub-paragraph (1).

- (3) The local lighthouse authority shall be the acquiring authority within the meaning of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 in respect of land purchased in accordance with sub-paragraph (2).

**6 Damages etc. to lighthouses etc.**

- (1) Section 219 of the 1995 Act shall apply in respect of Jersey.
- (2) The Royal Court shall have jurisdiction in respect of any offence or the recovery of any expenses under section 219 of the 1995 Act in its application to Jersey.

**7 Prevention of false lights**

- (1) The local lighthouse authority for Jersey, shall have the same powers as the general lighthouse authority has under section 220 of the 1995 Act in its application to Jersey.
- (2) The Royal Court shall have jurisdiction in respect of any offence or the recovery of any expenses under section 220 of the 1995 Act in its application to Jersey whether that application is by virtue of section 193(5) of the 1995 Act or by virtue of sub-paragraph (1).

**8 Exemption from taxes, duties, etc.**

Section 221(1) of the 1995 Act shall apply in Jersey.

**9 Exemption from harbour dues**

Section 222 of the 1995 Act shall apply to harbours, ports, docks and piers in Jersey.

**ENDNOTES****Table of Legislation History**

<b>Legislation</b>	<b>Year and No</b>	<b>Commencement</b>
Shipping (Jersey) Law 2002	L.41/2002	1 June 2004 (R&O.38/2004)
Shipping (Amendment) (Jersey) Law 2003	L.40/2003	1 June 2004 (R&O.39/2004)
Shipping (SOLAS) (Jersey) Regulations 2004	R&O.9/2004	1 June 2004
Shipping (Load Line) (Jersey) Regulations 2004	R&O.10/2004	1 June 2004
States of Jersey (Amendments and Construction Provisions No. 10) (Jersey) Regulations 2005	R&O.50/2005	9 December 2005

**Table of Renumbered Provisions**

<b>Original</b>	<b>Current</b>
1(5)(a), (b)	spent, omitted from this revised edition
1(5)(c)	1(5)
2(1)	2
2(2)	repealed by L.40/2003
49(9)	repealed by R&O.10/2004
202(2), (3)	spent, omitted from this revised edition
Schedule 2	repealed by R&O.10/2004
Schedule 8 Part 1	Schedule 8
Schedule 8 Part 2	spent, omitted from this revised edition
Schedule 10 paragraph 3(1)	Schedule 10 paragraph 3
Schedule 10 paragraph 3(2)	repealed by L.40/2003

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**Table of Endnote References**

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- <sup>1</sup> *This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 10) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*
- <sup>2</sup>Article 1(1) *definition “Jersey connection” deleted by L.40/2004*
- <sup>3</sup>Article 1(1) *definition “British connection” inserted by L.40/2003*
- <sup>4</sup> *chapter 19.060*
- <sup>5</sup>Article 1(1) *definition “small ship” inserted by L.40/2003*
- <sup>6</sup>Article 2 *amended by L.40/2003*
- <sup>7</sup>Article 10(1) *amended by L.40/2003*
- <sup>8</sup>Article 11(2) *amended by L.40/2003*
- <sup>9</sup>Article 12(2) *amended by L.40/2003*
- <sup>10</sup>Article 12(3) *amended by L.40/2003*
- <sup>11</sup>Article 13(1) *amended by L.40/2003*
- <sup>12</sup>Article 13(2) *amended by L.40/2003*
- <sup>13</sup>Article 17 *heading amended by L.40/2003*
- <sup>14</sup>Article 17(1) *amended by L.40/2003*
- <sup>15</sup>Article 17(2) *amended by L.40/2003*
- <sup>16</sup>Article 17(3) *amended by L.40/2003*
- <sup>17</sup> *chapter 14.825*
- <sup>18</sup> *chapter 10.800*
- <sup>19</sup> *The Committee may make Orders for the purposes of Article 49. R&O.9/2004*
- <sup>20</sup>Article 49(1) *amended by R&O.9/2004*
- <sup>21</sup> *OinC. 30/1952*
- <sup>22</sup> *chapter 13.125*
- <sup>23</sup> *chapter 14.825*
- <sup>24</sup> *chapter 15.360*
- <sup>25</sup> *chapter 13.125*
- <sup>26</sup> *chapter 19.540*
- <sup>27</sup> *chapter 19.060*
- <sup>28</sup>Article 159(4) *amended by R&O.10/2004*
- <sup>29</sup> *chapter 15.360*
- <sup>30</sup> *chapter 15.720*
- <sup>31</sup> *chapter 15.360*
- <sup>32</sup>Schedule 1 *amended by L.40/2003*
- <sup>33</sup>Schedule 9 *amended by R&O.10/2004*
- <sup>34</sup>Schedule 9 *paragraph 4 inserted by L.40/2003*
- <sup>35</sup> *chapter 18.135*